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

+ FAO (OS) 234/2017

ASHUTOSH

..... Petitioner

Through: Ms.June Chaudhri, Sr.Adv.
with Mohd. Irsad, Adv.

versus

ARUN JAITLEY

..... Respondent

Through: Mr.Rajiv Nayar, Sr.Adv. with
Mr.Sandeep Sethi Sr. Adv. with
Mr.Manik Dogra, Adv. for R-1.
Mr. Anoop George Chaudhri,
Sr. Adv. with Mr. Anupam
Srivastava and Mr. Rishikesh
Kumar, Advs. for R-2

+ FAO (OS) 235/2017

ARVIND KEJRIWAL

..... Petitioner

Through: Mr.Anoop George Chaudhri,
Sr.Adv. with Mr.Anupam
Srivastava and Mr.Rishikesh
Kumar Advs.

versus

ARUN JAITLEY

..... Respondent

Through: Mr.Rajiv Nayar, Sr. Adv.with
Mr.Sandeep Sethi, Sr. Adv.
with Mr.Manik Dogra, Adv. for
R-1.
Ms.June Chaudhri, Sr. Adv.
with Mohd. Isral, Adv. for R-2.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT
28.08.2017

C. Hari Shankar, J.

*“Oh, East is East and West is West, and never the twain shall meet,
Till Earth and Sky stand presently at God's great Judgment Seat;
But there is neither East nor West, Border, nor Breed, nor Birth,
When two strong men stand face to face, though they come from the
ends of the earth!”*

[“The Ballad of East and West” – Rudyard Kipling]

The “two strong men” who stand before us, albeit through Counsel, come, not from the ends of the earth, but from the political heartland of the country. Would that our “judgement seat” shared at least some of the divine attributes to which Kipling’s immortal ballad alludes!

The Facts

2. The appellant in FAO 235/2017 is the Chief Minister of Delhi, Mr Arvind Kejriwal, and the appellant in FAO 234/2017 is Mr Ashutosh; the spokesperson of the Aam Aadmi party. The respondent, in both these appeals, is the Union Finance Minister of the country, Mr Arun Jaitley. These are men of stature and accomplishment, regarded and respected by cognoscenti and laity alike. They, and the role they play, are central to the fulfillment, and furtherance, of the hopes and aspirations of millions in this country, who look to them as harbingers of good governance. And yet, there is, unquestionably, between them, a *lis*, a *lis* that has formed the grist of tabloid and electronic media mill

alike, for over a year now, and it has fallen to our lot to draw the curtain on a short, but significant, chapter thereof.

3. For ease of reference, this judgement refers to Mr. Kejriwal and Mr Jaitley as “the appellant” and “the respondent” respectively. These appeals are directed against the same order, dated 26th July 2017, passed by the learned Single Judge on an application, being IA 6955/2017, filed by the respondent in CS (OS) 3457/2015.

4. Lowering the recitation to a more pedestrian level, the *terminus a quo*, of the present controversy, is to be found in CS (OS) 3457/2015, which was filed, on the original side of this Court, by the respondent, against the appellant, on 21st December 2015, claiming damages on the ground that the appellant had defamed the respondent. Written statements, and replications thereto, were filed, and pleadings stood completed by 3rd February 2016. Admission and denial of documents was commenced on 15th March 2016, but was adjourned on 18th April 2016 for want of certificate under Section 65B of the Indian Evidence Act, 1872. Issues were framed, by the learned Single Judge, on 12th July 2016, on which date an additional written statement was filed by the appellant. Recording of evidence commenced thereafter. The examination-in-chief of the respondent (as PW₁) was recorded, by the Joint Registrar on 6th December 2016, and the respondent was cross-examined, by learned Senior Counsel appearing for the appellant, thereon, on 6th March 2017, 7th March 2017, 15th May 2017 and 17th May 2017. The matter was directed to

be listed, for further cross-examination of the respondent, on 28th July 2017 and 31st July 2017.

