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

\+ **RFA Nos. 851/2015, 69/2016,76/2016 & 304/2016**

% **Reserved on: 15th December, 2017**
Pronounced on: 22nd December, 2017

\+ **RFA No. 851/2015**

MARUTI SUZUKI INDIA LTD. ..... Appellant

Through: Mr. Kailash Vasdev, Sr. Advocate with Mr. Manoj Sharma, Mr. Satinder Bawa and Mr. Kapil Kaushik, Advocates for the applicant in CM No. 33469/2016.

versus

DELHI AUTO GENERAL FINANCE PVT. LTD. ..... Respondent

Through: Mr. Rajiv Bansal, Senior Advocate with Mr. Sanjoy Ghose, Advocate and Mr. Rhishabh Jetley, Advocate for DHC.

\+ **RFA No. 69/2016**

MEENA KUMARI ..... Appellant

Through: Mr. Kailash Vasdev, Sr. Advocate with Mr. Manoj Sharma, Mr. Satinder Bawa and Mr. Kapil Kaushik, Advocates for the applicant in CM No. 33472/2016.

versus

RAJENDER KUMAR & ANR. ..... Respondents

Through: Mr. Rajiv Bansal, Senior Advocate with Mr. Sanjoy Ghose,

Advocate and Mr. Rhishabh Jetley, Advocate for DHC.

\+ **RFA No. 76/2016**

MUKESH KUMAR GUPTA ..... Appellant

Through: Mr. Kailash Vasdev, Sr. Advocate with Mr. Manoj Sharma, Mr. Satinder Bawa and Mr. Kapil Kaushik, Advocates for the applicant in CM No. 33473/2016.

versus

RAJNEESH GUPTA & ORS. ..... Respondents

Through: Mr. Rajiv Bansal, Senior Advocate with Mr. Sanjoy Ghose, Advocate and Mr. Rhishabh Jetley, Advocate for DHC.

\+ **RFA No. 304/2016**

TDI INFRASTRUCTURE LIMITED ..... Appellant

Through: Mr. Kailash Vasdev, Sr. Advocate with Mr. Manoj Sharma, Mr. Satinder Bawa, Mr. Neeraj Yadav and Mr. Kapil Kaushik, Advocates for the applicant in CM No. 33475/2016.

versus

RAJESH MITTAL & ANR. ..... Respondents

Through: Mr. Rajiv Bansal, Senior Advocate with Mr. Sanjoy Ghose, Advocate and Mr. Rhishabh Jetley, Advocate for DHC.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA
HON'BLR MS. JUSTICE INDERMEET KAUR

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. Four applications are being disposed of by this judgment. These four applications have been moved not by any of the parties to the appeals but by the judicial officer whose judgment is impugned in the present appeals. The four applications are CM No. 33469/2016 in RFA No. 851/2015, CM No. 33472/2016 in RFA No. 69/2016, CM No. 33473/2016 in RFA No. 76/2016 and CM No. 33475/2016 in RFA No. 304/2016.

2. The prayer clause of application filed in RFA No. 851/2015 reads as under:-

> "1) To expunge/delete the remarks made in the impugned orders/judgments to the extent of "……..*Copy of the impugned judgment and decree along with copy of this order be placed before the committee inspecting judges of the Ld. Addl. District Judge……."* in RFA No.851/15 (**Page 2 Para 4 of the Order)** and correspondingly to direct the necessary changes/modifications on the Web Portal.
> 2) In case if the same have been so communicated to the Inspecting Committee or have percolated in the Annual Confidential Rolls of the Applicant, to direct the copy of modified order to be placed on the personal file of the applicant with directions that these comments/observations to be treated as expunged/deleted.
> 3) Any other relief as this Hon'ble Court deems fit and proper in the given circumstances.

Prayed accordingly."

