* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on 24.11.2015

Pronounced on : 22.02.2016

\+ CONT. CAS (CRL.) 12/2014 & CRL. M.A. 11975-77/2015

COURT ON ITS OWN MOTION ..... Petitioner
Through: None.

versus

DEEPAK KHOSLA ..... Respondent
Through: Mr. Salman Khurshid, Sr. Adv. with
Ms.Sanchita Ain, Mr. Ajay Marwah,
& Ms. Srishti Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

NAJMI WAZIRI, J.

1. After 26 judges of the Delhi High Court had recused themselves from hearing this and another criminal contempt petition (Cont Cas (Crl.) 9/2014) the Hon'ble Chief Justice has constituted this Special Division Bench to adjudicate upon the two pending petitions against the respondent, Deepak Khosla - an advocate, who has appeared before the Court.

Background/ Issue of Show Cause Notice

2. On 11.10.2013, while arguing certain applications in LPA 16/2012, the respondent referred to the Bench comprising Hon'ble Mr. Justice

Sanjiv Khanna and Hon'ble Mr. Justice R.V. Easwar, as *'Dedh Bench'* (Hindustani equivalent of one-and-half Bench). Recording this expression, the order dated 11.10.2013, noted that it would take a view on this expression at the time of final disposal of CM No. 2392/2013.

3. By a detailed order dated 28.03.2014, the Bench comprising of the Hon'ble Mr. Justice Kailash Gambhir and Hon'ble Mr. Justice R.V. Easwar, directed initiation of *suo moto* contempt proceedings against the respondent. The relevant portion of the order is reproduced as under:

> *"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-a-half 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: -*
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> *"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 Hon"ble Mr. Justice Sanjeev Khanna and Hon"ble 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 show-cause notice to Mr. Deepak Khosla, the applicant herein, as to why proceedings should not be initiated against him for committing contempt of court.

14. Mr. Deepak Khosla shall file his reply to the show-cause notice of contempt within 15 days. Relist the contempt proceedings as "Court of its own motion" on 25.04.2014."

4. The case was numbered as Cont. Case (C) 229/2014. On 25.04.2014, after the dismissal of certain other applications by this Bench, the

respondent impudently remarked that in view of the *"beautiful orders"* passed, the Bench should recuse itself from dealing with his matters henceforth. In view of this, the Bench ordered that this unwarranted expression shall also be dealt with during the contempt proceedings that had already been initiated against the respondent. The relevant portion of the order has been reproduced 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 the court are highly disparaging and contemptuous in nature. Earlier also, the appellant had the audacity to address the Division Bench as a 'dedh bench' and for which suo moto contempt proceedings were initiated against him. Today again, the expressions 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. It is ordered accordingly."*

5. The respondent chose not to reply to the contempt notice, despite being granted repeated opportunities to do so. On 22.08.2014, none appeared on behalf of the respondent and therefore his right to file his reply was

closed. The matter was adjourned to 20.11.2014 on which day he expressed difficulty to appear in the post lunch session. Hence, at his request, the case was adjourned for final hearing to 27.11.2014. However, even on 27.11.2014, an adjournment was sought by the respondent.

6. On 28.11.2014, it was noticed by the Court that the case had been incorrectly listed under the category of civil contempt proceedings. It was ordered to be treated and listed as a criminal contempt case and was renumbered as Cont. Case (Crl) 12/2014. Consequently, the respondent was granted a fresh opportunity to file his reply in view of the re-categorization of the matter as a criminal proceeding. The said order reads as under:

> *"Before we begin hearing the present contempt proceeding, Mr. Deepak Khosla, the alleged contemnor, who appears in person, submits that vide order dated 28th March, 2014 this Court had directed the Registry to list this contempt proceeding under the category of civil contempt and not as a criminal contempt, therefore, direction should be issued for listing this matter before the learned Single Judge dealing with the civil contempt cases.*
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> *We have heard Mr. Deepak Khosla. The contempt proceedings were directed against the respondent because of certain expressions used by him during the course of hearing of CM No.16860/2013 and CM No. 2392/2013 in LPA 16/2012 and therefore, the said contempt proceedings directed against the*

petitioner are manifestly in the nature of Criminal Contempt and not as a Civil Contempt. We may also observe here that the said expressions were used by Mr. Deepak Khosla in the face of the Court, therefore, the same will not fall under Section 2(b) but under Section 2(c) of The Contempt of Courts Act, 1971. We accordingly, rectify the said mistake which crept in the order dated 28th March, 2014 and hereby direct for initiation of criminal contempt proceedings against the respondent- Mr. Deepak Khosla. The Registry is, accordingly directed to register these proceedings under the category of Criminal Contempt, read with Article 215 of the Constitution of India. We also grant a fresh opportunity to Mr. Deepak Khosla to file his reply within a period of six weeks.

List on 16.01.2015."

Preliminary Objections

7. On 19.03.2015, Mr. Deepak Khosla appeared before a bench comprising of Hon'ble Mr. Justice Kailash Gambhir, and raised the following preliminary objections:

> *"A. Under Section 14(2) of the Contempt of Courts Act, 1971, the Court which had initiated the contempt proceedings cannot try him for the suo moto contempt proceedings rather it should be heard and decided by any other roster bench.*
> *B. He cannot be proceeded solely by the Contempt of Courts Act in the absence of rules framed by this Court and any decision by the Court in the*

contempt case in the absence of the rules would be in violation of the fundamental rights of the respondent as have been granted under Article 21 of the Constitution of India.

C. This contempt proceedings can continue only after the disposal of CM No. 17483/2013 which was filed by him in LPA No. 16/2012 wherein he gave necessary clarifications with regard to the said expression of 'Dedh Bench' and the same has yet not been decided by this Court.

D. The respondent being a practising Advocate, has to be tried for contempt proceedings by a Full Bench of this Court in terms of Volume V, Chapter 3, Part B Rule 2(1) of the High Court Rules."

8. These preliminary issues have already been dealt with in detail by the Court vide order dated 29.05.2015 and do not require any further discussion. Relevant portion has been quoted hereunder:

> *"25. Dealing with the first preliminary objection, it is beyond doubt that on 11th October, 2013 while addressing arguments on CM Nos. 16860/2013 and 2392/2013 for modification/ clarification of order dated 24th April, 2012, the respondent had used the expression 'Dedh Bench' which was referred to the Division Bench comprising of Sanjiv Khanna, J and R.V. Easwar, J. (as he then was). The said expression used by the respondent, for one of the member of the Division Bench, was in his CONT. CASE (CRL.) No.12/2014 Page 14 of 39 presence and on the very face of the court. The Court in such a situation, being a Court of Record, could have held the respondent guilty of contempt and awarded an instant punishment on the same very day. The other option was to give him a fair opportunity and know his stand as to why he had used such kind of expression for a Sitting Judge that too in his presence and on the face of the court. The Court thought of adopting the second course. In fact, the*

Court took a view that an appropriate decision on this aspect shall be taken at the time of deciding CM No. 16860/2013 and 2392/2013 in LPA 16/2012 filed by the respondent. Accordingly, when the said two applications were decided by the Bench by an order dated 28th March, 2014, this Court directed initiation of suo motu contempt proceedings against the respondent for using such kind of expressions for a member of the Bench, particularly R.V. Easwer, J. (as he then was) who had decided LPA No. 16/2012 vide order dated 24th April, 2012.

