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Montreaux Resorts P. Ltd and Ors. Vs. Sonia Khosla and Ors.

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Court : Delhi

Decided On : Jan-13-2015

Judge : Sanjeev Sachdeva

Appellant : Montreaux Resorts P. Ltd and Ors.

Respondent : Sonia Khosla and Ors.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Order reserved on:

17. th November, 2014 Order pronounced on:

13. h January, 2015 CONT. CAS (C) 165/2008 MONTREAUX RESORTS P. LTD & ORS....PETITIONERS Through: Mr. Raman Kapur, Sr. Advocate with Mr. Anand M. Mishra, Advocate Versus SONIA KHOSLA & ORS. ....RESPONDENTS Through: None. CORAM: HONBLE MR. JUSTICE SANJEEV SACHDEVA SANJEEV SACHDEVA, J.

1. Little did the framing fathers of the Constitution and the legislators visualize that the privilege and liberty granted to an individual to approach the court of law and to appear for himself and for others either as an attorney or as an advocate could and would be misused and abused to such an extent as has been done by this one individual Mr. Deepak Khosla.

2. 32 learned Judges of this High Court (including former and sitting judges), judges of the subordinate courts, the Company Law Board and the Arbitral Tribunal comprising of former judges of this Court and a former judge of the Supreme Court have recused themselves since 2008 from hearing the cases in which either Mr. Deepak Khosla is a party or appearing as an attorney or as an advocate.

3. Various judicial orders imposing costs and even initiating contempt proceedings both civil and criminal have not deterred him from continuing with his conduct.

4. The Courts in India are perceived as temples of justice and the Judges as its priests. The legal profession is considered world over as a very honourable profession. The members of the profession hold a special place in the society. They are looked upon by others as leaders, advisors, mentors, guides etc. One individual by his conduct has attempted to pollute the stream of administration of justice and the very purity of the Courts' atmosphere.

5. Mr. Deepak Khosla started appearing in a litigation first as an authorised representative of his wife and father and of a company but later on during the pendency of the litigation has gone on to study law and has joined the legal profession.

6. Members of the legal profession are required to maintain higher standards of behaviour and conduct than an ordinary citizen.

7. Despite entering the legal profession and donning the robes of a member of the legal profession the behaviour and conduct of Mr. Deepak Khosla has not changed.

8. By Order dated 24.04.2012 the Division Bench of this Court in LPA No.16/2012 held that the High Court has inherent power distinct and separate from power of contempt to injunct/sanction vexatious or frivolous litigation, vexatious/habitual litigants, contumelious litigant and issue appropriate directions, including prohibiting the said litigant from appearing and arguing matters in person and for others and from initiating or filing proceedings, except with permission of the

Court. The Division Bench further directed that the Order dated 04.01.2012, passed by a learned Single Judge, would be treated as a Show Cause Notice. The order of the Division Bench has been upheld by the Supreme Court by order dated 19.09.2012 in SLP(C) No.15004/2012.

9. The present order is being passed pursuant to the directions of the Division Bench by Order dated 24.04.2012.

10. For the disposal of the Show Cause Notice in terms of the directions of the Division Bench, it is necessary to examine the behaviour and conduct of Mr. Deepak Khosla in the Courts.

11. By Order dated 25.09.2008, in Co.A.(SB) 6/2008 a learned Single Judge of this Court has recorded as under:

In view of the scandalous averments contained in this application, it appears that the applicant has no confidence in me and, therefore I recuse myself from hearing this application.

12. By Order dated 28.01.2009 in Co.A.(SB) 7/2008 another learned Single Judge of this Court held as under:

3. The applications before this court are in the nature of a review of hearing wherein a brother colleague has recused himself for reasons of scandalous averments contained in CA No.1000/2000. It is well settled that consideration of any application has to abide by judicial record which is placed before the court. Fully conscious of the well settled legal position, unfounded allegations, before even submissions could be completed by counsel, have been made.

4. ....

7. .....At this stage, Mr. Deepak Khosla rose and started gesticulating. He interrupted the court proceedings in a loud voice making allegations that the counsel appearing in the matter have no right of audience in the matter and that proceedings in this court are not as per law. All requests to him to contain himself, to resume his seat and permit Respondents counsel to complete his submission

did not bear any fruit. Mr. Khosla continued to interrupt the court proceedings in loud and obstructive tone and making allegations against the counsel appearing on the other side in open court that they are lying.

8. He used insulting language and has cast aspersions on counsel appearing on the other side. The allegations made are scandalous and aimed at creating prejudice and embarrassment to counsel who are discharging their professional duties towards their client. I have been exercising considerable restraint keeping in view that Mr. Deepak Khosla was appearing in person. The Respondents have objected to his appearance inasmuch as he is arrayed as Respondent No.11 before the Company Law Board in the petition which has been filed by his wife Ms. Sonia Khosla as the petitioner and Mr. Khosla in the opposite party before the Company Law Board. 13.

9. His conduct in court today was so obstructive that this court found it impossible to record the order in open court and has risen to dictate this order in chamber.

10. The acts of Mr. Deepak Khosla in standing up when the other side is arguing, gesticulating with his hands, raising his voice and not permitting the proceedings in the court to continue amounts to interference with the due course of judicial proceedings before this court, which prima facie, constitutes criminal contempt of court.

11. ....

12. Let a copy of order be given to Mr. Deepak Khosla under signatures of court master. Mr. Deepak Khosla is hereby called upon to submit his response to this order which is being treated as a notice of charge, to be responded within two weeks.

13. ....

By Order dated 13.11.2009 in O.M.P. No.660 of 2009 another learned Single Judge of this Court has recorded as under:

Mr. Deepak Khosla, who claims to be the power of attorney holder on behalf of Respondent No.1/Mrs. Sonia Khosla, requests that this court recuse itself from hearing the present petition. Though, I find the request is baseless but keeping in view the principle of fairness, I direct that the present petition be listed before another Bench on ....

14. By Order dated 29.01.2010 in Arb. Pet. No.217 of 2009 another learned Judge of this Court recorded as under:

A prayer is made by Mr. Deepak Khosla for this court to recuse itself. This request, Mr. Khosla made, when the Court pointed to Mr. Khosla that there is a particular tone for addressing the Court and this Court will not accept any unacceptable tone in arguing the case. Whereas it is permissible for every petitioner or person to forcefully and passionately argue the case, there is, however, a line which a person should not cross. This request by Mr. Khosla asking me to recuse myself from hearing this matter is declined. I direct the petitioner to commence his arguments on the petition under Section 11 of the Arbitration and Conciliation Act, 1996, i.e. Arb. No.217/2009. I may also note that Honble Mr. Justice Manmohan, the only other Court which is hearing arbitration cases under the roster, also had recused himself from this case vide the order dated 17.12.2009. .... From the commencement of the hearing in this case, Mr. Deepak Khosla, has been repeatedly, and in effect directing, that the court must pass orders by necessarily noting facts in the manner and content as stated by him. I am of the opinion that it is the privilege of a person to argue the case, but the order; the contents thereof; the language thereof; is for this Court to decide and not for a litigant to dictate. Accordingly, in view of the repeated requests made by Mr. Khosla which, in effect, amounts to directing this Court, I put Mr. Khosla to notice, without issuing a formal notice of contempt, that in case any further remarks, which are not within the dignity of the court are made, a formal notice of contempt shall be issued to Mr. Khosla. .... Mr. Khosla, at this stage, is again adopting the attitude of putting questions to the court and in fact, which amounts to directions with regard to whether this Court has or has not read the said application. I hold that this stand is not correct because the Court has understood the contents of application and has, therefore, declined the relief and in fact, has held the same to be malafide and

misconceived and having been dismissed with costs. Since Mr. Khosla is continuing with this attitude which is not in accordance with the dignity of appearance and arguments in a court of law, at this stage, I issue a specific warning, again without issuing notice of contempt, that Mr. Khosla should, in every manner, absolve himself from making any comments which amounts to violation of the dignity of the Court. It is made clear that after this specific warning if Mr. Khosla continues with this attitude, this Court will be forced to issue notice of contempt to Mr. Khosla.

15. By Order dated 03.02.2010 in O.M.P. 660 of 2009 the learned Judge further held as under:

Mr. Khosla, at this stage, wants me to record various submissions which in my opinion are wholly baseless and irrelevant. So far as issue of notice in this petition and filing of reply are concerned, I am not even inclined to record what is urged by Mr. Khosla, However, I note that such submissions made by Mr. Khosla pertain to some contempt and criminal proceedings which he says are pending against the petitioners. In my order dated 29.01.2010 in A.A.217/2009, I had put Mr. Khosla to firstly a notice, not to direct the court to pass orders in a particular manner. Even thereafter, Mr. Khosla continued his attitude in the said A.A.217/2009 and therefore a further warning was issued. Even today, Mr. Khosla in spite of the same, insists that this court should pass orders using a particular language, which he thinks ought to be recorded in the orders being passed. Since this is a third warning to Mr. Khosla, I specifically issue a notice of contempt to Mr. Deepak Khosla, Attorney of the Respondents for interfering with the court proceedings. Contempt notice is accordingly issued to Mr. Deepak Khosla, which will be replied by Mr. Khosla within a period of four weeks from today. List this suo moto contempt proceedings by means of and in a separate file giving a separate numbering as a contempt petition, along with a copy of todays order and copy of the order dated 29.01.2010 in A.A.217/2009.

16. By order dated 22.02.2011 in R.P. 75/2011 in Cont.(Cas) 743/2009 another learned Judge of this court has recorded as under:

During the course of his arguments, Mr. Khosla has suggested that the petitioners did not file the contempt petition before the Company Court, and, instead filed this contempt petition as the petitioners were resorting to Bench hunting. This is a very serious allegation made by the applicant against this court. I would, therefore, not like to hear this matter any further.............