3. The prayer clause of application filed in RFA No. 69/2016 reads as under:-

> "1) To expunge/delete the remarks made in the impugned orders/judgments to the extent of "……..*Copy of the impugned judgment and decree along with copy of this order be placed before the committee inspecting judges of the Ld. Addl. District Judge……"* in RFA No.69/16 (**Page 4 Para 14 of the Order)** and correspondingly to direct the necessary changes/modifications on the Web Portal.
> 2) In case if the same have been so communicated to the Inspecting Committee or have percolated in the Annual Confidential Rolls of the Applicant, to direct the copy of modified order to be placed on the personal file of the applicant with directions that these comments/observations to be treated as expunged/deleted.
> 3) Any other relief as this Hon'ble Court deems fit and proper in the given circumstances.
> Prayed accordingly."

4. The prayer clause of application filed in RFA No. 76/2016 reads as under:-

> "1) To expunge/delete the remarks made in the impugned orders/judgments to the extent of "……..*Copy of the impugned judgment and decree along with copy of this order be placed before the committee inspecting judges of the Ld. Addl. District Judge……"* in RFA No.76/16 & RFA No.79/16 (**Page 10, Last Page of the Judgment)** and correspondingly to direct the necessary changes/modifications on the Web Portal.
> 2) In case if the same have been so communicated to the Inspecting Committee or have percolated in the Annual Confidential Rolls of the Applicant, to direct the copy of modified order to be placed on the personal file of the applicant with directions that these documents/observations to be treated as expunged/deleted.
> 3) Any other relief as this Hon'ble Court deems fit and proper in the given circumstances.
> Prayed accordingly."

5. The prayer clause of application filed in RFA No. 304/2016 reads as under:-

> "1) To expunge/delete the remarks made in the impugned orders/judgments to the extent of "……..*Copy of the impugned judgment and decree along with copy of this order be placed before the committee inspecting judges of the Ld. Addl. District Judge……"* in RFA No.304/16 (**Page 3 Para 13 of the Order)** and correspondingly to direct the necessary changes/modifications on the Web Portal.
> 2) In case if the same have been so communicated to the Inspecting Committee or have percolated in the Annual Confidential Rolls of the Applicant, to direct the copy of modified order to be placed on the personal file of the applicant with directions that these comments/observations to be treated as expunged/deleted.
> 3) Any other relief as this Hon'ble Court deems fit and proper in the given circumstances.
> Prayed accordingly."

6. The judicial officer Dr. Kamini Lau, ADJ, Delhi has filed these four applications for seeking expunction of the observations, as stated in the prayer clauses of the applications, by arguing that the said remarks which have to be expunged are adverse remarks. In the applications reliance is placed upon the recent judgment of the Supreme Court in the case of ***Amar Pal Singh Vs. State of Uttar Pradesh and Another (2012) 6 SCC 491***. During the course of arguments one other main judgment which is relied upon on behalf of the applicant/judicial officer is the judgment delivered by the Supreme Court in the case of ***Prakash Singh Teji Vs. Northern India Goods***

Transport Company Private Limited and Another (2009) 12 SCC 577. It is argued and asserted on behalf of the applicant/judicial officer that the remarks and observations made in the four orders passed in the RFAs be struck off by allowing the subject four applications.

7. The issue is that whether the remarks in question passed in the four orders in the four RFAs are or are not adverse or are such that the same in any manner unfairly affects the career of the applicant/judicial officer and therefore at the outset the four orders of the four RFAs from which certain remarks are sought to be expunged are reproduced hereinafter:-

(i) The order dated 16.5.2016 in RFA No. 851/2015:-

> "1. The appeal impugns a decree for mandatory injunction directing the appellant to return the sale deeds deposited by the respondent/decree holder with the appellant, according to the appellant by way of equitable mortgage by deposit of title deeds.
> 2. The senior counsel for the appellant states that the decree has been passed inter alia holding Section 58(f) of the Transfer of Property Act, 1882 to be not applicable to Delhi and has drawn attention to page 177 of the paper book to demonstrate that the said finding is erroneous.
> 3. Such a finding can have vast repercussions leading to rendering the securities held by all the banks not worth the paper they are engrossed on and the learned Additional District Judge **ought not to have returned such a finding in a casual manner.**
> 4. **A copy of the impugned judgment along with a copy of this order be placed before the Committee of Inspecting Judges of this Court of the learned Additional District Judge**.
> 5. Notice issued to the respondent remains unserved.
> 6. Admit.