26. Articles 129 and 215 of the Constitution of India declare the Supreme Court and High Courts of the country as a Court of Record having all the powers of such a court including power to punish for its contempt. These Articles are reproduced as under:- CONT. CASE (CRL.) No.12/2014 Page 15 of 39 "Article 129. Supreme Court to be a court of record 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 Article 215. High Courts to be courts of record Every High 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."

27. One of the earliest cases wherein this extra-ordinary and special power of the High Court to institute proceedings for contempt of court and to punish the contemnors wherever necessary was the case of Sukhdev Singh Sodhi v. The Chief Justice and Judges of The Pepsu High Court reported in [1954]1SCR454 wherein the Court held as under:- " In 1950 came the Constitution of India and article 215 states that - "Every High Court shall be a court of record and shall have all the powers such a court including the power to punish for contempt of itself." Here again, whatever this is a fresh conferral of power or a continuation of existing powers hardly matters because whichever way it is viewed the jurisdiction is a special one and so is outside the purview of the Criminal Procedure Code. The Contempt of Courts Act, 1926, was

repealed by Act XXXII of 1952. Section 3 of the new Act is similar to section 2 of the old and, far from conferring a new jurisdiction, assumes, as did the old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority "in accordance with the same procedure and practice." These words are new and would be inappropriate if the Criminal Procedure Code applied. In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate court, the Constitution vests these rights in every High Court, so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. It is true section 5 expands the ambit of the authority beyond what was till then considered to be possible but it does not confer a new jurisdiction. It merely widen the scope of an existing jurisdiction of a very special kind. On reflection it will be apparent that the Code could not be called in aid in such cases, for if the Code applies it must apply in its entirety and in that event how could such proceedings be instituted ? The maximum punishment is now limited to six months' simple imprisonment or a fine of Rs. 2,000 or both because of the 1952 Act. Therefore, under the second schedule to the Code contempt would be triable by a Magistrate and not by a High Court and the procedure would have to be a summons procedure. That would take away the right of a High Court to deal with the matter summarily and punish, a right which was well established by the case law up to 1945 and which no subsequent legislation has attempted to remove. So also section 556 could not apply, nor would the rule which prohibits a judge from importing his own knowledge of the facts into the case. We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is

necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council re Pollard L.R. 2 P.C. 106 at 120. and was followed in India and in Burma re Vallabhdas (I.L.R. 27 Bom. 394.) and Ebrahim Mamoojee Parekh v. King Emperor I.L.R. 4 Rang. 257at 259-261.). In our view that is still the law. If the Code of Criminal Procedure does not apply, then there is no other power which we can exercise. The Constitution gives every High Court the right and the power to punish a contempt of itself. If we were to order a transfer to another court in this case we would be depriving Pepsu High Court of the right which is so vested in it. We have no more power to do that than has a legislature. As for transfer from one Judge to another, there again there is no original jurisdiction which we can exercise. It is not a fundamental right and so article 32 has no application and there is no other law to which recourse can be had. This petition is therefore incompetent and must be dismissed. We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. It is otherwise when the attack is not directed against him personally. We do not lay down any general because there may be cases where that is impossible, as for example in a court where there is only one judge or two and both are attacked. Other cases may also arise where it is more convenient and proper for the judge to deal with the matter himself, as for example in a contempt in facie curio. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will comport themselves with that dispassionate dignity and decorum which befits their high office and will bear in mind the often quoted maxim that justice must

not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in his case." 28. In another authoritative pronouncement of the Hon'ble Supreme Court in the case of Pritam Pal v High Court of Madhya Pradesh reported in 1992 SCR (2) 864, the Hon'ble Supreme Court while dealing with the case of the appellant who made some serious allegations against two Judges of the High Court who dealt with his writ petition, took cognizance of his contemptuous conduct, notice was issued against him as to why he should not be punished for committing contempt of court. In the said matter also, the appellant had raised various preliminary objections, one of them being that the procedure followed by the High Court was contrary to rules framed under it. Dealing with this preliminary objection, the Hon'ble Supreme Court in the following para held as under:- "Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemner to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be `Courts of Record' under Articles 129 and 215 of the constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any

legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971." 29. Reiterating the said principle that jurisdiction contemplated by Articles 129 and 215 of the Constitution of India is inalienable and the same cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution, the Apex Court in the case of T. Sudhakar Prasad v Govt of A.P reported in (2001) 1 SCC 516 held as under:-

"Articles 129 and 215 of the Constitution of India declare Supreme Court and every High Court to be a Court of Record having all the powers of such a court including the power to punish for contempt of itself. These articles do not confer any new jurisdiction or status on the Supreme Court and the High Courts. They merely recognise a pre-existing situation that the Supreme Court and the High Courts are courts of record and by virtue of being courts of record have inherent jurisdiction to punish for contempt of themselves. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure excepting the principles of natural justice. The jurisdiction contemplated by Articles 129 and 215 is inalienable. It cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of Articles 129 and 215 of the Constitution. The provisions of Contempt of Courts Act, 1971 cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two Articles." 30. Another decision of the Hon'ble Supreme Court which has bearing in the facts of the instant case is that of Dr. L.P. Misra vs. State of U.P. reported in AIR 1998 SC 3337. In the facts

of this case, the alleged contemnors had committed contempt in the face of the Court and taking a note of the contumacious conduct of the appellants therein, the Court exercised its powers under Article 215 of the Constitution of India and held them guilty of committing contempt and sentenced them with imprisonment for one month and fine of Rs. 1000/- each. The said order was assailed before the Hon'ble Supreme Court and one of the grounds raised by the appellant was that the Court did not follow the procedure as prescribed under Section 14 of the Contempt of Courts Act, 1971 before passing the order of contempt on the same day i.e. without even issuing show cause notice to explain their alleged contemptuous conduct. The Hon'ble Supreme Court while recognizing the power of the High Court to exercise its jurisdiction as a Court of record, under Article 215 of the Constitution of India, held that such jurisdiction has to be in accordance with the procedure prescribed by law. For ready reference, the relevant paragraph of the said judgment is reproduced hereinbelow:-

"9. After hearing learned counsel for the parties and after going through the materials placed on record, we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. It is in these circumstances, the impugned order cannot be sustained." 31. In the case of Pallav Sheth vs. Custodian & Ors., reported in AIR 2001 SC 2763, the Hon'ble Supreme Court had the occasion to deal with the powers of the Supreme Court and High Courts under the Constitution of India and under the Contempt of Courts Act, 1971 for taking action for contempt of subordinate courts. The following paras would be relevant to the controversy in hand:-

"31. There can be no doubt that both this Court and High Courts are Courts of Record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution.