5. It was at this stage that, on or around 26th May 2017, IA 6955/2017 (wherein the impugned order has been passed by the learned Single Judge), came to be filed by the respondent, under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC”). The application voiced serious complaints against the tone and tenor of certain questions (which were, however, not particularized in the complaint itself) put to the respondent by learned Senior Counsel then appearing for the appellant, which, it was sought to be averred, were “*ex facie abusive*”, “*defamatory*”, “*offensive*”, “*malicious*”, “*vicious*”, “*designed to insult and/or annoy the Applicant/Plaintiff*”, having “*no relevance with either the dispute in questions or the issues framed by this Hon’ble Court*”. (As the proceedings thereafter reveal, it appears that learned Senior Counsel appearing for the appellant referred to the respondent as a “crook” and “guilty of crimes and crookery” during the proceedings before the Joint Registrar.) It was submitted, in IA 6955/2017, that the learned Senior Counsel appearing for the appellant had “*attempted to browbeat, overawe and intimidate*” the Joint Registrar who was presiding over the cross-examination of the respondent, and that “*a person who has submitted himself to the majesty and jurisdiction of this Hon’ble Court deserves to be protected*” against such vicious attacks. To support these submissions, the application drew attention to the fact that, of the 52, and 7, questions put by the learned Senior

Counsel appearing for the appellant on 6th March 2017 and 17th May 2017, the Joint Registrar had been constrained to disallow 10, and 5, questions, respectively. This, the application asserted, by itself proved *“that the attitude and intention of the Defendants is ex facie mala fide and questions have been asked to delay the conclusion of the evidence”*. Asseverating that the appellant had *“made a mockery of the evidence proceedings”*, it was sought to be contended that, as a result, the process of recording evidence had been unnecessarily delayed. With this prefatory recital, para 10 of the application exhorted this Court thus:

“10. The Applicant/Plaintiff has filed this application in the interest of justice, praying that this Hon’ble Court may pass appropriate orders and directions to expedite the recording of evidence and further direct that recording of evidence is conducted in an orderly, fair, dignified and bona fide manner.”

6. The IA, therefore, prayed that this Court be pleased to
- “(i) pass appropriate orders and directions to expedite the recording of evidence in a time bound manner;*
 - (ii) pass further directions that the recording of evidence is conducted in an orderly, fair, dignified and bona fide manner; and*
 - (iii) pass any such further orders as may be deemed appropriate in the interest of justice.”*

7. The appellant filed a reply to the aforementioned IA of the respondent. A preliminary objection, to the effect that the IA was not maintainable under the rules applicable to the Original Side of this

Court, was raised. The averments, in this regard, as they figured in paras 1 and 10 of the reply, read thus:

“1. That the present application is not maintainable as the proceedings before the Ld. Joint Registrar for recording of evidence are delegated by the original side rules of the Delhi High Court, therefore no cause of action can arise for any intercession by the delegator (Hon’ble High Court) in the proceedings going on before the delegate under the High Court rules. No order has been passed by the Joint Registrar which may occasion an interference as sought for by this Hon’ble Court vide this application. It is submitted that Rule IV of the High Court Rules provides for an appeal but only against an order of the Joint Registrar, hence clearly the rules do not provide for moving an application of the present nature.”

“10. That the contents of Para 10 are vehemently denied. No such directions as sought for can be given by this Hon’ble Court under the O.S. Rules of the High Court.”

8. On merits, significantly, the appellant admitted that disparaging expressions had, indeed, been used by the learned Senior Counsel, who appeared for the appellant, against the respondent, but pleaded immunity from any liability, on this count, on the rather tenuous reasoning that neither the appellant, nor his Counsel on record, had instructed the learned Senior Counsel to do so. The pleadings, on this issue, as they figure in the said reply of the appellant, necessarily merit reproduction, *in extenso*, thus:

(Para 7 of “*Preliminary Objections & Submissions*”)

“7. That with due respect it is submitted that neither the answering defendant nor the counsel briefing the senior counsel gave instructions to the Ld. Senior counsel to use the objectionable words on 17.05.2017. It is submitted that the answering defendant vide letter dated 02.06.2017 instructed the counsel on record to remind the senior counsel that no such instructions were issued to him in his meeting with the defendant no. 1, which according to him took place in the absence of the Advocate on record. Further, the Advocate on record was also informed that the senior counsel has been conveyed orally and in writing in this regard.

The answering defendant vide letter dated 19.07.2017 has conveyed to the senior counsel directly that no instructions to use objectionable words like ‘crook’ or ‘guilty of crimes and crookery’ were ever given by him at any point of time to the learned Senior Counsel.”(Emphasis supplied)

(“Paragraph-wise Reply on Merits”)

“3. xxxxxx

It is submitted that the counsel on record had categorically stated before the Registrar that no instructions were given by the Defendant No. 1 to use objectionable words as used by the learned Senior Counsel. It is submitted that the answering respondent has clarified his position by writing separate letters to the advocate on record and the senior counsel, as has already been clarified in the preceding paragraphs.