7. Issue fresh notice to the respondent by all modes including dasti returnable before the Registrar on 28th July, 2016.
8. List in the category of 'Regulars' as per turn.
9. The ad-interim order dated 16th December, 2015 staying the operation of the impugned judgment and decree is made absolute till the decision of the appeal.
10. CM No.30785/2015 is disposed of with liberty to the respondent to apply for variation / vacation." (emphasis added)

(ii) The order dated 25.4.2016 in RFA No. 69/2016:-

"1. This first appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 impugns the judgment and decree dated 4th August, 2015 of the Court of Additional District Judge (ADJ)-II (Central), Tis Hazari Courts, Delhi of dismissal of CS No.95/2014 Unique Case ID No.02401C0203302014 filed by the appellant for partition, inspite of the respondent/defendant no.1 having not filed the written statement and the respondent/defendant no.2 though having filed the written statement having been proceeded against ex parte and for the reason of the appellant/plaintiff having not led any evidence.
2. Notice of the appeal as well as of the application for condonation of 90 days delay in re-filing thereof was issued and is reported to have been served on both respondents. None appears for the respondents.
3. The respondents are proceeded against ex parte.
4. The delay of 90 days in re-filing the appeal is condoned and CM No. 4973/2016 is disposed of.
5. Admit.
6. Considering that in the event of this Court being of the opinion that the appellant is entitled to another opportunity for leading evidence, the suit from which this appeal arises will have to be remanded, the appeal with the consent of the counsel for the appellant is taken up for hearing today itself. The counsel for the appellant has been heard and the Trial Court record requisitioned in this Court perused.
7. A perusal of the Trial Court record shows (i) that the suit came up before the Trial Court first on 2nd May, 2014 when summons thereof were ordered to be issued to the respondents/defendants; (ii) on 5th March, 2015 upon non-appearance for the respondents/defendants, they were proceeded against ex parte; yet issues were framed in the suit and list of witnesses and original documents permitted to be filed within one month and affidavit by way of evidence directed to be filed by 2nd July, 2015 and the suit posted for entire evidence of the appellant/plaintiff on 3rd August, 2015; (iii) the order of 3rd August, 2015 notes that the Advocates were abstaining from work on the issue of pecuniary jurisdiction and the appellant/plaintiff appeared in person and sought permission to file

affidavit of evidence; even though the respondents/defendants were ex parte, costs of Rs.1,000/- was imposed for not filing the affidavit by 2nd July, 2015 and upon appellant plaintiff not paying cost and resultantly not filing the affidavit, the evidence of the appellant/plaintiff was closed and the matter listed for final arguments on 4th August, 2015; and, (iv) on 4th August, 2015 none appeared for the appellant/plaintiff and the learned ADJ vide impugned judgment dismissed the suit.

8. The counsel for the appellant/plaintiff on enquiry states that Advocates were on strike on 4th August, 2015 also.

9. What emerges from the perusal of the order sheet of the Trial Court is, that (i) the evidence was closed on the very first date on which the suit was listed for evidence and when Advocates were abstaining from work; (ii) even though the appellant/plaintiff appearing in person wanted to place his affidavit by way of examination-in-chief on record and inspite of the defendants being ex parte, the learned ADJ permitted the same only subject to costs and without specifying to whom the costs were payable and kept the matter pending; and, (iii) on re-call when none appeared, the evidence was closed and the suit was listed on the very next date after closing the evidence and was dismissed.

10. The order sheet of the Suit Court shows **a very harsh** stand taken by the learned ADJ of passing adverse orders inspite of the Advocates abstaining from work and of not taking the affidavit of the appellant/plaintiff by way of examination-in-chief on record though tendered and permitting the same to be taken on record only on payment of costs and without specifying to whom the costs were payable.