17. By Order dated 28.03.2014 in L.P.A. 16 of 2012 a Division Bench of this Court held as under:

...............A reading of the entire order of the Division Bench would show that the decision to stay the pending or new proceedings was prompted by several considerations, not the least of which was the protection of the court itself from the abrasive conduct of the applicant while appearing in person before it. ....The present applications for modification and clarification represent one more attempt by the applicant to revive his challenge which had met with a fatal end with the dismissal of his Review Petition by this Court and SLP by the Supreme Court. He has thus indulged in multiplicity of proceedings on the same issue, a luxury to which no litigant is entitled. Several hours of judicial time have been spent in these attempts. One is tempted to think that these are nothing but attempts to brow-beat the court into submission......... ....The applicant has also been unfair to the court by not disclosing that an earlier review petition filed by him had been dismissed before he approached the Supreme Court with an SLP; this fact was not known to this court till it was pointed out on behalf of the Respondents, who also filed a copy of the order dated 20.07.2012. In these circumstances, we are inclined to believe that the applications for clarification and modification are nothing but an attempt to ask for another review, disguised as applications for clarification and modification. The present applications have given rise to several connected miscellaneous applications, thus burgeoning the courts docket with no productive purpose. Constitutional means of challenging an adverse order or judgment rendered by a court are permitted, but the conduct of the applicant in filing repetitive applications even after the order adverse to him had attained finality amounts to obsessive cantankerousness which has to be seriously viewed............... Suo motu contempt proceedings:

13. On 11.10.2013 this Bench was hearing certain miscellaneous applications filed by the applicant Mr. Deepak Khosla seeking, inter alia, early hearing of CM No.2392/2013 (application for clarification). While hearing arguments in that behalf, he made a reference to dedh Bench (i.e., Hindi equivalent of one-and-ahalf Bench) while describing the Division Bench consisting of Sanjeev Khanna, J., and one of us (R.V. Easwar, J.,). In the order passed by this Bench on that day, it was noted as follows:

Addressing arguments on these applications, Mr. Deepak Khosla, who appears in person, submits that the order dated 24th April, 2012 passed by the Division Bench comprising of Honble Mr. Justice Sanjeev Khanna and Honble Mr. Justice R. V. Easwar can be described as Dedh Bench order (One and half) and this is quite apparent from the fact that in the order dated 24th April, 2012 Justice R. V. Easwar has not given his own comments. Mr. Deepak Khosla also submits that the judgment has been authored by Justice Sanjeev Khanna and the same has been just co-signed by Justice R.V. Easwar but Justice R.V. Easwar has not responded since May, 2013 to certain aspects of the law which had crept into the order dated 24th September, 2012 and this leads him to believe that Justice R.V. Easwar has not subscribed to some of the views in the said order. Mr. Deepak Khosla further submits that in his previous applications, he has already spelled out grievance to this effect. The present Special Bench has assembled today for hearing these applications. While addressing arguments on these applications, Mr. Deepak Khosla has raised the aforesaid contentions. This Court will take a view on the said plea raised by Mr. Deepak Khosla of describing the Division Bench as Dedh Bench at the time of final disposal of CM APPL. No.2392/2013 and other applications which are listed for hearing on 22nd November, 2013.

Since in our view the applicant has committed contempt of court in describing the Division Bench consisting of Sanjeev Khanna, J., and one of us (R.V. Easwar, J.) as Dedh Bench a prima facie contemptuous remark calculated to denigrate the dignity of this court we issue showcause notice to Mr. Deepak Khosla, the applicant herein, as to why proceedings should not be initiated against him for committing contempt of court.

18. By Order dated 25.04.2014 the said Division Bench in LPA16of 2014 held as under:

After dismissal of the applications moved by the appellant, the appellant audaciously stated that the kind of beautiful orders this court has passed today, this Bench should recuse itself to further deal with his matters. Mr. Deepak Khosla further states that he would be filing a formal application to make a request to this Bench to recuse from dealing with his matters. The appellant has every liberty to move an application, which he so wishes, but certainly the kind of expressions he is in habit of using and his entire tone and tenor for court are highly disparaging and contemptuous in nature. Earlier also, the appellant had the audacity to address the Division Bench as dedh bench and for which suo moto contempt proceedings were initiated against him. Today again, the expression used by him are highly derogatory and this conduct of the appellant using the aforesaid unwarranted expressions, during the course of judicial proceedings shall be taken into consideration at the time of taking final view in the said contempt petition.

19. By Order dated 08.09.2014 in Cont. Cas. (Crl) 9 of 2014 another Division Bench of this Court held as under:

20.

2. During the course of proceedings as well as oral hearing, which was held on 05.09.2014, the court had noticed that Mr. Deepak Khosla, who argued the appeal (LPA5832014) made averments in the appeal which tends to lower the authority or prestige of the court, as they directly attribute malice to the learned Single Judge...............

3. This Court is of the opinion that the above averments prima facie constitute criminal contempt as defined under section 2(c)(i) of the Act. This Court takes cognizance of the offence under section 15(1) of the Contempts of Court Act, 1971. Mr. Deepak Khosla is required to show cause why he should not be punished for committing such criminal contempt.

In view of the conduct of Mr. Deepak Khosla, by Order dated 30.12.2008 in C.P. No.114/2008 and CA No.671/2008, a member of the Company Law Board recused herself from hearing the matter.

21. A reference dated 29.10.2009 was received by the Registrar General of this Court from the Chairman Company Law Board for necessary action on the behaviour of Mr. Khosla. The Chairman in his letter had written as under:

Today (29.10.2009), Shri Deepak Khosla, 11th Respondent in CP No.114 of 2007 (Sonia Khosla Vs. Monterex Private Limited) entered my chamber when I was engaged in writing a judgment and demanded that the order passed by me on 15.10.2009 should be recalled. According to him, the order had been obtained fraudulently by the Respondents by stating that notice of mentioning had been given to the petitioners while no notice was given to the petitioners. Therefore, he wanted the order to be recalled. When I told him that I was not hearing any matters and that the question of recalling that order does not arise and if he was aggrieved, he could file an appeal before the High Court, he immediately reacted stating that I may have had some arrangement with the Respondents and that is why I have passed that order. He further threatened that he would file a civil suit claiming damages against me. I told him that if he did not leave my chamber immediately, I may have to call the police. Since he was not leaving the chamber even then, I myself left the chamber. Shri V.N. Sharma, present throughout.

Bench Officer was This court directed that the matter be treated as a reference for Criminal Contempt and placed it before an appropriate bench.

22. By Order dated 20.03.2009, the Arbitral Tribunal comprising of a former Judge of the Supreme Court and two former Judges of this court resigned holding as under:

Due to highly obstructive and abrasive conduct of Mr. Deepak Khosla representing Mrs. Sonia Khosla, his wife Respondent 1 and Mr. R.P. Khosla, his father Respondent 2 throughout the proceedings, we the three arbitrators have resigned as arbitrators in this matter. Mr. Khosla does not let the matter proceed on merits as he keeps moving one application after another and insists on the applications

being heard first. Moreover his stand (as recorded in proceedings on the last date of hearing dated 4.2.2009) is that this Arbitral Tribunal is not legally constituted. The resignation of each of the arbitrators, hand written and duly signed, are annexed hereto.

23. By Order dated 03.11.2014, the court of learned Metropolitan Magistrate in CC No.2/14 in which Mr. Deepak Khosla appeared as an Advocate representing a litigant, recorded as under:

Present: applicant. Cl Sh, Deepak Khosla for It is stated by Ld Cl for the applicant that before signing the order he should be apprised the what the order/decision of the court is. Order is pronounced orally. After pronouncing the order Ld Cl for applicant states that he wants to address the concerns of the court which were never raised at the time of argument. It is clarified to Ld Cl for applicant that the matter was fixed for seeking clarification, if any/ orders and this court is not required to seek any clarification. Hence the order are pronounced and no further arguments are required for the same. The order is appraised to Ld Cl for applicant and he has remedies available against the same. .... At this stage, Ld Cl for applicant started raising his voice and has started ignoring the orders of the Court. He at the stage states that this preemptry manner of running the court proceedings is highly appropriate and this court should hear arguments before pronouncing the order. It is clarified to Ld Cl for applicant that order has been pronounced and he has remedy against the same. At this stage, it is stated the orders were pronounced and then before signing the same this court is bound to hear him. It is again clarified to Ld Cl that crux of the order has already been pronounced in open court and he has the remedies against him. At this stage, again an objection is taken by Ld Cl for applicant that the text of the order was brought in pen drive and the entire order was not read over. It is again clarified that the crux of the order that the application of the applicant are pre-mature was announced in open court and immediately the order was signed. Considering the conduct of Ld Cl for applicant that he has no faith in the court which he actually submits before the court during the time this order is being dictated. Hence, this court deems it fit not to proceed further in the present case. At this stage, Ld Cl for applicant expresses his gratitude he actually has no faith and he expresses his gratitude. Be put up

before Ld CMM (South) at 2 PM for 05.11.2014. At this stage, it is stated by Ld Cl for applicant that because of one sided rendition of events that transpired in the court the next time he appears the present court he will have a tape-recorder running with the prior knowledge of the present court. He has requested for supplying of dasti copy. He is at liberty to apply for uncertified copy. However, in the interest of justice copy of the order be given dasti. At this stage, again Ld Cl for applicant again started addressing arguments on the application on merits. It is again apprised to him that both his applications are pre-mature to which he started confronting that as such no provision under Cr PC to state that the applications are pre-mature. At this stage, Ld Cl for applicant again started addressing that he refutes the events set out by the present court in the order that states that he will move for Honble High Court for a petition of perjury for setting out false facts in the order. At this stage, Ld Cl for applicant has again started addressing the court that there is fundamental right of jurisprudence. It is clarified that if he still have something to say he has 45 minutes as it is 04.17 PM. At this stage, Ld Cl for applicant has started using unparliamentary language and started insulting the court by saying that the present court is using taunting language and the present court can improve / change her vocabulary. This court is deems it fit to transfer the matter immediately...............

24. The same learned Metropolitan Magistrate by a subsequent order of the same date has recorded as under as to what transpired in the court when the Dasti copy of the above order was supplied to Mr. Deepak Khosla:

At 04.32 PM Present: Cl Sh Deepak Khosla for applicant. After receiving the dasti copies of the order dictated today Ld Cl for applicant has pointed out at page No.2 para 10 that the order is incorrect. It is apprised to Ld Cl that the order can now be corrected and even if some mistake in the same has crept in. At this stage, he states that in case of correction of the same by the present court he will be bound to file a perjury petition against the present court. He further states that the order is a certificate of the events which transpired in the court as per judgment of Supreme Court in case of D.P. Chadha Vs Triyugi Narayan Mishra. He has not provided the citation of the said judgment as he states that the battery of his laptop has finished. He further states that he is not supposed to provide the citation of the

same and the present court should have access to its own database. At this stage, Ld Cl states that he has not said that he is not supposed to provide the citation. He further states that it is expected from him that he should supply each and every citation at the drop of the hat. At this stage, he further clarifies that the correct sentence he used was and he expresses his gratitude at the eventual fairness of this court. The present order be sent alongwith the main file. At this stage, again Ld Cl states that the present court has provided a beautiful order to him because on the same lines a writ petition is already pending before Honble Delhi High Court and how the provisions U/s 362 Cr PC are misused by the Magistrate. At this stage, he states that he has used the word mis-interpreted and not misused. He further states that all the Magistrate will now be sent for training in this regard. At this stage, he again says that on this point the magistrates will require training in the light of judgment of Honble Supreme Court in case titled Santa Singh Vs State of Punjab. It is stated by him if the present court has no access to the same he can provide in half an hour. As it is already 4.45 PM therefore, the present court will not be available after half an hour. He states he can provide the copy of the same if the court desires. But as the matter has already put before Ld CMM therefore no requirement of the same. At this stage, he states that if the court wants to augment its knowledge regarding the said point he can still provide the citation of the same. He is at liberty to provide the citation of the same. He states that the if present court is not interested in getting the same he is not interested in providing the same.