It is further denied that the questions are clearly designed to insult and/or annoy the Applicant/Plaintiff. It is denied that these questions/statements have no relevance with either the dispute in question or the issues

framed by this Hon'ble Court. It is inconceivable that the Defendant no. 1 would even think of instructing the Senior Counsel to use such objectionable words."
(Emphasis supplied)

"5. That the contents of Para 5 are wrong and hence denied. It is categorically denied that during the cross-examination on 17.05.2017 the Senior counsel for the defendant no. 1 was instructed to use abusive and offensive words which are per se defamatory words against the applicant/Plaintiff."

(Emphasis supplied)

9. The emphasized words in the paragraphs, extracted hereinabove from the reply of the appellant to the IA filed by the respondent, make it clear beyond any shadow of doubt that the appellant candidly admitted that, on 17th May 2017, the learned Senior Counsel appearing for the appellant used derogatory and disparaging words while referring to the respondent. Borrowing a leaf, as it were, from Pontius Pilate, the appellant sought, in his response to the respondent's application, to wash his hands of the entire affair by pleading that the said words were used without instruction either by the appellant or his counsel on record, and that the appellant had expressed as much, both orally as well as in writing to the learned Senior Counsel. We also note that, in his reply, the appellant did not dispute the large number of questions which were put, on his behalf, to the respondent, and which had to be disallowed by the Joint Registrar. The appellant lays no challenge to these rejections.

10. Apart from the above, the reply, of the appellant, to IA 6955/2017 filed by the respondent, emphatically asserted that the appellant had never sought to delay the course of proceedings before the Joint Registrar, and that, in fact, the said proceedings were being conducted in right earnest and with all due expedition.

11. IA 6955/2017 was put up before the Joint Registrar on 29th May 2017. On the said date, Defendant No. 5, in CS (OS) 3457/2015, alone entered appearance. Notice was issued, by the Joint Registrar, to the other defendants (including the appellants in the present appeals) on the said IA, which was renotified for 14th July 2017.

12. On 14th July 2017, a new Counsel entered appearance for the respondent, and the following order was passed by the Joint Registrar:

“IA No. 6955/2017 (under Section 151 CPC by the plaintiff)”

One vakalatnama on behalf of defendant no. 1 has been filed. The defendants stands served. However, the defendants have not filed reply to the present application.

Learned counsels for the defendants seek time to file reply. Learned senior counsel for the plaintiff opposes the said request and submits that two days ago, he mentioned the matter before the Hon’ble Judge-In-charge (Original Side) regarding the present application and he was requested by the Hon’ble Judge-In-charge to make a request to the learned Joint Registrar to place the present application before the Hon’ble Court. Learned counsel for the defendant no. 1 submits that he is not aware of any such mentioning.

In the given circumstances, the present application be placed before the Hon'ble Court for further directions on 18.07.2017."

13. No opposition was made at the time of passing of this order. Be it also noted that this order, dated 14th July 2017, of the Joint Registrar, has never been challenged, by either of the present appellants, by way of appeal or otherwise, though the present appeal contains an averment that "this order was passed by the joint registrar in gross violation of O.S. Rules specifically rule 3A". No prayer, craving interference with the said order dated 14th July 2017, is, however, contained in either of the present appeals, both of which expressly limit their challenge to the impugned order, dated 26th July 2017, which came to be passed by the learned Single Judge thereafter.

14. On 18th July 2017, time was again sought, by the appellant, to file his response to IA 6955/2017, whereupon the matter was adjourned to 21st July 2017. Again, on 21st July 2017, time was sought by the appellant, and the proceedings were further renotified for 26th July 2017. It is admitted, by learned Senior Counsel appearing for the appellants, that no objection, regarding maintainability of the IA, was taken by the appellant on either of these occasions. Learned Senior Counsel would seek to urge that the objection was being reserved to be taken in writing, in the reply which was under preparation at the time.

The Impugned Order

15. IA 6955/2017 came up for hearing, and was decided, by the learned Single Judge, on 26th July 2017, *vide* the order impugned in the present appeals.

16. A perusal of the impugned order, dated 26th July 2017, reveals that Counsel, on either side, basically reiterated the contentions contained in the pleadings submitted by them, in the IA and the reply filed thereto. The findings of the learned Single Judge, thereon, read as under:

*“9. Having heard the learned counsel for the parties, this Court is of the view that **cross-examination is to be conducted in accordance with law and the dignity of the Court has to be maintained. No person who has invoked the jurisdiction of this Court can be subjected to offensive, scandalous and/or abusive language in the garb of cross-examination.***

10. Since the Joint Registrar is recording the evidence under the supervision of this Court as a delegatee of this Court, if a witness or party is subjected to abuse or humiliation during the process of cross-examination, the Court can surely intervene.