11. The learned ADJ is found to have erred in not exercising her power under Section 148 and order XVII Rule 1 of CPC of either extending the time for filing the affidavit by way of evidence from that earlier stipulated of 2 nd July, 2015 till 3rd August, 2015 when the appellant/plaintiff arguing in person sought to file the same or of adjourning the recording of evidence to some other day to enable the counsel for appellant/plaintiff to appear and for which, in the facts, sufficient cause existed. The learned ADJ lost sight of the fact that no prejudice had been caused to anyone from the appellant/plaintiff having not filed the affidavit by way of examination-inchief by 2nd July, 2015 as directed, since the respondents/defendants were ex-parte.

12. The impugned judgment and decree is thus set aside and the appeal stands allowed. The suit is remanded to the Trial Court to give an opportunity to the appellant/plaintiff to lead ex parte evidence.

13. The Trial Court file be returned forthwith to the Trial Court.

14. The appellant/plaintiff to appear before the Court of the learned ADJ-II, (Central), Tis Hazari Courts, Delhi and if the said Court has been abolished before the Court of District Judge, Delhi, on 20th May, 2016. Decree sheet be drawn up. **A copy of this judgment be also placed**

before the Committee of the Inspecting Judges of the Additional District Judge." (emphasis added)

(iii) The order dated 5.5.2016 in RFA No. 76/2016:-

1. On 15th February, 2016, when these appeals came up first before this Court, inter alia the following order was passed:

"1. The two appeals impugn the dismissal at the threshold/without trial of two separate suits filed by the appellant for specific performance of two separate Agreements for sale of ground floor and mezzanine floor of a property. The respondents being defendants to the suits did not oppose the suit.

2. However one Mr. Vinay Gupta filed an application for impleadment in the suits stating (a) that he/his predecessor had filed a suit for partition of several properties including the property subject matter of the said Agreements to Sell against the respondents and the said suit was pending as CS(OS) No.2365/1986 of this Court and there was an interim stay therein against the respondents from dealing with the property; (b) however the said suit was dismissed in default on 13th November, 2014 and an application for restoration was filed on 18th November, 2014 and vide order dated 8th December, 2014 the interim orders were again passed. It was the contention of the said Mr. Vinay Gupta that the Agreements to Sell by the respondents in favour of the appellant were in violation of the injunction order in the suit pending in this Court.

3. The learned Additional District Judge (ADJ) on the very same day rather than dealing with the applications for impleadment, dismissed the suits holding, (i) that the parties hereto were guilty of suppressing material facts; (ii) that the suits were not maintainable in view of the interim order in the suit in the High Court; (iii) that two separate suits were not maintainable and had been filed to create pecuniary jurisdiction of the learned ADJ and which otherwise has no jurisdiction as per the value of the property in accordance with the circle rates and Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015; and (iv) that the suits were collusive.

4. It is the case of the appellant that the Agreements to Sell of which specific performance was claimed are dated 28th November, 2014 i.e. of a date on which there was no interim order against the sale of the property.

5. Prima facie it appears that even if the suits were collusive, the other reasons for dismissal thereof are not correct. As aforesaid, the Agreements to Sell are stated to be of a date when there was no interim order in force. Moreover the suits for specific performance

are required to be valued as per the consideration disclosed in the Agreement to Sell and not as per the valuation of the property as per the circle rates. It also appears that Commercial Courts Act would not be applicable. It also appears that it is for this Court to, in the suit pending before it, determine and deal with violation if any of interim order therein and the learned ADJ could not have for the said reason dismissed the suits.

6. Issue notice to the respondents by all modes including dasti, returnable on 23rd March, 2016.

7. I am also of the opinion that the aforesaid Mr. Vinay Gupta is an appropriate party to the appeal.

8. Though the senior counsel for the appellant states that Mr. Vinay Gupta is not a necessary or appropriate party in the suit for specific performance but still since he had filed an application for impleadment in the suit and though without allowing the same the learned ADJ has acted on the application, it is deemed appropriate to hear him at the time of this appeal at least.

9. Accordingly the said Mr. Vinay Gupta is impleaded as respondent no.4 in each of the appeals. Amended memo of parties be filed within two days and notice of the appeals be issued to the said Mr. Vinay Gupta as well.