32. This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously.

33. The Contempt of Courts Act, 1971 inter alia provides for what is not to be regarded as contempt; it specifies in Section 12 the maximum punishment which can be imposed; procedure to be followed where contempt is in the face of the Supreme Court or in the High Court or cognizance of criminal contempt in other cases is provided by Sections 14 and 15; the procedure to be followed after taking cognizance is provided by Section 17; Section 18 provides that in every case of criminal contempt under Section 15 the same shall be heard and determined by a Bench of not less than two Judges;

Section 19 gives the right of appeal from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt. There is no challenge to the validity of any of the provisions of the Contempt of Courts Act as being violative or in conflict with any provisions of the Constitution. Barring observations of this Court in the Supreme Court Bar Association's case (supra), where it did not express any opinion on the question whether maximum punishment fixed by the 1971 Act was binding on the Court, no doubt has been expressed about the validity of any provision of the 1971 Act. In exercise of its constitutional power this Court has, on the other hand, applied the provisions of the Act while exercising jurisdiction under Article 129 or 125 of the Constitution. In Sukhdev Singh Sodhi's case (supra) it recognised that the 1926 Act placed a limitation on the amount of punishment which could be imposed. Baradakanta Mishra's case was decided on the interpretation of Section 19 of the 1971 Act, namely, there was no right of appeal if the Court did not take action or initiate contempt proceedings. In the case of Firm Ganpat Ram Rajkumar's case (supra) the Court did not hold that Section 20 of the 1971 Act was inapplicable. It came to the conclusion that the application for initiating contempt proceedings (was within time and limitation had to be calculated) as for the purpose of limitation date of filing was relevant and furthermore that was a case of continuing wrong. In Kartick Chandra Das case (supra) the provisions of the Limitation Act were held to be applicable in dealing with application under Section 5 in connection with an appeal filed under Section 19 of the Limitation Act. A three-Judge Bench in Dr L.P.Misra's case (supra) observed that the procedure provided by the Contempt of Courts Act, 1971 had to be followed even in exercise of the jurisdiction under Article 215 of the Constitution. It would, therefore, follow that if Section 20 is so interpreted that it does not stultify the powers under Article 129 or Article 215 then, like other provisions of

the Contempt of Courts Act relating to the extent of punishment which can be imposed, a reasonable period of limitation can also be provided."

32. We may also usefully refer to the decision of the Apex Court in Leila David v. State of Maharashtra & Ors. reported in AIR 2010 SC 862 wherein the Court dealt with the contemptuous conduct of one of the writ petitioners who had thrown a footwear at the Judges and after recording the entire incident which had occurred in the sight of the Hon'ble Judges and the other persons present in Court including the then Law Officers, the Court held that such behaviour of the writ petitioner is contemptuous in the face of the Court. The Court further held that since the writ petitioner stood by what she had done in Court and in the light of such admission, the resort to of summary procedure cannot be faulted and the Court held her guilty of criminal contempt and inflicted punishment of three months imprisonment on them.

33. The said course of action which was directed at the instance of one of the Judges of the Bench, did not meet the approval of the other learned Judge, who by a separate order, observed that the writ petitioner could not have been punished for contempt without due compliance with the provisions of Section 14(1) (a), (b), (c) and (d) of Contempt of Courts Act, 1971. His Lordship was also of the view that the Court's power under Article 142 was not meant to circumvent the statutory requirements. This difference of opinion by one of the learned Judges of the same Bench led to the constitution of Bench of three Judges by Hon'ble the Chief Justice to deal with the case of the alleged contemnors therein.

34. The then Attorney General who appeared before the Bench supported the view taken by his Lordship Dr. Justice Arijit Pasayat and submitted that Section 14 of the Contempt of Courts Act, 1971, did not preclude the Court from deciding the contempt matter summarily when such contempt was committed in the face of the Court. The learned Attorney General submitted that while Section 14

provides a procedure to be normally followed so as to give the contemnors an opportunity of showing cause against the action proposed to be taken, in cases of instant nature where the incident had taken place within the precincts of the Court room and within the sight of all present therein, including the Hon'ble Judges who constituted the Bench, there could be little justification in going through the procedure prescribed in Section 14 in order to establish that the alleged contemnors had, in fact, committed contempt of Court.

35. The Full Bench agreeing with the view of his Lordship Dr. Justice Arijit Pasayat and with the submissions canvassed by the learned Attorney General, upheld the sentence as was imposed upon on the said contemnors and they were directed to be taken into custody forthwith to serve out the remaining sentence. The relevant paras of the said judgment are as follows:-

"17. As far as the suo motu proceedings for contempt are concerned, we are of the view that Dr. Justice Arijit Pasayat was well within his jurisdiction in passing a summary order, having regard to the provisions of Articles 129 and 142 of the Constitution of India. Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large, including Senior Law Officers, such as the Attorney General for India who was then the Solicitor General of India. While, as pointed out by Mr. Justice Ganguly, it is a statutory requirement and a salutary principle that a person should not be condemned unheard, particularly in a case relating to contempt of Court involving a summary procedure, and should be given an opportunity of showing cause against the action proposed to be taken against him/her, there are exceptional circumstances in which such a procedure may be discarded as being

redundant. The incident which took place in the court room presided over by Dr. Justice Pasayat was within the confines of the court room and was witnessed by a large number of people and the throwing of the footwear was also admitted by Dr. Sarita Parikh, who without expressing any regret for her conduct stood by what she had done and was supported by the other contemnors. In the light of such admission, the summary procedure followed by Dr. Justice Pasayat cannot be faulted.

18. Section 14 of the Contempt of Courts Act, 1971, deals with contempt in the face of the Supreme Court or the High Court. The expression "Contempt in the face of the Supreme Court" has been interpreted to mean an incident taking place within the sight of the learned Judges and others present at the time of the incident, who had witnessed such incident. In re: Nand Lal Balwani [(1999) 2 SCC 743], it was held that where an Advocate shouted slogans and hurled a shoe towards the Court causing interference with judicial proceedings and did not even tender an apology, he would be liable for contempt in the face of the Court. It was observed by the Bench of three Judges which heard the matter that law does not give a lawyer, unsatisfied with the result of any litigation, licence to permit himself the liberty of causing disrespect to the Court or attempting, in any manner, to lower the dignity of the Court. It was also observed that Courts could not be intimidated into passing favourable orders. Consequently, on account of his contumacious conduct, this Court sentenced the contemnor to suffer four months simple imprisonment and to pay a fine of Rs.2,000/-. In another decision of this Court in Charan Lal Sahu v. Union of India and another [(1988) 3 SCC 255], a petition filed by an experienced advocate of this Court by way of a public interest litigation was couched in unsavory language and an intentional attempt was made to indulge in mudslinging against the advocates, the Supreme Court and other constitutional institutions. Many of the allegations made by him were likely to lower

the prestige of the Supreme Court. It was also alleged that the Supreme Court had become a constitutional liability without having control over the illegal acts of the Government. This Court held that the pleadings in the writ petition gave the impression that they were clearly intended to denigrate the Supreme Court in the esteem of the people of India. In the facts of the case, the petitioner therein was prima facie held to be guilty of contempt of Court.

19. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the Courts to be maintained. When an object, such as footwear, is thrown at the Presiding Officer in a Court proceeding, the object is not to merely scandalize or humiliate the Judge, but to scandalize the institution itself and thereby lower its dignity in the eyes of the public. In the instant case, after being given an opportunity to explain their conduct, not only have the contemnors shown no remorse for their unseemly behaviour, but they have gone even further by filing a fresh writ petition in which apart from repeating the scandalous remarks made earlier, certain new dimensions in the use of unseemly and intemperate language have been resorted to further denigrate and scandalize and over-awe the Court. This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as licence for indulging in indecorous behaviour and making scandalous allegations not only against the judiciary, but those holding the highest positions in the country. The writ proceedings have been taken in gross abuse of the process of Court, with the deliberate and

wilful intention of lowering the image and dignity not only of the Court and the judiciary, but to vilify the highest constitutional functionaries.

20. In such circumstances, while agreeing with the procedure adopted by Dr. Justice Pasayat in the facts of this case, we are not inclined to interfere with the sentence which has been imposed on the contemnors. The order dated 20th March, 2009, granting bail to the contemnors is hereby recalled. The Secretary General is directed to take the contemnors into custody forthwith and to arrange to have them sent to the appropriate jail to serve out the sentence."

36. In a recent decision of Ram Niranjan Roy v State of Bihar, 2014(4)SCALE428, the Hon'ble Supreme Court while dealing with the appellant who appeared in person and taking note of his condescending behaviour in the High Court, was directed to be taken into custody by the Court Officer and was sent to jail for punishment for one day. Aggrieved by the said order of the High Court, he had approached the Hon'ble Supreme Court and one of the contentions raised by the appellant was that no opportunity was given to him as contemplated under Section 14 of the Contempt of Courts Act, 1971. The Hon'ble Supreme Court after referring to many of its previous decisions, in the following paras, held as under:-

"Thus, when a contempt is committed in the face of the High Court or the Supreme Court to scandalize or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalizing the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempts committed in the face of the court need a strict treatment. The appellant, as observed by the High Court was not remorseful. He did not file any affidavit tendering apology nor did he orally tell the High Court that he was remorseful and he wanted to tender apology.

Even in this Court he has not tendered apology. Therefore, since the contempt was gross and it was committed in the face of the High Court, learned Judges had to take immediate action to maintain honour and dignity of the High Court. There was no question of giving the appellant any opportunity to make his defence. This submission of the appellant must, therefore, be rejected."

37. From the cornucopia of various decisions given by the Hon'ble Supreme Court and the decisions cited above, there remains no doubt that Articles 129 and 215 of the constitution of India declare Supreme Court and High Court to be a Court of Record having all the powers of such a court that includes the power to punish for contempt of court. The contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment and its power to punish for the Contempt of Court are independent of the statutory law of contempt enacted by the Parliament. These judgments have also recognized the supremacy of these Courts with regard to their jurisdiction to take cognizance of the contempt as well as to award punishment and to this extent, powers of these Courts are absolute and supreme and no provision of Contempt of Courts Act, 1971 or any other statute can abrogate or stultify the contempt jurisdiction vested with the Supreme Court and High Courts under Article 129 and 215 of the Constitution.

38. Insofar as the procedure for holding any person guilty of contempt and on the quantum of punishment to be awarded for Contempt of Court whether suo motu or otherwise, necessarily the provisions of the Contempt of Courts Act, 1971 are the only guide, as there is no other legislation enacted by the Parliament providing a

separate procedure or punishment for contempt of the Supreme Court and High Courts under Articles 129 and 215 of the Constitution.

39. The provisions of the Contempt of Courts Act, 1971 are in addition and not in derogation of Articles 129 and 215 of the Constitution and provisions of this Act cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two Articles.

40. Another legal principle which clearly emerges from the above discussion is that so far as any person who commits contempt in the face of the Court and, if the Court instantly takes cognizance of the contemptuous conduct of such a person, and holds the person guilty of contempt, then in such a case, the grant of opportunity or issuance of show cause notice before committing the person for contempt may not be necessary. This is what the Hon'ble Supreme Court has observed in Ram Niranjan's case (supra) saying that when a contempt is committed in the face of this High Court or the Hon'ble Supreme Court to scandalize or humiliate the Judge, instant action may be necessary and if the Courts do not deal with such contempt with strong hands that may result in scandalizing the institution thereby lowering its dignity in the eyes of the public. It further held that to prevent erosion of the faith of the people, contempt committed in the face of the court needs an ascetic treatment and the learned Judges have to take the immediate action to maintain honour and dignity of the Court. Thus, there is no limit or fetters on the power of the High Court to hold any person guilty of contempt and to punish him instantaneously if the contempt committed is in the face of the Court and in the opinion of the Court, if the same is of a serious nature warranting immediate action without even giving an opportunity to the alleged contemnor to put forth his defence.

41. Certainly, it would be for the Court to take such a view depending upon the facts of each case. This course of action is also in the fortitude of section 14 of the

Contempt of Courts Act, 1971. The only difference is that in Section 14 of the Contempt of Courts Act, 1971, wherever it appears to the Hon'ble Supreme Court or this court, upon its own view, that if a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible. But when the High Court exercises its power contemplated under Article 215 of the Constitution, then it may award the punishment in terms of Section 12 of the Contempt of Courts Act, 1971.

42. Now adverting back to the facts of the present case, this Court did not hold the respondent guilty of contempt for using the said expression 'Dedh Bench' on the same day and therefore, there was no instant action taken by the Court to take cognizance of the alleged contumacious conduct of the respondent. The Court rather held that at the time of deciding CM Nos. CM Nos. 16365/2013, 16366/2013 and 16367/2013 on 11th October, 2013 the Court will take a view on such kind of expressions used by the respondent during the course of addressing final arguments. It is only vide order dated 28th March, 2014, suo motu contempt proceedings were initiated against the respondent.

43. Resorting to the procedure prescribed under Section 14 of the Contempt of Courts Act, 1971, the respondent was given an opportunity to file the reply to the contempt notice and as already stated above, he failed to file any reply despite grant of several opportunities. We cannot be oblivious to Section 14(2) of Contempt of Courts Act, 1971 especially when an oral prayer has been made by the respondent to have the present contempt proceedings to be tried against him by some Bench other than the Bench in whose presence, the offence is alleged to have been committed. For better appreciation, Section 14 of the Contempt of Courts Act, 1971 is reproduced hereunder:-

"14. Procedure where contempt is in the face of the Supreme Court or a High Court.— (1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall— —(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—" (a) cause him to be informed in writing of the contempt with which he is charged; (b) afford him an opportunity to make his defence to the charge; (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and (d) make such order for the punishment or discharge of such person as may be just. (2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof. (3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under subsection (2), by a Judge other than the Judge or Judges in whose

presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case. (4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court: Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid."