11. Questions in cross-examination can be put only in the course of administration of law. Indecent, scandalous and abusive questions are prohibited even under the Evidence Act, 1872 (hereinafter referred to as “the Act”). This Court is further of the view that the liberty of free expression cannot be confused with licence to make unfounded, unwarranted and irresponsible aspersions.

12. *However, as the defendant no. 1 has now filed a reply accompanied by an affidavit stating that he had not instructed his senior counsel to use the words like “crook” and “guilty of crimes and crookery” against the plaintiff, this Court (with consent of Mr. Anoop George Chaudhuri learned senior counsel for defendant no. 1) declares the said expressions “crook” and “guilty of crimes and crookery” against the plaintiff as indecent and scandalous in accordance with Section 151 of the Act.*

13. *This Court may mention that it is not enquiring as to whether the previous senior counsel for the defendant no. 1 had called the plaintiff “crook” and “guilty of crimes and crookery” on his own or on instructions of the defendant no. 1 as the plaintiff has already instituted a second suit being CS (OS) No. 236/2017 with regard to use of aforesaid expressions/insinuations. Needless to say the said issue will be examined in CS (OS) 236/2017.*

14. *At this stage, learned senior counsel for defendant no. 1 states and assures this Court, on instructions of his client, that only relevant questions would be put to the plaintiff in future during the cross-examination and no indecent or scandalous questions shall be put to the plaintiff and the plaintiff shall not be subjected to abuse and/or humiliation in the present proceedings.*

15. *The statements and assurances given by learned senior counsel for the defendant No. 1 is accepted by this Court and the defendant no. 1 is held bound by the same.*

16. *Recording such statements, assurances, findings and liberty, the present application is disposed of. If the*

aforesaid statements and assurances are breached, the aggrieved party is given liberty to approach this Court.”

(Emphasis supplied)

17. Having disposed of IA 6955/2017 in the above terms, the learned Single Judge recorded, as under, in the suit:

“CS (OS) 3457/2015

At the request of Mr Chaudhari, learned senior counsel for defendant no. 1, who states that he has been recently engaged, the date for cross-examination before the Joint Registrar is deferred to 28th and 29th August, 2017 at 2.00 PM. The Joint Registrar is directed to expedite the trial.

The Joint Registrar is also directed to allow only the Advocates who are appearing in the present case to be present in the Court Room.

The date fixed before the Joint Registrar i.e. 28th and 31st July 2017 stands cancelled.”

(Emphasis supplied)

The dispute before us, and analysis thereof

18. We confess, at the outset, that we are completely baffled as to how, and why, the appellant can claim to be aggrieved by the impugned order, dated 26th July 2017, of the learned Single Judge. Vehement and vociferous arguments, advanced by learned Senior

Counsel Mr Anoop George Chaudhuri and Mrs June Chaudhuri, in these appeals, for well over an hour, have, unfortunately, failed entirely in clearing the air. The haze continues; if anything, thicker than ever.

19. The present appeals urge the following grounds, to challenge the impugned judgement of the learned Single Judge:

(i) that IA 6955/2017 was “*not envisaged and thus unsustainable under the Delhi High Court Original Side Rules*”, for the reason that Rule 3(A) of the Delhi High Court Original Side Rules (hereinafter referred to as “the Original Side Rules”) required the application to be placed before the JR who had to proceed therewith, and it was not permissible for the learned Single Judge to orally direct the learned Senior Counsel, appearing for the respondent, to request the Joint Registrar to place the matter before him,

(ii) that “*the learned Single Judge had failed to appreciate that no order was passed by the Joint Registrar which could have entailed an Appeal by an aggrieved party under Rule 4 of the O.S. Rules*”,

(iii) that “*the learned Single Judge has failed to appreciate that the power to record evidence is to be exercised under the O.S. Rules by the Joint Registrar under clause (29) of Rule 3*”, whereunder “*power has been conferred on the Joint Registrar to decide objections as to questions in cross examination*”,

- (iv) that, in view of clause (29) of Rule 3 of the Original Side Rules, the learned Single Judge had *“grievously erred in law in holding that the Joint Registrar is recording evidence under the supervision of this Court, and if a party is subjected to abuse or humiliation during the process of cross-examination, the Court can surely intervene”*,
- (v) that *“any interference”*, therefore, *“in ongoing recording of evidence is a violation of O.S. Rule 3”*,
- (vi) that the learned Single Judge *“further failed to appreciate that the Joint Registrar”* was *“a delegate (sic delegatee) of the High Court not of any individual judge”*,
- (vii) that, in view of the fact that the Joint Registrar had himself disallowed certain questions, *“there was no further cause for the learned Single Judge to exercise its power in the manner in which it has been exercised, ostensibly under u/s 151 CPC”*,
- (viii) that Section 151 of the CPC could not be invoked against provisions of law or rules; *“if law requires a particular thing has to be done in a particular manner then it has to be done in that manner or not all”*,
- (ix) that the learned Single Judge had also erred *“in directing the Joint Registrar to allow only the Advocates who are appearing in the present case to be present in the Court Room”*, which, *“besides being against the principles of open courts causes great inconvenience to counsels, their associates, Senior Counsels, and their associates, general public etc.”*;