10. In the meanwhile, the direction of payment of costs is stayed.

11. Trial Court record be requisitioned."

2. The notice of the appeals issued to respondents/defendants No.1 to 3 remained unserved but the respondent No.4 Mr. Vinay Gupta was served and appeared in person on 23rd March, 2016 and sought adjournment to engage an advocate. Fresh notice was also ordered to be issued to the respondents No.1 to 3.

3. The respondents No.1 to 3 remain unserved with the report that the premises, address of which was given of the respondent No.1 was found locked and the respondents No.2&3 had left the premises of which address was given. The appellant had filed affidavit of service of respondent No.2.

4. As recorded in the order dated 15th February, 2016, the respondents No.1 to 3 who were the defendants in the suits from which these appeals arise, had otherwise also not opposed the claim of the appellant/plaintiff and the suits were dismissed only on the basis of the application for impleadment filed by the respondent No.4 Mr. Vinay Gupta.

5. In this view of the matter, the service of respondents No.1 to 3 is dispensed with.

6. The respondent No.4 having failed to appear today, is proceeded against ex-parte.

7. I have, in the order dated 15th February, 2016, reproduced above, already recorded the reasons for which the learned Additional District Judge (ADJ) dismissed the suits from which these appeals arise. **I am unable to agree therewith**.

8. I will first take up the reason given by the learned ADJ, of the suits being not maintainable in view of the interim order in the suit in the High Court.

A. The appellants / plaintiffs are not pleaded to have been parties to the suit in the High Court.

B. The suit in the High Court was stated to be a suit for partition including of the properties of the Agreements of Sale whereof specific performance was sought in the suits from which these appeals arise.

C. As per the respondent no.4 Mr. Vinay Gupta, in the said suit in the High Court, there was an interim order inter alia restraining the respondents / defendants no.1 to 3 from selling the property and the Agreements to Sell executed by the respondents no.1 to 3 in favour of the appellants / plaintiffs were in violation thereof.

D. The learned ADJ appears to have proceeded on the premise that the suits were thus not maintainable, without considering the plea that the Agreements to Sell are of a date when the restraint order in the suit in the High Court of Delhi was not in force.

E. The question further arises that even if the Agreements to Sell by the respondents / defendants no.1 to 3 in favour of the appellants / plaintiffs and of which specific performance was sought were in violation of the interim order in the suit in the High Court of Delhi, whether it made the Agreements to Sell void, for it to be held that no suit for specific performance thereof was maintainable.

F. I had occasion to deal with the said question in ***A.K. Chatterjee Vs. Ashok Kumar Chatterjee*** (2009) 156 DLT 475 and again in ***Om Prakash Vs. Santosh Chaddha*** MANU/DE/3945/2013.

G. In the former, on a consideration of the judgments of the Supreme Court, it was concluded that even a sale deed of immovable property executed in violation / contempt of interim order of injunction is not non est or void and it cannot be said that no right in immovable property subject matter of the said sale deed has passed on to the purchaser.

H. The latter judgment also considered the subsequent judgment of the Supreme Court in ***Thomson Press (India) Ltd. Vs. Nanak Builders & Investors Pvt. Ltd.*** (2013) 5 SCC 397 in which Justice T.S. Thakur in a supplementary judgment held that it was a settled legal position that a transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation and further held that though it was so held in the context of lis pendens and not

in the context of transfer in breach of an order of injunction but there was no reason why the breach of any such injunction should render the transfer ineffective inasmuch as though the party committing the breach may incur the liability for consequences thereof but the sale or transfer by itself may remain valid as between the parties thereto subject only to any direction which the Court which had granted the injunction may issue against the transferee or vendor. Noticing the same, I have in Om Prakash supra held that the Court which is approached for specific performance of an agreement entered into in violation of the order of injunction of another Court, after acquiring knowledge of such violation of order of injunction of another Court is required to direct the plaintiff in such a suit to approach the Court which had granted the injunction for permission to proceed with his claim for specific performance and only if that Court grants such permission, to proceed with the suit for specific performance.