25. The same learned Metropolitan Magistrate by order dated 03.11.2014 in another matter wherein Mr. Deepak Khosla was appearing as an Advocate, has recorded as under:

As the case bearing CC No.2/14 has been put up before Ld CMM (South) for passing proper orders as the present court has recused from further trying the said case therefore, on the same lines as the Ld Cl for proposed accused had stated that he has no faith in the present court. At this stage, it is stated by Ld Cl for proposed accused that he has no faith in the present court due to refusal to accurately record the fair rendition which took today. Therefore the present court recuse itself from the present matter also.

26. What transpired when the matter was transferred by the learned Chief CONT. CAS (C) 165/2008 Metropolitan Magistrate to learned Metropolitan Magistrate and listed on 05.11.2014 is recorded in the order as under:

At this stage, it is noted that the counsel for the applicant has played a device in court without taking any prior permission of this court. Let this device be seized. Counsel for the applicant has opposed seizing of the said device by the court stating that the device is his personal device. Since the device is being used in the court without prior permission of the court, there is no right upon the counsel for the applicant to use the said device in the court. Counsel for the applicant argued that he has permission from Ld. District and Sessions Judge, South to use the said device and also from Ld. CMM, South. However no such permission is being shown by him. He is strictly directed to place the said directions on record within two working days. File has been received by way of transfer vide an order of Ld. CMM dated 05.11.2014. The file was received at around 3.40 pm. This court was giving dictation in another matters titled as Satte Vs. Deepak Kumar bearing FIR No.66/09 PS Mehrauli and another matter bearing CC No.64/1 titled as Nirmala Vs. Vipn Pawan for which orders were reserved at 4.00 p.m. Therefore, the file was taken up at 4.20 pm. I have perused the order of Ld. CMM and patiently heard the arguments of Ld. Counsel for the applicant. Since the file has been received today, no order on merits on any pending issue can be passed at this stage as it is already 4.30 pm and this court also needs time to peruse the file before pronouncement of orders. Therefore, the matter is adjourned today. Let the matter be put up for 23.12.2014 for consideration. At this stage, counsel for applicant submits that this court should release the matter as he states that the court is over burdened. The said submission are without any merits and it is apprised that this court has given a date of hearing as permitted by its board and in view of the pending cases which have already been listed for every month. Counsel for the applicant is within his authority to get the cases withdrawn from this court by moving appropriate application. Counsel for the applicant submits, at this stage, that the matter be referred back to Ld CMM. Heard. Allowed. Let the matter be put up before Ld. CMM, South on 07.11.2014. Counsel for the applicant insists that the matter be referred today itself as it is not already 5 pm. Heard. Allowed...............

27. In the present proceedings, the court on 22.12.2011 passed the following order:

3. It is noticed that applicant Mr. Deepak Khosla has recorded the proceedings of this Court which is not permissible.

4. It is pertinent to mention here that earlier he moved an application for permission of recording the court proceedings from the Coordinate Bench of this court. The same was referred to the Division Bench of this Court. The same has been decided that the recording of court proceedings are not permissible.

5. In spite of that he is taking every court for granted. I have already mentioned in my order dated 15.12.2011 that more than 20 Honble Judges of this Court have already rescued from the proceedings between the parties.

6. At this juncture, Registrar General and Registrar Vigilance were called in the court and they are present. In the circumstances, Registrar Vigilance is directed to take into custody the gadgets i.e. Sony MP3 Recorder, Mobile Phone and one HP Pavilion Laptop through which he was recording the proceedings of the Court, from Mr. Deepak Khosla.

7. The Registrar Vigilance is further directed to get the contents of the aforesaid gadgets copied into CDs. Thereafter, the recording of the Court proceedings be got removed from the aforesaid gadgets and the same be returned to Mr. Deepak Khosla after due acknowledgement. The report to this effect be filed on or before 03.01.2012.

28. Further the Court by order dated 04.01.2012 had directed as under:

1. While dismissing review application being R.P.No.788/2011, on 22.12.2011 it was noticed that applicant Mr. Deepak Khosla recorded the proceedings of this Court. The Registrar General and Registrar Vigilance of this Court were called in the Court.

2. The Registrar Vigilance was directed to take into custody the gadgets i.e. SONY MP3 Recorder, LG Mobile Phone, and one HP Pavilion Laptop to ascertain

whether the Court proceedings had been recorded by Mr. Deepak Khosla.

3. The Registrar Vigilance was further directed to get the contents of the aforesaid gadgets copied into a CD, thereafter, recording of the Court proceedings be got removed/deleted from the gadgets and same be returned to Mr. Deepak Khosla after due acknowledgement.

4. Pursuant to the order dated 22.12.2011 of this Court the aforesaid gadgets were examined through Mr. Sarsij Kumar, System Analyst and Mr. Zameen Ahmed, Programmer in the presence of Mr. Girish Sharma, Registrar (Computerisation) of this Court. Since, the password of the HP Pavilion laptop was not available, wife of Mr. Deepak Khosla, who is contemnor No.1 in present proceedings was contacted at 04:00PM on landline number 01204334365, which was taken from LG Mobile phone No.9953096650 of Mr. Deepak Khosla and she was requested to send Mr. Deepak Khosla to ascertain the password of the laptop. Accordingly, Mr. Deepak Khosla himself appeared before Registrar Computerisation at 04:30PM on 23.12.2011. After getting the password i.e. 1234, the HP Pavilion laptop was opened and examined wherein no audio or video recording pertaining to the court proceedings were found in the laptop. However, two audio recordings were found in the mobile phone (LG P500) and six audio recordings were found in SONY MP3 Recorder. All these recordings have been copied on CD and the said data was removed/deleted from the SONY MP3 Recorder and LG Mobile phone, as per the direction of this Court.

5. For the satisfaction of the Court, the copied recordings were heard on the computer system in chamber and it was found that, Mr. Deepak Khosla had recorded the proceedings of this Court and proceedings of the Co-ordinate Bench of this Court; and further the proceedings of two different Courts namely Shri Ajay Gupta, learned ACMM and his successor Smt. Ravinder Bedi, learned ACMM. It is revealed that before the Courts below Mr. Khosla, has not maintained the dignity and decorum of the Court, as the language used by him is condemnable. This fact is verifiable from the orders passed by said Judges. ....

12. In spite of all these, Mr. Deepak Khosla, has been continuously, recoding the court proceedings, therefore, it amounts to Contempt of Courts. 13 ....

Therefore, he invariably fights with the courts and used insulting and contemptuous language and say that he was not afraid of going behind the bar. ....

29.

15. In the circumstances, I am of the considered view that he shall not appear in any Court either in person or as attorney; he does not have inherent right to appear and argue in person.

16. After seeing his conduct in this Court and in different Courts, I am of the opinion that before resorting to legal action, he should be medically examined. It seems that he is suffering from some kind of mental disorder as he has been taking the Courts for granted and has been acting over-smart. Therefore, in these compelling circumstances, his mental assessment is essential.

Impugning the order dated 04.01.2012, the Respondent had filed an appeal being LPA No.16/2012 wherein the Division Bench by Judgment dated 24.04.2012 directed as under:

71. During the course of proceedings before us, the Bakshi Group has filed details of litigations/proceedings which have been initiated by the Khosla Group from 2008 onwards in this Court. The number is 67. These are original or substantive proceedings. This number does not include applications for interim directions/orders and other interlocutory prayers/directions. The Khosla Group has initiated as many as 8 proceedings against the advocates appearing for Bakshi Group primarily on the ground that they have wrongly claimed or stated that Vikram Bakshi was/is Director of the company or/ and they can appear on behalf of the said company on the basis of authorization given by Vikram Bakshi/the Bakshi Group. The Khosla Group has filed as many as 16 contempt cases, some of which have been disposed of. 14 applications under Section 340 Cr.P.C. have been filed by Khosla Group against Bakshi Group or others. Most of the applications are based on the cause of action that Vikram Bakshi was/is wrongly claiming himself to be a director; the minutes of the AGM held on 30 th September, 2006 are forged etc. The details of these 67 cases is submitted by the

Bakshi Group during the course of hearing is not being reproduced this order for the sake of brevity.

72. As noticed, there are number of proceedings/cases pending both in the High Court and in District Courts. Issue of this nature and whether or not Deepak Khosla is entitled to appear as a self represented litigant or for others, if taken up for consideration in different forums/courts, would lead to and cause its own problems and difficulties. Apart from the possibility of conflicting orders, there would be delay, confusion and judicial time will be spent in several courts dealing with an identical/similar question/issue. It is, therefore, advisable that this aspect be considered and decided before one Bench in the High Court rather than in different benches/courts. Further, this question should be decided first and immediately before Deepak Khosla can be permitted to appear and is given an audience. Keeping these aspects in mind, we feel that it will be appropriate that the entire aspect and issue is decided by the learned single Judge as expeditiously as possible and till the decision is taken, there should be stay of further proceedings in different matters before the High Court and in the District Courts. This direction will not apply and prevent Deepak Khosla for filing any writ petition under Article 226 or moving an application for bail/anticipatory bail. This will also not apply to any proceedings pending before the Supreme Court or Courts outside Delhi.

73. In view of the aforesaid, we hold as under and issue the following directions:(i) The High Court has inherent power distinct and separate from power of contempt to injunct/sanction vexatious or frivolous litigation, vexatious / habitual litigants, contumelious litigant and issue appropriate directions, including prohibiting the said litigant from appearing and arguing matters in person and for others and from initiating or filing proceedings, except with permission of the Court. (ii) The two directions given in the impugned order dated 4th January, 2012 are set aside. (iii) Order dated 4th January, 2012 will be treated as a show cause notice. The learned single Judge will examine other allegations, which have been made by the Respondents and issue a supplementary show cause notice, if deemed appropriate and necessary. (iv) The appellant will be entitled to respond and file reply to the show cause notice. He will not be orally heard or given audience. He

can, however, appoint an advocate to appear for him and make oral submissions.

30. Mr. (v) Till the decision, there will be stay of the pending proceedings or initiation of new proceedings before the High Court and in the District Courts. This direction will not apply and prevent Deepak Khosla from filing writ petitions under Article 226 and moving any application for bail/anticipatory bail, if required and necessary. Deepak Khosla, however, will not be permitted and allowed to appear for any third party till decision. This will not apply to any proceedings before the Supreme Court or in any courts outside Delhi. In case immediate orders are required, the parties (including the Respondents) can approach the learned single Judge for appropriate directions or permission to continue with the pending proceedings or initiate new proceedings. (vi) An order disposing of the show cause notice will be passed expeditiously as soon as possible. In such matters, it is apparently desirable that the proceeding should be concluded as soon as possible as it causes prejudice to the parties in litigation.