“moreover, such a relief was also not claimed in the application i.e. I.A. 6955/2017”, and

(x) “that the learned Single Judge ought to have granted at least 2 months’ time to prepare”.

20. Before us, Mr Anoop George Chaudhuri and Mrs June Chaudhuri, learned Senior Counsel appearing for the appellants in these appeals, essentially argued that IA 6955/2017 was not maintainable, and could not have been heard by the learned Single Judge, in view of Rule 3-A of the Original Side Rules, which could not have been thus bypassed. Additionally, and rather surprisingly, learned Senior Counsel also voiced their disapproval at the direction, of the learned Single Judge, to expedite the trial, which, according to them, was neither justified nor, in fact, prayed for, in IA 6955/2017.

21. To be fair to learned Senior Counsel, however, it merits mention that no issue was joined, by them, with respect to the finding, in the impugned order of the learned Single Judge, that indecent and scandalous expressions had been employed, by learned Senior Counsel, while referring to the respondent, which was entirely unjustified in the circumstances. Neither did Mr. Chaudhuri seek, before us, to resile, in any way, from the undertaking given by him to the learned Single Judge, as recorded in para 14 of the impugned judgement, already reproduced hereinabove.

22. We reiterate that, in these circumstances, we fail to understand how the appellants can claim to be aggrieved by the impugned order, so as to enable them to maintain the present appeals. The impugned order of the learned Single Judge limits itself to issuance of three directions, viz., that no attempt to scandalize or browbeat the respondent would be permissible (for which purpose the undertaking of Mr Chaudhuri was recorded), that the trial be expedited, and that only counsel, “*who are appearing in the present case*”, be allowed in the court room.

23. As already noted hereinabove, learned Senior Counsel, appearing for the appellants before us, did not join issue on the first of the above three directions in the order on IA 6955/2017, viz., that no attempt to scandalize or browbeat the respondent, during recording of evidence, would be permitted. Indeed, no exception could be taken to the said direction, in view of the statutory interdiction contained in Sections 151 and 152 of the Indian Evidence Act, 1872, which read thus:

“151. Indecent and scandalous questions. – The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.”

“152. Questions intended to insult or annoy. – The Court shall forbid any question which appears to it to be

intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.”

24. On the manner in which trials are to be conducted, and evidence recorded therein, the following exhortation, by R.C. Lahoti, J. (as His Lordship then was), speaking for a 3-judge bench in ***Makhan Lal Bangal v Manas Bhunia, (2001) 2 SCC 562***, are part of legal lore:

*“A Judge presiding over the trial of an election petition, and any trial for the matter of that, needs to effectively control examination, cross-examination and re-examination of the witnesses so as to exclude such questions being put to the witnesses which the law does not permit and to relieve the witnesses from the need of answering such questions which they are not bound to answer. **Power to disallow questions should be effectively exercised by reference to Sections 146, 148, 150, 151 and 152 of the Evidence Act by excluding improper and impermissible questions. The examination of the witnesses should not be protracted and the witness should not feel harassed. The cross-examiner must not be allowed to bully or take unfair advantage of the witness. Though the trials in India are adversarial, the power vesting in the court to ask any question to a witness at any time in the interest of justice gives the trial a little touch of its being inquisitorial. Witnesses attend the court to discharge the sacred duty of rendering aid to justice. They are entitled to be treated with respect and it is the Judge who has to see that they feel confident in the court. In *Ram Chander v. State of Haryana [(1981) 3 SCC 191 : 1981 SCC (Cri) 683 : AIR 1981 SC 1036]* this Court observed,***

“... to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere

recording machine. He must become a participant in the trial by evincing intelligent active interest ...”. (SCC p. 193, para 2)

An alert Judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of just decision. The interest of the counsel for the parties in conducting the trial in such a way so as to gain success for their respective clients is understandable but the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective — search for truth and delivering justice expeditiously — cannot be subdued. Howsoever sensitive the subject-matter of trial may be; the courtroom is no place for play of passions, emotions and surcharged enthusiasm.”