I. Unfortunately, the learned ADJ, without considering or even citing the law proceeded to summarily dismiss the suit.

9. Another reason given by the learned ADJ, of two separate suits being not maintainable and had been filed to create pecuniary jurisdiction of the Court of the learned ADJ which otherwise had no jurisdiction as per the value of the property in accordance with the circle rates and Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, is also contrary to law.

A. The valuation for the purpose of court fees of a suit for specific performance of a contract of sale, as per Section 7(x)(a) of the Court Fees Act, 1870, is to be according to the amount of the consideration. Such consideration is the consideration agreed in the contract for sale of which specific performance is claimed.

B. The valuation of the suit for purposes of jurisdiction, as per Section 8 of the Suits Valuation Act, 1887, is to be the same as the value for the purpose of Court Fee.

C. It is not understandable as to how the learned ADJ held that the valuation had to be in accordance with the circle rates.

D. Circle rates have been notified by the Government of NCT of Delhi (GNCTD) in exercise of the powers under the Indian Stamp Act, 1899 read with the Delhi Stamp (Prevention of Under - valuation of Instruments) Rules, 2007 and for the purpose of guidance of the Sub-Registrars to whom the documents / instruments of transfer of property are presented for registration, to ensure that stamp duty in accordance with law is paid thereon. The same have no relevance to the valuation of suits for the purpose of jurisdiction or to the payment of court fees thereon. The said circle rates also, vide order reported as Manu Narang Vs. The Lieutenant Governor, Government of National Capital Territory of Delhi MANU/DE/4234/2015 and Amit Gupta Vs.

Government of NCT of Delhi MANU/DE/0841/2016 have been held to be only presumptive, open to rebuttal.

E. Again, the learned ADJ has not even bothered to state what the circle rate of the property agreed to be sold was.

F. The invocation by the learned ADJ of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 is also entirely misconceived. Though Section 2(1)(c)(vii) of the said Act brings a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce within the definition of a commercial dispute but Section 6 thereof defines the jurisdiction of commercial court as over suits of specified value; Section 12 (1)(c) defines the specified value of subject matter of commercial dispute in a suit where the relief sought relates to immovable property or to a right therein as the market value of the immovable property. The said Act does not otherwise deal with valuation of the suits for the purpose of jurisdiction or court fees payable thereon and in my view the valuation of a suit for specific performance of an agreement of sale even if relating to immovable property used exclusively in trade or commerce, for the purpose of court fees and jurisdiction will continue to be governed by the provisions of the Court Fees Act and the Suits Valuation Act as aforesaid and only those commercial disputes relating to immovable property will be triable by the Commercial Courts the consideration for sale of which property is in excess of the specified value.

G. Moreover, as aforesaid once even for the purpose of payment of stamp duty, the circle rates only raise a presumption which is rebuttable, the question of the learned ADJ dismissing the suit without giving any opportunity of hearing to the appellants / plaintiffs to rebut the presumption does not arise.

10. The reasoning given by the learned ADJ of deliberate splitting up of the agreement is also not understandable. In any case, the said findings as also the findings of collusion and suppression of material facts could not have been given without recording evidence.

11. The learned ADJ out of the 21 pages of which impugned judgment / order comprises of, has, devoted nearly 10 pages to quoting the judgments of the courts without even testing the facts of the suits from which these appeals arise on the anvil thereof and without noticing whether in the judgments cited, the findings had been given without recording evidence or otherwise. Rather another few paragraphs are devoted to the conduct of the counsel for the appellants / plaintiffs and which is indicative of the impugned judgment / order being more out of angst against the counsel for the appellants / plaintiffs and without realising the expense and inconvenience to which the appellants / plaintiffs would be put to by such order.

12. The judgments and decrees of dismissal of the suits thus cannot be sustained and are set aside and the suits bearing CS No.12/2016 and CS No.74/2015 dismissed on 13th January, 2016 by the Court of ADJ-II (Central District), Tis Hazari Courts, Delhi are remanded for decision in accordance with law.

13. It is made clear that Mr. Vinay Gupta aforesaid who was impleaded as a respondent to these appeals would also be impleaded as a defendant in the suits and the learned ADJ would, on remand, proceed to issue notice to the defendants already impleaded in the suits as well as to the said Mr. Vinay Gupta.