Deepak Khosla challenged the order dated 24.04.2012 before the Supreme Court in SLP(C) No.15004/2012. The Supreme Court on 19.09.2012, passed the following order :- Delay condoned. We see no reason to interfere with the directions passed by the High Court. The special leave petition is, therefore, dismissed.

31. A review was filed by Mr. Deepak Khosla impugning the order dated 24.04.2012 but the review has been dismissed. A modification application was filed and the same was also dismissed.

32. By Order dated 24.04.2012, the Division Bench laid down that the High Court has inherent power distinct and separate injunct/sanction from power vexatious or of contempt frivolous to litigation, vexatious / habitual litigants, contumelious litigant and issue appropriate directions, including prohibiting the said litigant from appearing and arguing matters in person and for others and from initiating or filing proceedings, except with permission of the Court.

33. The order dated 24.04.2012 of the Division Bench further directed that the order of the learned Single Judge dated 4 th January, 2012 would be treated as a

Show Cause Notice. Mr. Deepak Khosla was permitted to respond and file reply to the said Show Cause Notice. It was directed that he would not be orally heard or given audience. He could, however, appoint an advocate to appear for him and make oral submissions.

34. However, Mr. Deepak Khosla did not file any response or reply to the Show Cause Notice in terms of order dated 24.04.2012.

35. On 21.08.2014 when it was enquired from Mr. Deepak Khosla whether any response or reply had been filed to the Show Cause Notice, he submitted that the order did not clearly spell out or amount to a Show Cause Notice and it was not clear as to what the Respondent has to respond to.

36. This court had clarified by order dated 21.08.2014 that sub-para (iii) of paragraph 73 of the judgment dated 24.04.2012 directed that the order dated 04.01.2012 would be treated as a Show Cause Notice. The Single Bench had been directed to examine the other allegations which have been made by the Respondent (petitioner herein) and issue a supplementary Show Cause Notice if deemed appropriate and necessary.

37. Since the Respondent had submitted that it was not clear as to what the Respondent has to respond to, it was clarified that the Respondent had to respond to the part of paragraph No.15 of the order dated 04.01.2012 extracted in the said order i.e. he had to show cause as to why he should not be restrained from appearing in any Court either in person or as an attorney. He also has to respond to the factual matrix as extracted in the order dated 04.01.2012.

38. Four weeks time was granted to the Respondent to file a response to the above in terms of the directions passed by the Division Bench in order dated 24.04.2012.

39. Since the Division Bench had directed that the Respondent shall not be orally heard or given audience, but was permitted to appoint an advocate for him or make oral submissions, the Respondent was granted four weeks time to appoint an advocate for him to make oral submissions in terms of the directions of the

Division Bench in sub-para (iv) of paragraph 73 of Judgment dated 24.04.2012.

40. This court had further directed the Respondent to file a list of all proceedings initiated by the Respondent post the directions issued in sub-para (v) of paragraph 73 of order dated 24.04.2012.

41. The Registry had pointed out that the Respondent had not paid costs imposed by the court by an earlier order. On an enquiry by the court, he stated that he was ready to pay costs, on him being shown the provisions of law under which the cost could have been imposed.

42. The Respondent was directed to file an affidavit disclosing the number of orders passed by this court in various proceedings/applications by which costs had been imposed on him and the status of payment costs in those matter. The registry was also directed to file the said details.

43. Mr. Deepak Khosla on 21.08.2014 had stated that he appeared as an advocate as well and appears in cases other than the cases which are his personal cases. He had stated that he predominantly practises in Delhi but was enrolled with the Bar Council of Karnataka (Enrolment No.KAR12802013). He stated that though there were certain matter in contemplation to be filed in the State of Karnataka, however no matter had been filed till that date (i.e. 21.08.2014) in the State of Karnataka.

44. Mr. Deepak Khosla and the Secretary, Bar Council of India were directed to file the copy of the enrolment application as well as the supporting documents filed by him with the Bar Council of Karnataka for his enrolment.

45. The Respondent impugned the order dated 21.08.2014 by way of a LPA but the same was dismissed.

46. The Respondent failed to file any response or reply or comply with any of the directions contained in the said order. On 14.10.2014 at request of the Respondent the matter was adjourned to 17.11.2014.

47. On 17.11.2014 neither the Respondent was present nor anyone appeared for the Respondent. The Respondent had even failed to file a reply/response to the Show Cause Notice. Right to file response/reply was closed. Since none appeared from the Respondent, the right to address arguments was also closed and order was reserved on the Show Cause Notice issued by order dated 24.04.2012, The Respondent, however, was granted further one weeks time to file written submissions. Even that opportunity has not been availed of and even no written submissions have been filed.

48. By the order of 17.11.2014, the Registry of this court was directed to place on record a list of all the learned Judges who have recused themselves from hearing the matters of the Respondent since the year 2008 alongwith the relevant orders and also place on record the list of cases in which suo-moto contempt proceedings, both Civil or Criminal have been initiated by this court against Mr. Deepak Khosla.

49. The Registry of this Court and the Secretary, Bar Council of India have complied with the directions contained in orders dated 21.08.2014 and 17.11.2014. Learned counsel for the Petitioner has also filed a compilation which has been taken on record.

50. The report of the Registry read with the compilation filed by the Petitioner show that numerous orders have been passed imposing costs on Mr. Deepak Khosla by this court. The orders are: S.No.1. Date of Order Case No.29.05.2009 CA1311of 2009 in CONT. CAS (C) 165/2008 Amount in Rupees 25,000 Reasons Abuse of process of Co.A. (SB) 6/2008 2. 29.05.2009 CA512of 2009 in Co.A. (SB) 7/2008 25,000 Protracting litigation, making incorrect submissions & dilatory tactics 3. 29.05.2009 CA514of 2009 in Co.A. (SB) 7/2008 25,000 Protracting litigation, making incorrect submissions & dilatory tactics 4. 29.05.2009 CA27of 2009 in Co.A. (SB) 7/2008 25,000 Strategising filing one application after another, malafide in inundating the judicial record with applications preventing consideration of main matter or inviting conflict of adjudication, wastage of judicial time 5. 13.11.2009 Crl M.A. 11595 of 2008 in Arb.P. 93 of 2008 10,000 Not maintainable and not letting Arbitral tribunal to proceed 6. 29.01.2010 IA1011of

2010 in Arb P217of 2009 10,000 Misconceived application 7. 29.01.2010 IA of 2010 in Arb P217of 2009 10,000 Frivolous and merit less 8. 29.01.2010 Arb P217of 2009 25,000 For unnecessary adjournment 9. 29.01.2010 OMP316of 2009 25,000 For unnecessary adjournment 10. 03.02.2010 IA1284of 2010 in OMP660of 2009 25,000 with interest @ 18% pa 11. 10.02.2010 IA1641of 2010 in Arb P217of 2009 10,000 12. 12.03.2010 RP112of 2010 in OMP660of 2009 5,000 13. 17.01.2011 Cont Cas 190 of 2010 25,000 Mis-use process 14. 22.07.2011 Cont Cas (Crl) 24 of 2009 10,000 Frivolous misconceived.

15. 22.07.2011 Cont Cas (Crl) 2 of 2010 10,000 No merit.

16. 04.01.2012 IA92of 2012 in OMP613of 2010 20,000 Misconceived, and frivolous false 17. 03.02.2012 OMP613of 2010 20,000 Not ready matter, cost adjournment with for 18. 13.08.2013 Cont Cas 165 of 2008 20,000 Filing application after application and not letting case proceed on merit, tactic for delaying the hearing on main case 19. 28.03.2014 CM168602392 25,000 Burgeoning the courts docket with no productive CONT. CAS (C) 165/2008 No.& of Sheer and complete abuse of the process of law Gross abuse process of law of Abuse of process of law of judicial 2013 in LPA16of 2012 51. purpose, filing repetitive applications even after the adverse order has attained finality amounts to obsessive cantankerousness.

20. 25.04.2014 CM7215of 2014 in LPA16of 2012 20,000 Highly misconceived 21. 12.08.2010 Cont Cas (C) 959 of 2013 35,000 Not disclosed about similar petition being dismissed with costs. Petition misconceived and wastage of substantial judicial time. The record does not reveal whether the costs imposed by the above orders have been paid or deposited as directed or not. The Registry by report dated 18.07.2014 had reported that costs imposed by order dated 13.08.2013 had not been deposited. Mr. Deepak Khosla on 21.08.2014 had admitted that the cost had not been paid and had stated that he was ready to pay the cost on him being shown the provisions of law under which the cost could have been imposed. Neither proof of payment/deposit of costs has not been furnished by Mr. Deepak Khosla nor any order staying or setting aside the orders of imposition of costs has been produced.

52. The Registry has also reported that the following Contempt proceedings have been initiated by the Court on its own motion against Mr. Deepak Khosla (i) Cont Cas (Crl) 2 of 2009 arising from Co.A. (SB) 6 & 7 of 2008 by order dated 28.01.2009. (ii) Crl. C. Ref 7/2009 referred by Sh. S. Balasubramanian Chairman Company Law Board in CP114of 2007. (Disposed of by order dated 02.12.2010 as unconditional apology was tendered by Mr. Deepak Khosla and accepted by the Court) (iii) CCP (O) 15 of 2010 arising from OMP660of 2009 by order dated 03.02.2010.

53. (iv) Cont Cas (C) 229 of 2014 arising from LPA16of 2012 by order dated 28.03.2014. (Converted to Criminal Contempt by order dated 28.11.2014). (v) Cont Cas (Crl) 9 of 2014 arising from LPA583of 2014 by order dated 08.09.2014. The Division Bench by order dated 24.04.2012 has held that the High Court has inherent power distinct and separate from power of contempt to injunct/sanction vexatious or frivolous litigation, vexatious / habitual litigants, contumelious litigant and issue appropriate directions, including prohibiting the said litigant from appearing and arguing matters in person and for others and from initiating or filing proceedings, except with permission of the Court. The Division Bench had directed that the order dated 4th January, 2012 will be treated as a Show Cause Notice.

54. For adjudicating on the Show Cause Notice, in light of the directions of the Division Bench, it would be expedient to examine the various judicial pronouncements with regard to the general behaviour of litigants and Advocates in court and before judicial officers.

55. A Division Bench of Madhya Pradesh High Court in B.R. NIKUNJ VS VIPIN TIWARI, 1999 CRI L J4223has laid down that an act of a lawyer attacking the reputation and character of a Judge is as grave an offence worthy of condemnation as of a priest in a temple defacing and defiling the deity installed in it, because by such act he not only destroys the very institution from which he derives status and sustenance but does greater general damage by shaking faith of the devotees and hurting the feelings and sentiments of the worshippers who through his mediation and assistance seek spiritual gain and contentment.