(Emphasis supplied)

25. Nearly half a century ago, a Division Bench of this Court, in ***Mohinder Singh v State, ILR (1970) II Delhi 854***, echoed the same sentiment, by observing that “*the trial Judge has a duty not to permit questions which are scandalous, vexatious or even cantankerous, which elicit irrelevant or inadmissible answers, or even those which do not advance the trial but are calculated to hinder or delay its progress*”.

26. Travelling back another four decades, one finds that Courtney Terrell, C.J., speaking for a Division Bench of the High Court of Patna, ordains, in ***Emperor v Fazlur Rahman, AIR 1930 Pat 593***, that, had the learned Trial Judge “*looked at Sections 151 and 152 he would have seen that the Court may forbid any questions or inquiries*

which it regards as indecent or scandalous unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed, and furthermore, that the Court is bound to forbid any question which appears to it to be intended to insult or annoy or which though proper in itself appears to the Court needlessly offensive in form.”

27. Indeed, the principle that every litigating party in a case, as well as every witness in a trial, civil or criminal, in court, is entitled to be treated with regard and respect, and not subjected to insults, insinuation, and injury, is a proposition so elementary as to obviate the necessity of reference to any further judicial authority in its support.

28. Rather strangely, learned Senior Counsel appearing for the appellants also vented their angst at the direction, in the impugned order of the learned Single Judge, for expediting of the trial. This Court has not come across any earlier case where such a grievance has been voiced. Suffice it to state that the right to a speedy trial is elemental, and an inalienable adjunct to orderly administration of justice, and no exception can ever be taken, to such a direction. This truism applies, with equal force, to civil as well as criminal trials. In para 15 of the report in ***Bagai Construction v Gupta Building Material Store, (2013) 14 SCC 1***, the Supreme Court holds thus:

“After change of various provisions by way of amendment in CPC, it is desirable that the recording of

evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered.”

Expedition in trials is, therefore, the need of the hour, and is, in fact, highly recommended in all cases. The direction, by the learned Single Judge, to expedite the trial between the appellant and respondent, therefore, is clearly unexceptionable and cannot be faulted for any reason.

29. At our expressing our chagrin at such a challenge, by the appellants, the response of Mrs June Chaudhuri, learned Senior Counsel, was, “*Why this matter?*” We were reminded that there are several matters awaiting trial, and that there was no justification for according any special treatment to “this matter”. The query is unanswerable. Suffice it to state that every trial deserves to be conducted with all due expedition, and that delay, in the progress of any legal proceeding, substantially defeats the cause of justice. It is an inalienable truism that no litigant can ever claim to be aggrieved by a judicial direction for expediting the process of a trial, or of recording of evidence therein. In fact, this court is making every effort to address court delays and improve case management in all jurisdictions and cases, which range from implementing e-filings, promoting

judicial education, effectuating scrutiny and evaluation of case pendency, and case management.

30. The third, and equally inexplicable, grievance, voiced by Mr Chaudhari, learned Senior Counsel appearing for the appellants, was with respect to the prohibition, contained in the impugned order, from anyone, except Counsel appearing for the parties, to be present in the courtroom during recording of evidence. In the first place, the impression, of the appellant, that the said direction could not have been issued by the learned Single Judge in IA 6955/2017, as no such prayer had been made therein, is entirely misguided, as the said direction was issued, not in IA 6955/2017, but in the suit, i.e. in CS (OS) 3457/2015 which the Id. Single Judge was adequately empowered to do.

31. Mr Chaudhari, learned Senior Counsel, had, in this context, sought to place reliance on an interlocutory order, dated 14th August 2017, of the Supreme Court in **WP (Cri) 99/2015 (Pradyuman Bisht v U.O.I.)**. The said order, besides being interlocutory, is issued in the context of video-recording of court proceedings, and placement of CCTV cameras in courts. Mr Chaudhari, thereupon, seeks to rely on an extract, from the well-known pronouncement of the 9-Judge Bench of the Supreme Court in **Naresh Shridhar Mirajkar v State of Maharashtra, (1966) 3 SCR 744**, which was cited by the learned Additional Solicitor General before the Supreme Court and stands

recorded in the aforementioned interlocutory order dated 14th August 2017 in ***Pradyuman Bisht (supra)***. It reads thus:

“It is well settled that in general, all cases brought before the courts, whether civil, criminal, or others, must be heard in open court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court-room. As Bentham has observed:

‘In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity’. (Scott v. Scott [(1911) All ER 30])”

The direction, of the learned Single Judge in the impugned order, to the effect that only Counsel appearing in the matter would be allowed to be in court during recording of evidence by the Joint Registrar, Mr Chaudhari emphatically asserts, is in the teeth of the above extracted dictum in ***Naresh Shridhar Mirajkar (supra)***.