44. It is a cardinal principle of law that justice should not only be done but also seem to have been done. Although it is not the wish or prerogative of a litigant as to which Bench will decide his case as this is a prerogative of the Chief Justice of a High Court to decide the Bench and accordingly place any matter before a particular bench. Although, wherever any contempt is committed in the face of the Court, then the same Court may be in a better position to take a view on the misconduct of such person. However, at the same time, the litigant facing a contempt, if carries any such feeling that any particular Judge or Bench has a bias towards him then certainly he can exercise his right under Section 14(2) of the Contempt of Courts Act, 1971 to be tried against by a Judge other than the Judge in whose presence or hearing, the alleged contempt has been committed. This however will depend on the facts of each case and the nature of misconduct subject to the exception that is , if the offence committed by a contemnor is of a serious nature warranting an

instant action by the Court then this course of action may not be available to him.

45. Thus so far as the first objection is concerned, we are in agreement with the contention raised by the Petitioner. However at the same time we are of the view, that it is not for the litigant to decide which bench shall take cognizance unless and until there appears to be a reasonable apprehension of bias. In view of the aforesaid discussion, we deem it appropriate to place this matter before Hon'ble the Chief Justice for placing it before the appropriate bench.

46. Coming to the second objection raised by the respondent that he cannot be proceeded under the Contempt of Courts Act, 1971 in the absence of rules framed by this Court and any decision by this Court in a contempt case in the absence of rules would be in violation of the Fundamental Rights of the respondent guaranteed under Article 21 of the Constitution of India. Pertinently, the Contempt of Courts Act, was brought on the statute book in the year 1971 and the purpose of this enactment was to keep the administration of justice pure and unsullied. This piece of legislation is quite comprehensive in nature and provides inbuilt mechanism to protect personal liberty and fundamental rights of the citizen. This is evident from the very dawn of the statute which starts as 'An Act to define and limit the powers of certain courts in punishing Contempts of Courts and to regulate their procedure in relation thereto.'

47. On bare perusal of various sections of the Contempt of Courts Act, 1971 one can notice that the same are procedural in nature. The heading of Section 14 of the Contempt of Courts Act, 1971 is "Procedure where contempt is in the face of the Supreme Court or a High Court". The heading of Section 17 of the Contempt of Courts Act 1971, is also along these lines, which is "Procedure after cognizance". It is because of the inbuilt mechanism of the statute perhaps it was never felt that in the absence of the rules, the provisions of the Act cannot

be invoked, enforced and implemented. We are not suggesting here that the rules should not be framed but certainly the statute has strided well in the absence of the rules for the past about 34 years. We thus find no force in the objection raised by the respondent that in the absence of the rules, action against him cannot be taken under the provisions of the Contempt of Courts Act, 1971. We also cannot lose sight of the fact that the contempt proceedings have also been directed against the respondent under Article 215 of the Constitution and as already discussed above, the powers of the High Court under Article 215 of the Constitution to punish in contempt for itself are supreme and absolute. 48. It is also an undeniable fact that the respondent has been given due opportunity of hearing to defend himself in the said contempt proceedings and therefore, the respondent cannot complain denial of adequate opportunity or violation of principles of natural justice. In this background his rights as are guaranteed under Article 21 of the Constitution of India have been duly taken care of.

49. Moving onto the other objection raised by the respondent that CM No. 17483/2013 was filed by him in LPA No. 16/2012 wherein he made the necessary clarification with regard to the use of said expression "Dedh Bench" and if that CM is allowed, then the very foundation and substratum of this contempt proceedings would collapse in heat. This objection raised by the respondent is also not tenable. The said application purported to have been filed by the respondent was not pressed by the respondent at any stage of the proceedings and now at the stage of final hearing of the contempt proceedings, we cannot allow him to take shelter under the said CM. In any event of the matter, the respondent was granted number of opportunities to file replies to the contempt proceedings but he failed to do so which means that the respondent did not prefer to offer any explanation to the use of the said expression "Dedh Bench" while addressing his arguments in support of his pending

applications. Mere filing of an application by the respondent is thus hardly of any consequence.
50. So far as the objection D is concerned, since we have already directed that the matter be placed before Hon'ble the Chief Justice in terms of Section 14 (2) of the Contempt of Courts Act, 1971 for assigning the same to the appropriate Bench, therefore, we deem it fit that the Hon'ble Chief Justice may take a view on this objection raised by the respondent herein."

Accordingly, this matter was placed before Hon'ble the Chief Justice, who has constituted this Division Bench. There is no occasion for us to take a different view from the aforesaid conclusion.

9. An issue raised by the respondent is that this contempt proceeding could only continue after the disposal of CM No. 17483/2013, which was filed by him in LPA No. 16/2012, wherein he gave necessary clarifications with regard to the said expression of '*Dedh Bench*'. The court is of the view that the substratum of contempt proceedings is the charge of contempt itself. The noticee may respond to the charge of contempt by way of an affidavit-in-defence or otherwise argue against the charge but he cannot seek to stall the contempt proceedings on the ground that an allegedly connected issue in another proceeding needs to be adjudicated first. The criminal contempt proceedings try the charge of contempt before it uninfluenced by the outcome of an application pending in some civil appeal.

10. If the respondent wanted to rely on the averments in the pending application, i.e., CM No. 17483/2013, in his defence against the charge, he ought to have filed the same in these proceedings. It is not for this Court to search for that application and then adjudicate the

matter. Choosing not to file a reply in defence of the charge of contempt will be deemed to be foreclosure of this right amounting to admission of the charge and/or no defence against the charge. The Court will only consider whether the charge before it constitutes contempt of court, *de hors* any other pending proceedings. In defence, the noticee/respondent has not sought a plea of truth either. On the contrary, he has sought to offer a perfunctory apology, at the penultimate stage of proceedings. The respondent's contention that if the pending CM is allowed, this contempt proceeding would be rendered redundant is based on aspirational conjuncture. The charge of criminal contempt has to be answered in the here and now. The respondent cannot be allowed to use the CM as a shield to stall or avoid these proceedings. The respondent has failed to provide any explanation let alone justification regarding the use of the pejorative and insulting term '*Dedh Bench'* against the Hon'ble Division Bench.

11. The last preliminary issue challenges the authority of this Bench to entertain this contempt proceeding insofar as the respondent claims that being a practicing advocate, a matter pertaining to his alleged contempt of court shall be heard before a Full Bench only. It would be apt to reproduce Rule 2(1) of the High Court Rules (Volume V, Chapter 3, Part B):

> *"JURISDICTION OF A SINGLE JUDGE AND OF BENCHES OF THE HIGH COURT*
> *2. (i) Bench in cases of misconduct of Advocates – Every case for professional or other misconduct against an Advocate shall be laid before the Honourable the Chief Justice or a Judge nominated in this behalf for an order under Section 10(2) of the Indian Bar Councils Act,*

1926, as to whether it be rejected summarily or whether an inquiry be held. If an inquiry is ordered, the case shall, after receipt of the findings of the Tribunal or the District Judge, be heard by a Bench of three Judges."