56. Availability of an independent judiciary and an atmosphere wherein Judges may act independently and fearlessly is the source of existence of civilisation in society. The directions issued by the Court must be obeyed. It is the binding efficacy attaching with the commands of the Court and the respect for the orders of the Court which deter the aggrieved persons from taking the law in their own hands as they are assured of an efficacious civilised method of settlement of disputes being available to them wherein they shall be heard and their legitimate grievances redeemed. Any act or omission which undermines the authority or dignity of the court is therefore viewed with concern by the society and the court treats it as an obligation to zealously guard against any onslaught on its dignity.

57. In AJAY KUMAR PANDEY, ADVOCATE, RE, (1998) 7 SCC248the Supreme Court of India held as under:

16. At the outset, we wish to emphasise that this Court being the Supreme Court of the country, has not only the right to protect itself from being scandalised or denigrated but it also has the right, jurisdiction and the obligation to protect the High Courts and the subordinate courts in the country from being insulted, abused or in any other way denigrated. Any action on the part of a litigant - be he a lawyer appearing in person - which has the tendency to interfere with or obstruct the due course of justice has to be dealt with sternly and firmly to uphold the majesty of law. No one can be permitted to intimidate or terrorise Judges by making scandalous, unwarranted and baseless imputations against them in the discharge of their judicial functions so as to secure orders which the litigant wants.

17. The subordinate judiciary forms the very backbone of the administration of justice. This Court would come down with a heavy hand for preventing the Judges of the subordinate judiciary or the High Court from being subjected to scurrilous and indecent attacks, which scandalize or have the tendency to scandalize, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is

necessary for the courts to enable them to discharge their judicial functions without fear.

18. The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law and if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts has to be respected and protected at all costs. It is for this reason that the courts are entrusted with the extraordinary power of punishing those for contempt of court who indulge in acts whether inside or outside the courts, which tend to undermine the authority of the courts and bring them in disrepute and disrespect thereby obstructing them from discharging their judicial duties without fear or favour. This power is exercised by the courts not to vindicate the dignity and honour of any individual Judge who is personally attacked or scandalised but with a view to uphold the majesty of law and the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself. ....

24. Thus, it is now settled that abuses, attribution of motives, vituperative terrorism and scurrilous and indecent attacks on the impartiality of the Judges in the pleadings, applications or other documents filed in the court or otherwise published which have the tendency to scandalize and undermine the dignity of the court and the majesty of law amounts to criminal contempt of court.

25. While a litigant as also his lawyer have the freedom of expression and liberty to project their case forcefully, it must be remembered that they must while exercising that liberty maintain dignity, decorum and order in the court proceeding. Liberty of free expression cannot be permitted to be treated as a licence to make reckless imputations against the impartiality of the Judges deciding the case. Even criticism of the judgment has to be in a dignified and temperate language and without any malice. ....

28. In Lalit Mohan Das v. Advocate General, Orissa [AIR 1957 SC250:

1957. SCR167 this Court observed:

A member of the Bar undoubtedly owes a duty to his client and must place before the court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of the Bar is an officer of the court and owes a duty to the court in which he is appearing. He must uphold the dignity and decorum of the court and must not do anything to bring the court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury, because the Munsif had merely upheld an order of his predecessor on the preliminary point of jurisdiction and court fees, which order had been upheld by the High Court in revision. Scandalising the Court in such a manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From that point of view, the conduct of the appellant was highly reprehensible.

29. In M.B. Sanghi v. High Court of Punjab & Haryana [(1991) 3 SCC600:

1991. SCC (Cri) 897]. this Court took notice of the growing tendency amongst some of the advocates of adopting a defiant attitude and casting aspersions having failed to persuade the Court to grant an order in the terms they expect. Holding the advocate guilty of contempt, Ahmadi, J.

observed: (SCC p. 602, para

2) The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalize which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the Judge concerned but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times

blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the Judge concerned but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system.

(emphasis supplied) Again, in Vinay Chandra Mishra, Re [(1995) 2 SCC584 this Court observed: (SCC p. 616, paras 37-38)

37. To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the court, to address him by losing temper are all acts calculated to interfere with and obstruct the course of justice. Such acts tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice.

38. The stance taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring under a grave misunderstanding. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the court.

(emphasis supplied) ....

33. In Supreme Court Bar Assn. v. Union of India [(1998) 4 SCC409: JT (1998) 3 SC184 a Constitution Bench of this Court opined: (SCC pp. 444-45, para 79)

79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for professional misconduct, on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion and take appropriate action against such an advocate. Under Article 144 of the Constitution all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act in aid of the Supreme Court. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner-advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate who has the tendency to interfere with the due administration of justice.

The Bench went on to say:

There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate

while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette.

34. Looking to the established facts of this Court, it is apparent that the conduct of the contemner was highly contumacious and even atrocious. He has abused professional privileges while practising as an advocate. We, therefore, deem it appropriate, in view of the observations made in Supreme Court Bar Assn. v. Union of India [(1998) 4 SCC409: JT (1998) 3 SC184 to direct that the copy of this judgment together with the relevant record be forwarded to the Chairman, Bar Council of India, who may refer the case to the committee concerned for appropriate action as is considered fit and proper.

58. The Supreme Court further in the case of ARUNDHATI ROY, IN RE, (2002) 3 SCC343laid down as under:

1. Rule of law is the basic rule of governance of any civilised democratic polity. Our constitutional scheme is based upon the concept of rule of law which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. After more than half a century of independence, the judiciary in the country is under a constant threat and being endangered from within and without. The need of the time is of restoring confidence amongst the people for the independence of judiciary. Its impartiality and the glory of law has to be maintained, protected and strengthened. The confidence in the courts of justice, which the people possess, cannot, in any way,

be allowed to be tarnished, diminished or wiped out by contumacious behaviour of any person. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. In Vinay Chandra Mishra, In re [(1995) 2 SCC584: AIR 1995 SC2348 this Court reiterated the position of law relating to the powers of contempt and opined that the judiciary is not only the guardian of the rule of law and the third pillar but in fact the central pillar of a democratic State. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with extraordinary powers of punishing those who indulge in acts, whether inside or outside the courts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalising it. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

2. No person can flout the mandate of law of respecting the courts for establishment of rule of law under the cloak of freedom of speech and expression guaranteed by the Constitution. Such a freedom is subject to reasonable restrictions imposed by any law. Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalising the authority of the institution of judiciary. Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. However, it must be remembered that the maintenance of dignity of courts is one of the cardinal principles of rule of law in a democratic set-up and any criticism of the judicial

institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the courts cannot be permitted when found having crossed the limits and has to be punished. This Court in Harijai Singh, In re [(1996) 6 SCC466 has pointed out that a free and healthy press is indispensable for the functioning of a true democracy but, at the same time, cautioned that the freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances. Lord Denning in his book Road to Justice observed that press is the watchdog to see that every trial is conducted fairly, openly and above board but the watchdog may sometimes break loose and has to be punished for misbehaviour. Frankfurter, J.

In Pennekamp v. Florida [90 L Ed 1295 :

328. US331(1946)]. (L Ed at p. 1314) observed:

If men, including Judges and journalists, were angels, there would be no problems of contempt of court. Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of court is a safeguard not for Judges as persons but for the function which they exercise.

....

16. Similarly, reliance of Shri Shanti Bhushan, Senior Advocate on Baradakanta Mishra v. Registrar of Orissa High Court [(1974) 1 SCC374:

1974. SCC (Cri) 128]. is of no great help to his client. After referring to the definition of criminal contempt in Section 2(c) of the Act, the Court found that the terminology used in the definition is borrowed from the English law of contempt and embodies certain concepts which are familiar to that law which, by and large, was applied in India. The expressions scandalize, lowering the authority of the court, interference, obstruction and administration of justice have all gone into the legal currency of our sub-continent and have to be understood in the sense in

which they have been so far understood by our courts with the aid of English law, where necessary. Sub-clause (i) of the definition was held to embody the concept of scandalisation, as discussed by Halsbury's Laws of England, 3rd Edn. in Vol. 8, p. 7 at para 9. Action of scandalising the authority of the court has been regarded as an obstruction of public justice whereby the authority of the court is undermined. All the three clauses of the definition were held to justify the contempt in terms of obstruction of or interference with the administration of justice. It was declared that the Act accepts what was laid down by the Privy Council and other English authorities that proceedings in contempt are always with reference to the administration of justice. The scandalisation within the meaning of sub-clause (i) must be in respect of the court or the Judge with reference to administration of justice. This Court concluded that the courts of justice are, by their constitution, entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or likely to have business therein that the courts perform all their functions on a high level of rectitude without fear or favour, affection or ill will. It is this traditional confidence in courts of justice that justice will be administered to the people which is sought to be protected by proceedings in contempt. The object obviously is not to vindicate the Judge personally but to protect the public against any undermining of their accustomed confidence in the institution of the judiciary. Scandalisation of the court was held to be a species of contempt which may take several forms. Krishna Iyer, J.

while concurring with the main judgment authored by Palekar, J.

observed that the dilemma of the law of contempt arises because of the constitutional need to balance two great but occasionally conflicting principles - freedom of expression and fair and fearless justice. After referring to the judgments of English, American and Canadian courts, he observed: (SCC p. 403, para 65)

65. Before stating the principles of law bearing on the facets of contempt of court raised in this case we would like to underscore the need to draw the lines clear enough to create confidence in the people that this ancient and inherent power, intended to preserve the faith of the public in public justice, will not be so used as

to provoke public hostility as overtook the Star Chamber. A vague and wandering jurisdiction with uncertain frontiers, a sensitive and suspect power to punish vested in the prosecutor, a law which makes it a crime to public regardless of truth and public good and permits a process of brevi manuconviction, may unwittingly trench upon civil liberties and so the special jurisdiction and jurisprudence bearing on contempt power must be delineated with deliberation and operated with serious circumspection by the higher judicial echelons. So it is that as the palladium of our freedoms, the Supreme Court and the High Courts, must vigilantly protect free speech even against judicial umbrage - a delicate but sacred duty whose discharge demands tolerance and detachment of a high order.

According to him the considerations, as noticed in the judgment, led to the enactment of the Contempt of Courts Act, 1971 which makes some restrictive departures from the traditional law and implies some wholesome principles which serve as unspoken guidelines in this branch of law. Section 2(c) emphasizes the interference with the courts of justice or obstruction of the administration of justice or scandalising or lowering the authority of the court - not the Judge. According to him: (SCC p. 403, para

67) The unique power to punish for contempt of itself inheres in a court qua court, in its essential role of dispenser of public justice.

After referring to a host of judicial pronouncements, Krishna Iyer, J., concluded: (SCC p. 409, para 82)

82. We may now sum up. Judges and courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative acts of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally overzealous, criticism cannot be overlooked. Justice is no cloistered virtue.

The Court in that case did not spare even a judicial officer and convicted him of the offence by awarding the punishment of paying a fine of Rs 1000 or in default suffer imprisonment for three months.