32. The very next passage in *Naresh Shridhar Mirajkar (supra)* eloquently answers the submission of Mr Chaudhari, and merits reproduction, *in extenso*, thus:

“Having thus enunciated the universally accepted proposition in favour of open trials, it is necessary to consider whether this rule admits of any exceptions or not. Cases may occur where the requirement of the administration of justice itself may make it necessary for the court to hold a trial in camera. While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the court is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in

camera; but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself. The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court. In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end. It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice. That, in our opinion, is the rational basis on which the conflict of this kind must be harmoniously resolved. Whether or not in the present case such a conflict did in fact arise, and whether or not the impugned order is justified on the merits, are matters which are irrelevant to the present enquiry.”

(Emphasis supplied)

In the ultimate eventuate, therefore, it is a matter of discretion; a call to be taken by the judge seized of the matter, whether to allow a public hearing of the case, or not. So long as the exercise of such discretion is judicious, and not capricious, it is hardly the brief of an appellate court to interfere therewith. The learned Single Judge has, in the present case, taken the call, clearly keeping in mind orderly dispensation of justice, and we find no justification, whatsoever, to question the same.

33. While the reliance, by Mr Chaudhari, on the interlocutory order of the Supreme Court in *Pradyuman Bisht (supra)*, or even on the passage from *Naresh Shridhar Mirajkar (supra)*, extracted therein, is thus demonstrably misplaced, we, deem it appropriate to highlight a practical aspect of this facet of the controversy. It is a matter of common knowledge that, in a case such as the present, several Senior Counsel appear, each assisted by multiple assisting/briefing counsel and juniors. It is equally well known that the court rooms of Joint Registrars are small in size, with limited seating capacity. Significantly, one of the concerns expressed by Mr Chaudhari was that, if such a direction, of the learned Single Judge, were to be allowed to operate, apart from his own colleagues and assisting counsel, media persons would not be able to attend the hearing. While the fourth estate is certainly entitled to be accorded all due respect, in an era such as the present, given the practicalities of the matter, we are unable to appreciate such a contention.

34. The direction of the learned Single Judge, clearly, operates in the realm of ensuring convenience of parties, as well as counsel, to the case. We may, however, at once allay the apprehension, of learned Senior Counsel, that the said direction would operate as a proscription, against their juniors, associates, etc., from participating in the proceedings, by clarifying that no such consequence flows from the said direction. It would be entirely open, not only to learned Counsel arguing the matter, but to their associates, juniors, or assisting Counsel, to be present during the hearing. This facility,

needless to say, would be equally available to the plaintiff, defendants, and their witnesses. Indeed, it is incomprehensible how such an innocuous direction issued by the learned Single Judge, apparently with a view to ensure orderly and dignified conducting of the proceedings in trial, could be thus sought to be misinterpreted before us, and challenged on that basis.

35. We are constrained to observe, much against our will, that the present appeals essentially impugn a decision which is clearly aimed solely at ensuring orderly and dignified conducting of the trial proceedings. Such appeals do disservice to the cause of justice in the long run, and we would request counsel to be more circumspect in raising such challenges. We say no more.

36. The directions, in the impugned order of the learned Single Judge, are wholesome and in the best interests of orderly administration of justice. We would be loath, therefore, to interfere with the said directions. Nevertheless, valuable judicial time has been expended in allowing the said submissions to be urged and argued, and, in deference to learned Senior Counsel who raised them, we proceed to deal therewith.

37. Reliance has been placed, by learned Senior Counsel for the appellant, on Rule 3-A of the Original Side Rules, which reads as under:

“All applications except those in which urgent ex parte orders are sought will be placed before the Registrar in the first instance. He will dispose of such of them as he is empowered to do, and as regards the rest may call for replies and rejoinders and take such other steps as are necessary to make them ready for hearing, before listing them before the Court.”

38. It is not possible to understand how it is sought to be contended, by learned Senior Counsel for the appellants, that the impugned order of the learned Single Judge infracts Rule 3-A of the Original Side Rules. IA 6955/2017 was placed, in the first instance, before the Joint Registrar. The prayers in the said IA – which stand reproduced hereinbefore – by their very nature, could not have been granted, or disallowed, by the Joint Registrar. The IA had, therefore, necessarily to be heard and decided by the learned Single Judge.