A perusal of the above rule would show that the expression used therein is "misconduct". In *Noratanmal Chourariavs M.R. Murli & Anr.*, (2004) 5 SCC 689], the Hon'ble Supreme Court delved into the meaning of the expression "misconduct". It would be proper to reproduce the observations herein under:

"Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour intentional wrong doing or deliberate violation of a rule of standard or behaviour":

Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law.

In Delhi Cloth & General Mills Co. Ltd. vs. Its Workmen reported in (1969) 2 LLJ 755, Shah, J. stated that misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby.

This Court in State of Punjab and Others vs. Ram Singh Ex. Constable, reported in 1992 (4) SCC 54, noticed:-

"5. Misconduct has been defined in Black's Law Dictionary, sixth Edition at Page 999 thus:-

"A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty,

unlawful behaviour, wilful in character, improper or wrong behaviour, it synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness".

Misconduct in offence has been defined as :-

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act".

P.RamanathAiyar's Law Lexicon, Reprint Edition 1987 at Page 821 defines 'misconduct thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment, Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite.

Misconduct in office may be defined as unlawful behaviour or neglect by a public official, by which the right of party have been affected."

Thus it could be seen that the word 'misconduct' though not capable of precise of definition, on reflection receives its conotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-manner and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

12. In the present case, the alleged act of criminal contempt was committed by an advocate during the course of hearing. The respondent is being tried under the Contempt of Courts Act, 1971, and the charge upon him is that of criminal contempt and not of misconduct under the Advocates Act,1961. Although the act in question could well be classified under the broader ambit of misconduct also, it does not preclude the trial and punishment of the same as a case of criminal contempt. Hence, this objection too is untenable and is accordingly rejected.

Defence

13. In the present case, the respondent was granted several extensions of time to file his reply/affidavit in defence on 25.04.2014, 30.05.2014 and 28.11.2014. However, he chose not to file his reply and his right

to do so was finally closed on 30.01.2015. There is no scope for the respondent to claim that his fundamental rights, enshrined under Article 21 of the Constitution, have been denied to him. The principles of natural justice have been upheld insofar as the respondent was afforded several opportunities to file his reply to the contempt petition.

14. On 24.11.2015, the learned Senior Advocate appearing on behalf of the respondent, stated that i) the respondent was extending an apology, ii) there was no intention to cause any affront to the dignity of the Court and iii) in the interest of the process of administration of justice it is requisite that a sense of harmony be maintained between the Bar and the Bench. He also submits that sometimes the language used by a counsel can get him into trouble and the Court may bear that in mind such unwitting errors or handicap in proper expression by counsel, while adjudicating the case.

Analysis

15. In *Haridas Das v. Smt. Usha Banik and Ors. and Apu Banik* (AIR 2007 SC 2688), the Supreme Court observed as follows:

> *"1. "Judge bashing" and using derogatory and contemptuous language against Judges has become a favourite pastime of some people. These statements tend to scandalize and lower the authority of the Courts and can not 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.

...

12. There is guarantee of the Constitution of India that there will be freedom of speech and writing, but reasonable restriction can be imposed. It will be of relevance to compare the various suggestions as prevalent in America and India. It is worthwhile to note that all utterances against a Judge or concerning a pending case do not in America amount to contempt of Court. In Article 19 the expression "reasonable restrictions" is used which is almost at par with the American phraseology "inherent tendency" or "reasonable tendency". The Supreme Court of America in ***Bridges v California*** *(1911) 86 Law Ed. 192 said:*

> *What finally emerges from the clear and present danger cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely serious and the degree of imminence extremely high before utterances can be punished.*

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 AC 273 . It was observed that when unjustifiable interference is suppressed it is not*

because those charged with the responsibilities of administration of 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 and their authority wanes and is supplanted.

13. There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. No Court can 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 to be in possession of all truth to hold that wherever others differ from them are in 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 the Court even if strong, may not be actionable, but 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 be 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 Court, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. To similar effect were the observations of Hidayatullah, C.J., (as the learned judge was then) in ***R.C. Cooper v. Union of India*** *[1971]1SCR512 .*

14. There is an abundance of empirical decisions upon particular instances of conduct which has been held to constitute contempt of Court. We shall now refer to a few. Lord Russel of Killowen, L.C. J, has laid down in ***Reg v. Gray*** *1900(2) QB 36 at 40 as follows:*

Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court.

...

16. The view was echoed by this Court in ***Re. D.C. Saxena v. CJI*** *1996CriLJ3274 In the same volume of Halsbury's Laws of England at para 27 it is stated thus: "Any act done or writing published which is calculated to bring a Court or a Judge into contempt or to lower its authority or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court."*

17. The above proposition has been approved and followed by Lord Atkin in ***Andrew Paul Terence Ambrad v. The Attorney General of Trinidad and Tobago*** *AIR 1936 PC 141. It was observed as follows:*

No wrong is committed by any member of the public who exercised the ordinary right of criticism in good faith in private or public the public act done in the seat of justice. The path of criticism is public way, the wrong headed are permitted to err therein, provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impart the administration of Justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men:

Lord Justice Donovan in ***Attorney General v. Butterworth*** *1963(1) QB 696 after making reference to* ***Req. v. Odham's Press Ltd ex parte A.G.*** *1957(1) QB 73 said: "whether or not there was an intention to interfere with the administration of justice is relevant to penalty not to quit". This makes it clear that an intention to*

interfere with the proper administration of justice is an essential ingredient of the offence of contempt of court and it is enough if the action complained of is inherently likely so to interfere. In ***Morris v. Crown Office*** *1970(1) All E.R. 1079 ,Lord Denning M.R. said: that the course of justice must not be deflected or interfered with. Those who do it strike at the very foundations of our society. In the same case, Lord Justice Solmon spoke:*

> *The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.*

Frank Further, J. in ***Offutt v. U.S.*** *1954(348) U.S. 11 expressed his view as follows:*

It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage.

In ***Jennison v. Baker*** *1972(1) All E.R. 997 at page 1006 it is stated:*

> *The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.*

18. Chinappa Reddy, J. speaking for the Bench in ***Advocate General, State of Bihar v. Madhya Pradesh Khair Industries*** *19807CriLJ684 citing those two decisions in the cases of Offutt and Jennison (supra) stated thus:*

> *...It may be necessary to punish as a contempt a cause 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 affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and 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 and the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.

19. Krishna Iyer, J. in his separate judgment ***In Re. S. Mulgaokar*** *[1978]3SCR162 while giving broad guidelines in taking punitive action in the matter of contempt of Court has stated:*

...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.

20. In the case of ***Brahma Prakash Sharma and Ors. v. The State of Uttar Pradesh*** *1954CriLJ238 this Court after referring to various decisions of the foreign countries as well as of the Privy Council stated thus:*

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 affirmative 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.