17. In S. Mulgaokar, In re [(1978) 3 SCC339:

1978. SCC (Cri) 403]. Beg, C.J.

observed that the judiciary is not immune from criticism but when that criticism is based on obvious distortion or gross misstatement and made in a manner which is designed to lower the respect of the judiciary and destroy public confidence in it, it cannot be ignored. He further declared: (SCC pp. 34748, para

16) I do not think that we should abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter.

In that case when the matter was taken up in the Court, the contempt proceedings were dropped without calling upon the counsel appearing for the Respondent in response to the notice. The action had been initiated on some news items published in The Indian Express which was termed to be milder publication. The erring sentence in the publication was:

So adverse has been the criticism that the Supreme Court Judges, some of whom had prepared the draft code, have disowned it.

It was found that the Judges of the Court were not even aware of the contents of the letter before it was sent by the Chief Justice of India to the Chief Justices of various High Courts suggesting, inter alia, that the Chief Justices could meet and draft a code of ethics themselves or through a Committee of the Chief Justices so as to prevent possible lapses from the path of rectitude and propriety on the part of Judges. The error was pointed out to the Editor of The Indian Express in a letter sent by the Registrar of this Court. In reply, the Registrar received a letter from the Editor showing that the contents of the letter, which were confidential, were known to the Editor. Instead of publishing any correction of the misstatement about the conduct of Judges of this Court, the Editor offered to publish the whole material in

his possession, as though there was an issue to be tried between the Editor of the newspaper and this Court and the readers were there to try it and decide it. It was pointed out that the writer of an article of a responsible newspaper on legal matters is expected to know that there is no constitutional safeguard or provision relating to the independence of the judiciary which could possibly prevent Judges themselves meeting to formulate a code of judicial ethics or to constitute a committee to formulate a code of judicial ethics and etiquette. The article proceeded on the assumption that there was already a formulated code of ethics sent to the Chief Justice which, in fact, was not correct. The counsel appearing for the alleged contemner to whom the notice was issued tried to convince the Court that there was no intention on the part of the writer of the article or the Editor to injure the dignity or position of the Court but the intention was only to direct public attention to matters of extreme importance to the nation. The Chief Justice made his statement clear and removed the misapprehensions, if there were really and in discretion dropped the proceedings. Nowhere in the judgment the Court opined that publication of offending material against the Court did not amount to scandalising the Court. Krishna Iyer, J.

while concurring, observed: (SCC p. 350, para 23)

23. The contempt power, though jurisdictionally large, is discretionary in its unsheathed exercise. Every commission of contempt need not erupt in indignant committal or demand punishment, because Judges are judicious, their valour non-violent and their wisdom goes into action when played upon by a volley of values, the least of which is personal protection - for a wide discretion, range of circumspection and rainbow of public considerations benignantly guide that power. Justice if not hubris; power is not petulance and prudence is not pusillanimity, especially when Judges are themselves prospectors and mercy is a mark of strength, not whimper of weakness. Christ and Gandhi shall not be lost on the Judges at a critical time when courts are on trial and the people (We, the People of India) pronounce the final verdict on all national institutions. Such was the sublime perspective, not plural little factors, that prompted me to nip in the bud the proceeding started for serving a larger cause of public justice than punitive action against a publisher, even assuming (without admitting) he was guilty. The

preliminary proceeding has been buried publicly; let it lie in peace. Many values like free press, fair trial, judicial fearlessness and community confidence must generously enter the verdict, the benefit of doubt, without absolutist insistence, being extended to the defendant. Such are the dynamics of power in this special jurisdiction. These diverse indicators, carefully considered, have persuaded me to go no further, by a unilateral decision of the Bench. This closure has two consequences. It puts the lid on the proceedings without pronouncing on the guilt or otherwise of the opposite parties. In a quasi-criminal action, a presumption of innocence operates. Secondly, whatever belated reasons we may give for our action, we must not proceed to substantiate the accusation, if any. To condemn unheard is not fair play. Bodyline bowling, perhaps, is not cricket. So my reasons do not reflect on the merits of the charge.

He further observed that contempt power is a wise economy of use by the court of this branch of its jurisdiction. The court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The court should harmonise the constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemners, be they the powerful press, gang up of vested interests, veteran columnists of olympian establishmentarians. After referring to certain principles to be kept in mind while dealing with the contempt proceedings and referring to a host of judgments of the foreign courts and this Court, he concluded: (SCC p. 363, para 56)

56. The court is not an inert abstraction; it is people in judicial power. And when drawing up standards for press freedom and restraint, as an interface with an unafraid court, we must not forget that in our constitutional scheme the most fundamental of all freedoms is the free quest for justice by the small man. When beggars die, there are comets seen and when the bull elephants fight, the grass is trampled. The contempt sanction, once frozen by the high and mighty press campaign, the sufferer, in the long run, is the small Indian who seeks social

transformation through a fearless judicial process. Social justice is at stake if foul press unlimited were to reign. As Justice Frankfurter stated, may be Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions (a question I desist from deciding here), but when comment darkens into coercive imputation or calculated falsehood, threats to impartial adjudication subtly creeps. Not because Judges lack firmness nor that the dignity of the Bench demands enhanced respect by enforced silence, as Justice Black observed in the Los Angeles Times case [Bridges v. California, 314 US252 263 :

86. L Ed 192 (1941)]. but because the course of justice may be distorted by hostile attribution.

....

21. Dealing with the meaning of the word scandalising, this Court in D.C. Saxena case [(1978) 3 SCC339:

1978. SCC (Cri) 403]. held that it is an expression of scurrilous attack on the majesty of justice which is calculated to undermine the authority of the courts and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Dealing with Section 2(c) of the Act and defining the limits of scandalising the court, it was held: (SCC p. 247, para 40)

40. Scandalising the court, therefore, would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice

or the majesty of justice. It would, therefore, be scandalising the Judge as a Judge, in other words, imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the Judge or judiciary into contempt. Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the Judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.

....

28. As already held, fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if

not checked, would destroy the institution itself. Litigant losing in the court would be the first to impute motives to the Judges and the institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic set-up i.e. judiciary. In Dr D.C. Saxena case [(1978) 3 SCC339:

1978. SCC (Cri) 403]. this Court dealt with the case of P. Shiv Shanker [1893 AC138 by observing: (SCC p. 244, para 34)

34. In P.N. Duda v. P. Shiv Shanker [1893 AC138 this Court had held that administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office i.e. to defend and uphold the Constitution and the laws without fear and favour. Thus the Judges must do, in the light given to them to determine, what is right. Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of the Judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the Judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or Judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and Judges to punish a person for an alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or a lawyer. In that case the speech of the Law Minister in a seminar organised by the Bar Council and the offending portions therein were held not contemptuous and punishable under the Act. In a democracy Judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court.

....

30. The Constitution of India has guaranteed freedom of speech and expression to every citizen as a fundamental right. While guaranteeing such freedom, it has also provided under Article 129 that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Similar power has been conferred on the High Courts of the States under Article 215. Under the Constitution, there is no separate guarantee of the freedom of the press and it is the same freedom of expression, which is conferred on all citizens under Article 19(1). Any expression of opinion would, therefore, be not immune from the liability for exceeding the limits, either under the law of defamation or contempt of court or the other constitutional limitations under Article 19(2). If a citizen, therefore, in the garb of exercising right of free expression under Article 19(1), tries to scandalise the Court or undermines the dignity of the Court, then the Court would be entitled to exercise power under Article 129 or Article 215, as the case may be. In relation to a pending proceeding before the Court, while showing cause to the notices issued, when it is stated that the Court displays a disturbing willingness to issue notice on an absurd, despicable, entirely unsubstantiated petition, it amounts to a destructive attack on the reputation and the credibility of the institution and it undermines the public confidence in the judiciary as a whole and by no stretch of imagination, can be held to be a fair criticism of the Court's proceeding. When a scurrilous attack is made in relation to a pending proceeding and the noticee states that the issuance of notice to show cause was intended to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it, is a direct attack on the institution itself, rather than the conduct of an individual Judge. The meaning of the expressions used cannot come within the extended concept of fair criticism or expression of opinion, particularly to the case of the contemner in the present case, who in her own right is an acclaimed writer in English. At one point of time, we had seriously considered the speech of Lord Atkin, where the learned Judge has stated: (AIR pp. 145-46) The path of criticism is a public way: the wrongheaded are permitted to err therein. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken, comments of ordinary men.

(Andre Paul Terence Ambard v. Attorney General of Trinidad [AIR 1936 PC141:

1936. All LJ671) and to find out whether there can be a balancing between the two public interests, the freedom of expression and the dignity of the court. We also took note of the observations of Bharucha, J.

in the earlier contempt case against the present contemner, who after recording his disapproval of the statement, observed that the Court's shoulders are broad enough to shrug off the comments. But in view of the utterances made by the contemnor in her show-causes filed and not a word of remorse, till the conclusion of the hearing, it is difficult for us either to shrug off or to hold the accusations made as comments of an outspoken ordinary man and permit the wrongheaded to err therein, as observed by Lord Atkin.

59. The Supreme Court of India in the case of RADHA MOHAN LAL V. RAJASTHAN HIGH COURT, (2003) 3 SCC427has laid down as under:

9. In Shareef case [AIR 1955 SC19: (1955) 1 SCR757:

1955. Cri LJ133 the Constitution Bench held that the misconception in a section of the Bar has to be rooted out by a clear and emphatic pronouncement and it should be widely made known that counsel who sign applications or pleadings containing matter scandalizing the court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefor, with a view to prevent or delay the course of justice, are themselves guilty of contempt of court, and that it is not the duty of a counsel to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications. Hope expressed in Shareef case [AIR 1955 SC19: (1955) 1 SCR757:

1955. Cri LJ133 that this kind of conduct will not be repeated by counsel in any High Court in this country, and no more test cases of this kind would have to be fought out has been belied despite the passage of nearly 50 years.

10. The liberty of free expression as was sought to be contended by Mr Sualal Yadav cannot be equated or confused with a licence to make unfounded and irresponsible allegations against the judiciary. The imputation that was made was

clearly contemptuous. The effect is lowering of the dignity and authority of the court and an affront to the majesty of justice.

11. In Shamsher Singh Bedi v. High Court of Punjab & Haryana [(1996) 7 SCC99:

1996. SCC (Cri) 181]. this Court held that an advocate cannot escape his responsibility for drafting a scandalous notice to a Magistrate on the ground that he did so in his professional capacity.

12. An advocate is not merely an agent or servant of his client. He is an officer of the court. He owes a duty towards the court. There can be nothing more serious than an act of an advocate if it tends to impede, obstruct or prevent the administration of law or it destroys the confidence of the people in such administration. In M.B. Sanghi, Advocate v. High Court of Punjab & Haryana [(1991) 3 SCC600:

1991. SCC (Cri) 897]. while deciding a criminal appeal filed by an advocate against an order of the High Court, this Court said: (SCC pp. 60203, para

2) The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the Judge concerned but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the Judge concerned but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the

legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed Judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much-endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence.