39. The Joint Registrar did call for replies to be filed to the IA, for which the appellants themselves sought time. If, given the nature of the reliefs sought in the IA, the learned Single Judge advised the respondent to request the Joint Registrar to place the matter before him, and the Joint Registrar acceded to such request, we are unable to perceive any illegality, whatsoever, therein. It is, in any case, plainly obvious that no prejudice, whatsoever, has resulted, to either of the appellants as a result thereof.

40. The Original Side Rules provide for an appeal, against the order of the Joint Registrar, before the judge in chamber. No such appeal,

admittedly, was filed, by the appellant, against the order, dated 14th July 2017, of the Joint Registrar.

41. Neither was any objection, to IA 6955/2017 being listed in court, taken by the appellant, either before the Joint Registrar or before the learned Single Judge. On the contrary, as noted above, time was sought, by the appellant, more than once, i.e. on 18th July 2017 and 21st July 2017, to file his reply to the IA, in acceptance of the correctness of the order dated 14th of July, 2017.

42. As has already been noted hereinabove, the impugned judgement of the learned Single Judge disposes of IA 6955/2017 on the basis of the undertaking, of learned Senior Counsel, as recorded in para 14 thereof. No exception, thereto, was taken, before us, by either of the learned Senior Counsel representing the appellants. Having voluntarily given the said undertaking, we have serious doubts whether we should, at all, permit the issue of maintainability of IA 6955/2017 to be raised, before us, all over again.

43. That apart, a complete answer, to the argument, of learned Senior Counsel, regarding the procedure followed being violative of the Original Side Rules, is contained in Rule 18 of the said Rules, which reads thus:

“18. Inherent power of the Court not affected.

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

44. We have already held, hereinabove, that the impugned judgement has been passed to ensure that the ends of justice are met, and processual due process followed, in the best possible manner. The power, and jurisdiction, of the learned Single Judge, to do so, cannot, therefore, be gainsaid, in view of Rule 18 of the Original Side Rules *supra*.

45. Section 151 of the CPC reads thus:

“151. Saving of inherent powers of Court.

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

46. Rule 18 of the Original Side Rules, and Section 151 of the CPC are, it is apparent, *in haec verba*, and the contours, of either provision, are wide and expansive. In the context of Section 151 of the CPC, ***G. Christudas v Anbiah, (2003) 3 SCC 502*** holds thus:

“The power exercised under Section 151 CPC is ex debitojustitiae. An application invoking the inherent power of the court under Section 151 CPC is not one which a party is required to make under any provisions

of the Civil Procedure Code for setting in motion the machinery of the court.”

47. In this regard, we may also usefully advert to a seldom-used provision of law, being Section 94 of the CPC, which provides as under:

“94. Supplemental proceedings. –

In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;*
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;*
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;*
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;*
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.”*

The law, therefore, enables the Court to pass all such orders “*as may be just and convenient*”, in other words, which the interests of justice, applied to the case before the court, would demand.

48. It is not possible, therefore, to accede to the submission, of learned Senior Counsel appearing for the appellants, that IA 6955/2017 was not maintainable, or that, in the manner in which the said IA was prosecuted, dealt with and decided, any infraction, procedural, processual or substantive, could be said to have occurred. The Joint Registrar was, even as per the stand of the appellants themselves, acting as the delegatee of the Court in recording evidence, and there was no embargo whatsoever, therefore, on the learned Single Judge, to issue appropriate directions, to ensure orderly and properly conduct of the proceedings before him.

49. The impugned order also shows that the Joint Registrar had fixed 28th and 31st July 2017 to continue recording of evidence. Accepting the jurisdiction, of the learned Single Judge, to vary/alter an order passed by the Joint Registrar, on 26th July 2017, Mr Chaudhari, Id. Senior Counsel for the appellant, had himself made a request for deferment of the trial. The impugned order reveals that the learned Single Judge acceded to this request, made on behalf of the appellants, deferred the trial, and cancelled the dates, earlier fixed, of 28th and 31st July 2017. The appellants have, thereby, themselves accepted the jurisdiction of the learned Single Judge to pass such

orders. Any contention, to the contrary, before us, would amount to approbate and reprobate, which, it is trite, is impermissible in law.

50. Clearly, therefore, the present appeals are totally misconceived, and only serve to protract proceedings which, in the interests of the parties to the lis, deserve to be brought to a quietus as soon as possible.

51. In view of the above, we are constrained to dismiss these appeals as devoid of merit.

52. No costs.

C.HARI SHANKAR, J.

ACTING CHIEF JUSTICE

AUGUST 28, 2017
neelam/hj

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