...

22. Though certain imputations against the Judge may be only libelous against that particular individual, it may at times amount to contempt also depending upon the gravity of the allegations. In Brahma Prakash Sharma's case (supra) this Court held that a defamatory attack on a Judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libeler in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such Court, it can be punished separately as contempt. The same view has been taken in ***Perspective Publications (P) Ltd v. The State of Maharashtra*** *1971CriLJ268* ***and C.K. Daphtary and Ors. v. O.P. Gupta and Ors****. 1971CriLJ844 . Therefore, apart from the fact that a particular statement is libelous, 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 scandalize the court.*

23. The right to criticize 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 willfully or maliciously misrepresent the position of the Court, or tend to bring it into disrespect, 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 guarantee 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 wrong reason, it cannot rely upon the courts to administer justice 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.

24. Judiciary is the bed rock 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. Lennon (1968) 3 All E.R. 304 are relevant: "Justice must be rooted in confidence, and confidence is destroyed when right minded people go away thinking - the Judge is based."

25. 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 3, 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.

26. Majesty of Law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel the law Courts will absorb anything and every thing, 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 Panicky in his book "Judges". Judges are mere mortals, but they are asked to perform a function which is truly divine.

27. 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.

28. Lord Diplock, speaking for the Judicial Committee in ***Chokolingo v. Attorney General of Trinidad and Tobago*** *(1981) 1 All E.R. 244, summarized the position thus:*

Scandalising the Court is a convenient way of describing a publication which, although it does not relate to any specific case either part of 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 of the other, will determine whether or nor the act complained of amounted to contempt.

29. Mahajan, J in ***Aswini Kumar Ghose v. Arabinda Bose*** *AIR1953SC75 , observed as follows:*

No objection could have been taken to the article had it merely preached to the Courts of law the sermon of divine detachment. But when it proceeded to attribute improper motives to the Judges, it not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of this Court.... It is obvious that if an impression is created in the minds of the public that the Judges in the highest Court of the land act on extraneous considerations in deciding cases, the confidence of the whole community in the

administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined.... We would like to observe that it is not the practice of this Court to issue such rules except in very grave and serious cases and it is never over-sensitive to public criticism; but when there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity....

16. In the *Nirmala J. Jhala V. State of Gujarat*, (2013) 4 SCC 301, the Supreme Court held:

"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."

17. The Hon'ble Supreme Court, in a matter titled *In re: Vinay Chandra Mishra* (AIR 1995 SC 2348), observed as follows:

"... No one expects a lawyer to be subservient to the Court while presenting his case and not to put forward his arguments merely because the Court is against him. In fact, that is the moment when he is expected to put forth his best effort to persuade the Court. However, if, in spite of it, the lawyer finds that the court is against him, he is not expected to be discourteous to the court or to fling hot words or epithets or use disrespectful, derogatory or threatening language or exhibit temper which has the effect of overbearing the court. Cases are won and lost in the court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the court. That is the least that is expected of a lawyer. Silence on some occasions is also an argument. The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language.

...

Such act tend to overawe the court and to prevent it form 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.

...

The Court will be failing in its duty to protect the administration of justice from attempts to denigrate and lower the authority of the judicial officers entrusted with the sacred task of delivering justice. A failure on the part of this Court to punish the offender on an occasion such as this would thus be a failure to perform one of its essential duties solemnly entrusted to it by the Constitution and the people. For all these reasons, we unhesitatingly reject the said so called apology tendered by the contemner."

18. In a matter pertaining to *Mr. 'G', a Senior Advocate of the Supreme Court,* [1955] 1 SCR 490, it was held:

> *"...He (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action."*

19. In *L.M. Das v. Advocate General,* Orissa [1957] 1 SCR167, the Supreme Court observed :-

> *"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.*
> ...
> *Scandalising the Court in such 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*."

20. The Bar Council of India under Section 49(1)(c) of the Advocates Act, 1961, has prescribed *Standards of Professional Conduct and Etiquette to be observed by Advocates* – the relevant part of which has been reproduced herein:

> *"An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and normal for a person who is not a member of the Bar, or for a member*

of the Bar in his nonprofessional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain cannons of conduct and etiquette adopted as general guides; yet specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned. Section I— Duty to the Court

1. An advocate shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. An advocate shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. ...

4. An advocate shall use his best efforts to restrain and prevent his client from restoring to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in

pleadings, and using intemperate language during arguments in Court. ...”

(Emphasis supplied)

21. A lawyer is an officer of the Court and is expected to conduct himself in a manner that behoves his privileged position in Court. Advocates are required to conduct themselves at all time as gentlemen; this conduct assumes greater significance in a court of law when he/she stands to assist the Court. It is expected that they would stand to augment the process of justice instead of acting in a manner which tends to obstruct the functioning of the court and the administration of justice.

22. Unlike the contemnor in *Haridas Das v. Smt. Usha Banik and Ors. and Apu Banik*, (supra), who sought shelter from the contempt proceedings under the nebulous umbrella of illiteracy, the present respondent is an advocate who has been practicing in this Court. The objectionable language used by him, thus cannot be ignored. Furthermore, the respondent has not sought shelter on the ground of illiteracy, except to the limited extent that his counsel pled that the language in question could well be attributed to a poor choice of words. In the respondent's written submissions dated 25.3.2015, his statement quoted below do not show any limitation or inhibition in his articulation of contentions:

> *“4. As regards Article 215 not conferring upon this Hon'ble Court any additional power that what has been conferred upon it by the Contempt of Courts Act, much less “unbridled and limitless” power, the Respondent, as directed by this Hon'ble Court, is placing on record the following 4 judgments which he is placing reliance on, which settle the proposition*

that Article 215 is no magic wand in the hands of the Court to usurp unbridled and limitless power in the guise of the ephemeral concept of "inherent powers" merely because it is a "Court of Record"and/or a "superior"court:

...

5. The very murmur or whisper of "unbridled and limitless" power is unthinkable for a codified society, where there is none- not even the Supreme Court of India- who is an imperium in imperio.

6. This being so, it becomes even more disconcerting when such murmurings emanate (self-servingly) from a "superior"court.

23. The Court is of the view that the nature of the language used was quite explicit and unambiguous and that it is evident that the respondent knew what he meant by it. A Division Bench comprises of two Judges and for an advocate to call it a *'Dedh Bench'* is to mock at the Court and to affront its dignity. This expression clearly seeks to doubt the capacity of the Hon'ble Judges. It is a glaring instance of 'judge bashing'. *Ex facie*, it constitutes a deliberate attempt to embarrass the two Hon'ble Judges constituting the Division Bench and to denigrate the prestige of the Bench. To compound his offensive behaviour he subsequently laced his contempt with sarcasm before another Bench when seeking its recusal from the case by stating that it had passed *'beautiful orders'*. This act has been sought to be justified by the respondent, by referral to his averments in CM No. 17483/2013. However, when an act of contempt is so evident, such as use of pejorative or insulting words such as '*Dedh Bench'* against a Division Bench, no further proof is required for establishing the charge.