60. The Supreme Court further in the case HARIDAS DAS V. USHA RANI BANIK, (2007) 14 SCC1laid down as under:

1. Judge bashing and using derogatory and contemptuous language against Judges has become a favourite pastime of some people. These statements tend to scandalise and lower the authority of the courts and cannot be permitted because, for functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution. That cannot be permitted to be undermined because that will be against the public interest.

2. Judiciary should not be reduced to the position of flies in the hands of wanton boys. Judge bashing is not and cannot be a substitute for constructive criticism. ....

13. The vehemence of the language used is not alone the measure of the power to punish for contempt of court. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the

satisfaction of all concerned. To similar effect were the observations of Lord Morris in Attorney General v. Times Newspapers [1974 AC273: (1973) 3 WLR298: (1973) 3 All ER54(HL)]. , AC at p.

302. It was observed that when unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted that their authority wanes and is supplanted.

(All ER p. 66f) 14. To similar effect were the observations of Hidayatullah, C.J.

(as the learned Judge was then) in Rustom Cowasjee Cooper v. Union of India [(1970) 2 SCC298: AIR 1970 SC1318 : (SCC p. 301, para 6)

6. There is no doubt that the court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves in possession of all truth or hold that wherever others differ from them, it is so far error. No one is more conscious of his limitations and fallibility than a Judge but because of his training and the assistance he gets from learned counsel he is apt to avoid mistakes more than others. while fair and temperate criticism of this Court even if strong, may not be actionable, attributing improper motives, or tending to bring judges or courts into hatred and contempt or obstructing directly or indirectly with the functioning of courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril.

....

22. Chinnappa Reddy, J.

speaking for the Bench in Advocate General, State of Bihar v. M.P. Khair Industries [(1980) 3 SCC311:

1980. SCC (Cri) 688]. citing those two decisions in Offutt [(1954) 348 US11:

99. L Ed 11]. and Jennison [(1972) 2 QB52: (1972) 2 WLR429: (1972) 1 All ER997(CA)]. stated thus: (SCC p. 315, para

7) [I].t may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and effects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression Contempt of Court may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.

23. Krishna Iyer, J.

in his separate judgment in S. Mulgaokar, In re [(1978) 3 SCC339:

1978. SCC (Cri) 402]. while giving broad guidelines in taking punitive action in the matter of contempt of court has stated: (SCC p. 353, para

33) if the Court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

24. In Brahma Prakash Sharma v. State of U.P. [AIR 1954 SC10:

1954. Cri LJ238 this Court after referring to various decisions of the foreign countries as well as of the Privy Council stated thus: (AIR p. 14, para

12) It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely or tends in any way, to interfere with the proper administration of law,

25. It may be noted here that in the illustrious case S. Mulgaokar case [(1978) 3 SCC339:

1978. SCC (Cri) 402]. it was held that: (SCC p. 347, para 16)

16. The judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored.

....

27. The same view has been taken in Perspective Publications (P) Ltd. v. State of Maharashtra [AIR 1971 SC221:

1971. Cri LJ268 and C.K. Daphtary v. O.P. Gupta[(1971) 1 SCC626:

1971. SCC (Cri) 286 : AIR 1971 SC1132 . Therefore, apart from the fact that a particular statement is libellous, it can constitute criminal contempt if the imputation is such that the same is capable of lowering the authority of the court. The gravity of the aforesaid statement is that the same would scandalise the court. The right to criticise an opinion of a court, to take issue with it upon its conclusions as to a legal proposition, or question its conception of the facts, so long as such criticisms are made in good faith, and are in ordinarily decent and respectful language and are not designed to wilfully or maliciously misrepresent the position of the court, or tend to bring it into disrepute or lessen the respect due to the

authority to which a court is entitled, cannot be questioned. The right of free speech is one of the greatest guarantees to liberty in a free country like [ours]., even though that right is frequently and in many instances outrageously abused. If any considerable portion of a community is led to believe that, either because of gross ignorance of the law, or because of a worse reason, it cannot rely upon the courts to administer justice to a person charged with crime, that portion of the community, upon some occasion, is very likely to come to the conclusion that it is better not to take any chances on the courts failing to do their duty.

[Ed.: As observed in Peter Breen, Re, 17 Lawyers Reports Annotated, New Series, p. 572 as quoted in C.K. Daphtary v. O.P. Gupta, (1971) 1 SCC626at p. 640, para 53.].

28. Judiciary is the bedrock and handmaid of democracy. If people lose faith in justice parted by a court of law, the entire democratic set-up would crumble down. In this background, observations of Lord Denning, M.R. in Metropolitan Properties Ltd. v. Lannon [(1969) 1 QB577: (1968) 3 WLR394: (1968) 3 All ER304(CA)]. are relevant: (All ER p. 310 D) Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: The Judge was biased.

29. Considered in the light of the aforesaid position in law, a bare reading of the statements makes it clear that those amount to a scurrilous attack on the integrity, honesty and judicial competence and impartiality of Judges. It is offensive and intimidating. The contemnor by making such scandalising statements and invective remarks has interfered and seriously shaken the system of administration of justice by bringing it down to disrespect and disrepute. It impairs confidence of the people in the court. Once door is opened to this kind of allegations, aspersions and imputations, it may provide a handle to the disgruntled litigants to malign the Judges, leading to character assassination. A good name is better than good riches. Immediately comes to one's mind Shakespeare's Othello, Act II, Scene iii, 167:

Good name in man and woman, dear my Lord is the immediate jewel of their souls; who steals my purse, steals trash; its something, nothing; 'T was mine, its his, and has been slate to thousands; But he that filches from me my good name,

Robs me of that which not enriches him And makes me poor indeed.

30. Majesty of law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel that the law courts will absorb anything and everything, including attacks on their honesty, integrity and impartiality. But it has to be borne in mind that such divinity and magnanimity is not its weakness but its strength. It generally ignores irresponsible statements which are anything but legitimate criticism. It is to be noted that what is permissible is legitimate criticism and not illegitimate insinuation. No court can brook with equanimity something which may have tendency to interfere with the administration of justice. Some people find judiciary a soft target because it has neither the power of the purse nor the sword, which other wings of democracy possess. It needs no reiteration that on judiciary millions pin their hopes, for protecting their life, liberty, property and the like. Judges do not have an easy job. They repeatedly do what rest of us (the people) seek to avoid, make decisions, said David Pannick in his book Judges. Judges are mere mortals, but they are asked to perform a function which is truly divine.

31. What is contempt of court has been stated in lucid terms by Oswald in classic Book on Contempt of Court. It is said:

To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and demonstration of law into disrespect and disregard or to interfere with or prejudice parties, litigant or their witnesses during the litigation.

Contempt in the legal acceptance of the term, primarily signifies disrespect to that which is entitled to legal regard, but as a wrong purely moral or affecting an object not possessing a legal status, it has in the eye of the law no existence. In its origin all legal contempt will be found to consist in an offence more or less direct against the sovereign himself as the fountainhead of law and justice or against his palace where justice was administered. This clearly appears from old cases.

32. Lord Diplock, speaking for the Judicial Committee in Chokolingo v. Attorney General of Trinidad and Tobago [(1981) 1 WLR106: (1981) 1 All ER244(PC)].

summarised the position thus: (All ER p. 248e-f) Scandalising the court is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice. Thus, before coming to the conclusion as to whether or not the publication amounts to a contempt, what will have to be seen is, whether the criticism is fair, temperate and made in good faith or whether it is something directed to the personal character of a Judge or to the impartiality of a Judge or court. A finding, one way or the other, will determine whether or not the act complained of amounted to contempt. ....

34. 61. There can be no quarrel with the proposition that anyone who intends to tarnish the image of judiciary should not be allowed to go unpunished. By attacking the reputation of Judges, the ultimate victim is the institution. The day the consumers of justice lose faith in the institution that would be the darkest day for mankind. The importance of judiciary needs no reiteration. The Supreme Court of India in the case of R.K. ANAND V. DELHI HIGH COURT, (2009) 8 SCC106laid down as under:

236 More importantly, another Constitution Bench of this Court in Ex. Capt. Harish Uppal v. Union of India [(2003) 2 SCC45 examined the question whether lawyers have a right to strike and/or give a call for boycott of court(s). In para 34 of the decision the Court made highly illuminating observations in regard to lawyers' right to appear before the court and sounded a note of caution for the lawyers. Para 34 of the decision needs to be reproduced below: (SCC pp. 71-73)

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the

High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for his clients before an arbitrator or arbitrators, etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file vakalat on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in dignified and orderly manner. The very sight of an advocate, who is guilty of

contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. The distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.

(emphasis added) ....

238. In Supreme Court Bar Assn. [(1998) 4 SCC409 the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practise law and the bar was considered as a punishment inflicted on him. [Though in para 80 of Supreme Court Bar Assn.

case[(1998) 4 SCC409 , as seen earlier (in para 230 herein), there is an observation that in a given case it might be possible for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt.]. In Ex. Capt. Harish Uppal [(2003) 2 SCC45 it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and orderly functioning of the courts but may become necessary for the selfprotection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an inconvenient court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately these examples are not from imagination. These things are happening more frequently than we care to acknowledge.

239. We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time.

240. It is already explained in Ex. Capt. Harish Uppal [(2003) 2 SCC45 that a direction of this kind by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts

does not affect the right of the lawyer concerned to carry on his legal practice in other ways as indicated in the decision. We respectfully submit that the decision in Ex. Capt. Harish Uppal v. Union of India [(2003) 2 SCC45 places the issue in correct perspective and must be followed to answer the question at issue before us.

241. Lest we are misunderstood it needs to be made clear that the occasion to take recourse to the extreme step of debarring an advocate from appearing in court should arise very rarely and only as a measure of last resort in cases where the wrongdoer advocate does not at all appear to be genuinely contrite and remorseful for his act/conduct, but on the contrary shows a tendency to repeat or perpetuate the wrong act(s).

242. Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceedee is held guilty of criminal contempt before dealing with the question of punishment. ....

264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the

increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.

62. The Supreme Court in R.K. ANAND CASE (SUPRA) has laid down that certain actions of individuals may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. One such illustration given by the Supreme Court is where an advocate has made it into a practice to browbeat and abuse Judges and on that basis has earned the reputation to get a case transferred from an inconvenient court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. The Supreme Court has further laid down that in such a situation measures may be required to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. The Supreme Court has laid down that in such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time.

63. The Supreme Court in R.K. ANAND CASE (SUPRA) further laid down that ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules

providing for such a course, the rules of natural justice demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. In the present case, The Division Bench by order dated 24.04.2012 had directed that the order dated 04.01.2012 would be treated as a Show Cause Notice. Further by order dated 21.08.2014 this court had clarified that he had to show cause as to why he should not be restrained from appearing in any Court either in person or as an attorney.