24. The court is of the view that the statementS made by the respondent, tend to scandalize and lower the authority and prestige of the Court. It also prejudices and interferes with the administration of justice. The Court thus finds the respondent guilty of criminal contempt of Court.

Validity of Apology

25. In *High Court on its own Motion vs. S.G. Kudle, Advocate*, decided on 05.03.2008, the High Court of Judicature at Bombay through a Division Bench comprising Justice Bilal Nazki and Justice S.A Bobde (as he then was) held that:

> *"Law is settled that if somebody accused of contempt wants to place himself before the mercy of the court he should do so at the first instance and if it is sought at a later stage he must show repentance and it must be clear to the court that the contemnor was repenting and he had made an apology by genuine change of heart."*

26. On 12.08.2015, the respondent had sought time to address the Court effectively on merits. On 24.11.2015, an apology was offered through counsel. But clearly, the respondent has been contesting the notice right from the beginning till the end and except from the last date, when an offer of apology was made through his counsel, the respondent has shown no remorse or given any indication of having misgivings about the contemptuous statements made by him. It has never been the contemnor's case that the offensive words were merely a slip of the tongue for which he was contrite and that there has been a change of heart on his part in his attitude towards the court. He has

continued to persevere and persist with his stand that he was justified in using the language he did.

27. The perfunctory and qualified offer of apology was made at the last minute, without any element of contrition or remorse and without a sense of misgiving, and thus cannot be taken into consideration. In light of the aforesaid contentions, the Court rejects the respondent's apology, offered through counsel.

Previous Conduct of Respondent

28. The respondent's conduct shows a belligerent and aggressive attitude. The recusal of almost 2/3rd of the strength of Judges of this Court, from hearing his matters, is testimony to the fact that the respondent has had numerous confrontations with this Court and seeks to challenge the authority of the Court or otherwise mock and hold in ridicule the office of the judges. While such conduct by an ordinary citizen would be highly scandalous and contemptuous, it assumes a far graver ramification when a lawyer is involved.

29. In Cont. Cas (C) 165/2008, Montreaux Resorts P. Ltd. & Ors. Vs. Sonia Khosla., a learned single judge of this Court, while dealing with the conduct of the respondent herein, observed that:

> *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.

The court further found that:

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. KAR 1280/2013). 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.

...

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.

In view of the above, the learned single judge, was pleased to dispose of the matter 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 (13.01.2015); and

(ii) Mr. Deepak Khosla is further prohibited from personally appearing before the Arbitral Tribunal constituted or to be constituted by the Court in the personal litigation of Mr. Deepak Khosla for a period of one year from (13.01.2015); 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.

30. The conduct of the respondent has shown that he has an incorrigible tendency to take-on the superior judiciary - in particular the judges of the Delhi High Court and to cast aspersions on both, their ability and integrity. Such act is unpardonable. Making disparaging statements against the judges of the High Court is striking at the very institution of the High Court and the judiciary as a whole. If such nefarious activities are not dealt with firmly, it would inexorably lead to

subjecting the institution of the judiciary to ridicule, to reducing people's confidence in the Courts, thus severely impairing the administration of justice.

Punishment

31. In *Haridas Das v. Smt. Usha Banik and Ors. and Apu Banik* (supra), it was sternly observed by the Supreme Court as follows:

> *"30. 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 loose (sic) faith in the institution that would be the darkest day for mankind. The importance of judiciary needs no reiteration."*

32. The institution of the judiciary has to be safeguarded from covert and insidious assaults from any quarter. Mocking at the Court or using scandalous language against it or addressing the Court in a consistently abrasive manner shows disrespect towards the Court, tends to scandalise the Court and is a clear interference with the administration of justice. The polluters of the judicial firmament will require to '*be well taken care of to maintain the sublimity of the Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned."*[1] Conduct of lawyers, including use of language which gives the impression that the court in not in control of

[1] Haridas Das v. Smt. Usha Banik and Ors. Apu Banik (*supra*)

its affairs in the administration of justice, is to be sternly dealt with. The aforesaid language/expressions used in the charge in the show-cause notice is unambiguous and a direct assault upon the personal dignity of the judge and the prestige of the court. The language used by the respondent does not reflect any constraint in articulation of contentions. Therefore, the plea that the respondent could have erred in the choice of expression because of constraint in articulation is untenable.

33. We are of the view that if such repeated assaults on judges of the High Court are not dealt with sternly, the mischief of such language and conduct could fester irredeemable damage to the prestige and dignity of the High Court. The Courts are bound to protect their dignity and prestige. Individual judges collectively comprise a High Court. A contemptuous act before one Bench of the High Court is an act of contempt against the High Court itself. People's faith in justice and the justice delivery system sustains the institution of the Courts. If confidence of right minded people is destroyed or the faith of the people is besmirched by the impression that the Court is in any manner incapacitated, the institution of Courts will crumble. Weakening of the institution of judiciary is akin to weakening one of the three essential pillars of the Indian Republic. Assault on the judiciary is no less than an act of constitutional sacrilege. No Constitutional court will tolerate such nefarious activity.

34. The conduct of the respondent/contemnor has been persistently incorrigible. The record shows that he contested the contempt notice on procedural grounds at every stage. Neither has any sense of remorse

been exhibited by the contemnor regarding the contemptuous expression nor was any proper apology offered despite more than a year having passed since the contempt was committed. The contemnor's conduct has been consistently aggressive and combative towards the Courts. The court has found him guilty of having committed criminal contempt of court. It is to be kept in mind that the contemnor has also been convicted today in another criminal contempt case i.e. Con.Cas.(Crl) 9/2014 for imputing malicious conduct against an Hon'ble Judge of this Court, including allegations of discrimination, bias and prejudice. Therefore, the respondent's offer of apology at the last moment through counsel, perhaps to escape any punishment, is obviously insincere, without any sense of remorse or change of heart or after due reflection upon his conduct. For the sake of preserving the dignity of the institution, the Court would need to punish the contemnor howsoever unpleasant the decision may be.

35. In the circumstances, the Court sentences the respondent contemnor Deepak Khosla to one month imprisonment along with a fine of Rs.2000/-. The fine shall be deposited within a week from today, failing which the imprisonment shall extend by another month. This sentence shall run concurrently with the sentence in Con.Cas.(Crl) 9/2014.

36. We had considered prohibiting the contemnor from further appearance before this Court or subordinate court and Tribunals in Delhi for some period of time after his having served the prison sentence, but we restrain ourselves from doing so. We feel that appropriate orders in this regard should, in the facts of this case, be taken by the Bar Council

concerned. Hence a copy of this order be sent to the Bar Council of Delhi and the Bar Council of Karnataka, for them to take appropriate measures apropos the contemnor, Mr.Deepak Khosla.

37. The petition is disposed off in the above terms.

NAJMI WAZIRI, J

ASHUTOSH KUMAR, J

FEBRUARY 22, 2016