64. In O.P. SHARMA V. HIGH COURT OF PUNJAB & HARYANA, (2011) 6 SCC86the Supreme Court while dealing with the status, behaviour, conduct and ethical standards of the Advocates in courts laid down as under:

22. In Ajay Kumar Pandey, Advocate, In re [(1998) 7 SCC248 the advocate was charged of criminal contempt of court for the use of intemperate language and casting unwarranted aspersions on various judicial officers and attributing motives to them while discharging their judicial functions. This Court held as under: (SCC p. 259, para 17)

17. The subordinate judiciary forms the very backbone of the administration of justice. This Court would come down with a heavy hand for preventing the judges of the subordinate judiciary or the High Court from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable them to discharge their judicial functions without fear.

23. In Chetak Construction Ltd. v. Om Prakash [(1998) 4 SCC577 this Court deprecated the practice of making allegations against the Judges and observed as under: (SCC pp. 585-86, para 16)

16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and the rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to terrorise or intimidate Judges with a view to secure orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it.

A similar view has been reiterated in Radha Mohan Lal v. Rajasthan High Court[(2003) 3 SCC427:

2003. SCC (Cri) 863]. .

24. Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech. Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection of other fundamental human rights, freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. But they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial processes. Any adverse opinion about the judiciary should only be expressed in a detached manner and respectful language. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary [vide D.C. Saxena (Dr.) v. Chief Justice of India [(1996) 5 SCC216].. ....

28. In M.B. Sanghi v. High Court of Punjab & Haryana [(1991) 3 SCC600:

1991. SCC (Cri) 897]. this Court took notice of the growing tendency amongst some of the advocates of adopting a defiant attitude and casting aspersions having failed to persuade the court to grant an order in the terms they expect. Holding the advocates guilty of contempt, this Court observed as under: (SCC p. 602, para 2)

2. The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the Judge concerned but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the Judge concerned but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system.

....

32. A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of a judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary. (Vide M.Y. Shareef v. Judges of Nagpur High Court [AIR 1955 SC19:

1955. Cri LJ133: (1955) 1 SCR757 , Shamsher Singh Bedi v. High Court of Punjab & Haryana [(1996) 7 SCC99:

1996. SCC (Cri) 181]. and M.B. Sanghi v.High Court of Punjab & Haryana [(1991) 3 SCC600:

1991. SCC (Cri) 897]. .) .... Advocate's role and ethical standards 38. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system. 65.

39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules.

40. As a rule, an advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue. In NIRMALA J.

JHALA V. STATE OF GUJARAT, (2013) 4 SCC301the Supreme Court emphasised the duty of the Higher Judiciary to protect the Subordinate Judiciary and laid down as under: II. Duty of Higher Judiciary Subordinate Judicial Officers

to protect 18. In Ishwar Chand Jain v. High Court of P&H [(1988) 3 SCC370:

1988. SCC (L&S) 797 : AIR 1988 SC1395 it was held: (SCC pp. 381-82, para 14)

14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for the rule of law. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.

19. In Yoginath D. Bagde v. State of Maharashtra [(1999) 7 SCC739:

1999. SCC (L&S) 1385 : AIR 1999 SC3734 it was held: (SCC p. 766, para 48)

48. The Presiding Officers of the court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs.

20. A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure-contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. Judge bashing has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (Vide L.D. Jaikwal v. State of U.P. [(1984) 3 SCC405:

1984. SCC (Cri) 421 : AIR 1984 SC1374 , K.P. Tiwari v. State of M.P. [1994 Supp (1) SCC540:

1994. SCC (Cri) 712 : AIR 1994 SC1031 , Haridas Das v. Usha Rani Banik [(2007) 14 SCC1: (2009) 1 SCC (Cri) 750 : AIR 2007 SC2688 and Ajay Kumar Pandey, In re[(1998) 7 SCC248: AIR 1998 SC3299) 21.

66. The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them Judge bashing becomes a favourable pastime. In case the High Court does not protect honest judicial officers, the survival of the judicial system would itself be in danger. The Supreme Court in NIRMALA J JHALA CASE (SUPRA) has laid down that a subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure-contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. Judge bashing has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them Judge bashing becomes a favourable pastime. In case the High Court does not protect honest judicial officers, the survival of the judicial system would itself be in danger. The Supreme Court has laid down that the High Court is under a constitutional obligation to guide and protect judicial officers.

67. The conduct of Mr. Deepak Khosla, before the learned Judges of this Court as also before the judicial officers of the subordinate court and the Company Law Board and the Arbitral Tribunal, referred to hereinabove, when viewed in the light of the law as laid down by the Supreme Court in various judicial pronouncements, some of which have been extracted hereinabove, clearly poses a real and imminent threat to the purity of the Court proceedings.

68. Over and above the orders that may be passed by the Court on the suo moto Civil and Criminal Contempt proceedings that have been initiated and the action that the Bar Council, in exercise of its disciplinary powers under the Advocates Act, 1961, may take against Mr. Deepak Khosla, in light of the decision of the Supreme Court in R.K. ANAND (SUPRA) and the order dated 24.04.2012 of the Division Bench of this court in LPA No.16/2012, his conduct calls for measures to regulate the Courts proceedings and to maintain the dignity and orderly functioning of the Courts to save the purity of the Court proceedings from being polluted in any way.

69. Apart from the above, during the proceedings what has come to light is that Mr. Deepak Khosla has got himself enrolled with the Bar Council of Karnataka. He on 21.08.2014 had made a statement before this court which was recorded in the order of the said date that he predominantly practises in Delhi but was enrolled with the Bar Council of Karnataka (Enrolment No.KAR12802013). He had stated that though there were certain matter in contemplation to be filed in the State of Karnataka, however no matter had been filed till that date (i.e. 21.08.2014) in the State of Karnataka.

70. Bar Council of India in exercise of rule making powers under Section 49 (1)(c) of the Advocates Act, 1961 has laid down the Standards of Professional Conduct and Etiquette as canons of conduct and etiquette adopted as general guides and has further laid down that the specific mention thereof shall not be construed as a denial of the existence of others equally imperative canons though not specifically mentioned.

71. Bar Council of India in exercise of rule making powers under Section 49 (1)(ah) of the Advocates Act, 1961 has laid down Conditions for right to practice . Rule 1 lays down as under:

1. Every advocate shall be under an obligation to see that his name appears on the roll of the State Council within whose jurisdiction he ordinarily practices. PROVIDED that if an advocate does not apply for transfer of his name to the roll of the State Bar Council within whose jurisdiction he is ordinarily practising within six months of the start of such practice, it shall be deemed that he is guilty of

professional misconduct within the meaning of Section 35 of the Advocates Act.

72. As per Rule 1 of the Conditions for right to practise, every advocate is under an obligation to see that his name appears on the roll of the State Bar Council within whose jurisdiction he ordinarily practices and in case an advocate does not apply for transfer of his name to the roll of the State Bar Council within whose jurisdiction he is ordinarily practising within six months of the start of such practice, it shall be deemed that he is guilty of professional misconduct within the meaning of Section 35 of the Advocates Act.

73. The rationale behind the said rule is clearly to subject the advocate to the disciplinary jurisdiction of the State Bar Council within whose jurisdiction he ordinarily practices. If Advocates were permitted to ordinarily practice within jurisdictions of State Bar Councils other than the State Bar Council with which the advocate is enrolled, it would cause grave inconvenience to litigants who engage such advocates or to persons who wish to file complaints against such advocates as it would be difficult for them to ascertain the State Bar Council that would have jurisdiction over the said advocate and further impractically impossible for them to initiate and prosecute any complaint against the said advocate.

74. The Record of enrolment of Mr. Deepak Khosla (KAR/1280/13) forward by Bar Council of Karnataka through the Bar Council of India shows that he has been enrolled by the Bar Council of Karnataka on 30.07.2013 and he as per his statement has been predominantly practicing in Delhi. As per his own statement, till 21.08.2014 he has not filed any case within the jurisdiction of the State Bar Council of Karnataka though as per his statement certain matter were in contemplation of being filed in that state.

75. Record also reveals that costs have been imposed on Mr. Deepak Khosla for filing frivolous applications, protracting litigation, abusing the process of courts etc. which costs have remained unpaid. The imposition of costs and pre-emptory orders being passed by the courts have not deterred Mr. Deepak Khosla from filing further applications.

76. In view of the above, the Show Cause Notice issued by the Division Bench by its order dated 24.04.2014 is disposed of with the following directions: (i) Mr. Deepak Khosla is prohibited from personally appearing and addressing any court in any matter in the Delhi High Court, the District Courts of Delhi, the Company Law Board either as a litigant in person or as an attorney/authorised representative or as an Advocate for a period of one year from today; and (ii) Mr. Deepak Khosla is further prohibited from personally Arbitral Tribunal appearing constituted before or the to be constituted by the Court in the personal litigation of Mr. Deepak Khosla for a period of one year from today; and (iii) Mr. Deepak Khosla is prohibited from filing any application or petition in the Delhi High Court till he furnishes to the Registry the proof of deposit or payment, as the case may be, of the costs imposed by the various orders mentioned hereinabove; and (iv) Mr. Deepak Khosla is prohibited from filing any proceedings in the Delhi High Court or the District Courts of Delhi as an advocate unless the same is filed jointly with an Advocate enrolled with the Bar Council of Delhi. (v) Mr. Deepak Khosla is at liberty to engage an advocate to represent and appear for him in his personal litigation.

77. It is clarified that the period of one year has been fixed to enable the Respondent Mr. Deepak Khosla to introspect over his conduct and to learn to respect the court and the system of administration of justice and to mend his behaviour and attitude towards the courts and the judicial officers. If after the expiry of the said period he does not mend his behaviour and attitude towards the courts and the judicial officers, the court would be at liberty to reconsider the disposal of the Show Cause Notice and revisit the directions issued herein and pass further appropriate orders.

78. The Bar Council of India and the Bar Council of Karnataka are also directed to examine the conduct and behaviour of hereinabove Mr. and Deepak to take Khosla as appropriate elucidated action in accordance with law.

79. The Registry of this court is directed not to accept or process any application or petition filed by Mr. Deepak Khosla in the Delhi High Court till he furnishes to the Registry the proof of deposit or payment, as the case may be, of the costs imposed by orders mentioned hereinabove.

80. The Registry of this court is further directed not to accept or process any proceedings filed by Mr. Deepak Khosla as an advocate unless the same is filed jointly with an Advocate enrolled with the Bar Council of Delhi.

81. The Registrar General is directed to circulate a copy of this order to the District & Session Judges of the various Districts Courts of Delhi, the Chairman Company Law Board, the Secretary Bar Council of India and the Secretary Bar Council of Karnataka. SANJEEV SACHDEVA, J JANUARY13 2015 HJ

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