14. The appellant to appear before ADJ-II (Central District), Tis Hazari Courts, Delhi on 1st June, 2016.

15. The Trial Court file requisitioned in this Court be returned forthwith to the Trial Court.

No costs.

Decree sheets be prepared.

MAY 05,2016/'bs/gsr'.. RAJIV SAHAI ENDLAW,J

P.S A copy of the impugned judgments and decrees along with copy of this order be placed before the Committee of the Inspecting Judges of the learned Additional District Judge." (emphasis added)

(iv) The order dated 10.5.2016 in RFA No. 304/2016:-

"**CM No.17598/2016 (for exemption)**

1. Allowed, subject to just exceptions.

2. The application is disposed of.

RFA 304/2016, CMs No.17596/2016 (for stay) & 17597/2016 (u/O XLI R-27 CPC)

3. The appeal impugns the judgment and decree of mandatory injunction directing the appellant to withdraw its demands for overdue and holding charges and to handover actual physical possession of plot No.I-116, measuring about 500 sq. yds., TDI City, Kundli, Sonepat, Haryana to the respondents/plaintiffs and of permanent injunction restraining the appellant from cancelling the allotment of plot in question in favour of the respondents / plaintiffs / decree holders and also from creating any third party interest therein.

4. Though the counsel for the appellant / defendant neither pressed an Issue of territorial jurisdiction nor an Issue of maintainability of a suit for mandatory injunction instead of for the relief of specific performance and has also not taken the said grounds in the memorandum of appeal but to me it appears that in the light of the well settled law commencing from ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd.*** (2005) 7 SCC 791

and subsequent judgments of the Division Bench of this Court in ***Vipul Infrastructure Developers Ltd. Vs. Rohit Kochhar*** MANU/DE/0546/2008 and ***Pantaloon Retail India Ltd. Vs. DLF Ltd***. 155 (2008) DLT 642, the question of the Courts at Delhi having territorial jurisdiction to grant relief in the nature of specific performance of an agreement with respect to a property situated outside Delhi does not arise.

5. Upon it being put to the senior counsel for the appellant, he states that he has not examined the matter in the said light.

6. Admit.

7. Issue notice to the respondents by all modes including dasti, returnable before the Registrar on 26th July, 2016.

8. Considering the nature of the matter, it is deemed appropriate to hear the matter on an actual date.

9. List for hearing in the category of "After Notice Miscellaneous Matters" on 28th November, 2016.

10. Trial Court record be requisitioned.

11. CM No.17597/2016 under Order XLI Rule 27 be taken up at the time of hearing of the appeal.

12. There shall be stay of execution and operation of the judgment and decree insofar as for the relief of mandatory injunction. CM No.17596/2016 is disposed of with liberty to the respondents to apply for variation / vacation.

13. Prima facie, it appears that even though the appellant / defendant had not raised the said aspect, the learned Additional District Judge (ADJ) should not have entertained the suit for the reasons aforesaid and **has glossed over the well settled law** though has in paragraphs 14 & 15 of the impugned judgment noticed the factual position. It is also worth mentioning that as per plaint in the suit, the sale price was over Rs.34 lacs and the suit for specific performance would have to be valued thereat and which was beyond the pecuniary jurisdiction of the learned ADJ. However jurisdiction of the learned ADJ was created by undervaluing the suit at about Rs.10 lacs and which aspect also learned ADJ failed to notice. **A copy of the impugned judgment and decree along with a copy of this order be placed before the Committee of Inspecting Judges of the learned ADJ**." (emphasis added)

8. This Court has highlighted the portions of the four orders in the four RFAs which according to the applicant/judicial officer are unnecessary, uncalled for and are adverse in nature resulting in her

reputation being sullied and that the observations would have the effect of prejudicially affecting her career.

9. Before examining each order individually in the four RFAs, from which certain observations are sought to be expunged, the law in this regard as to when a judicial officer can approach a Court for expunction of remarks, needs to be referred to.

10. In the case of ***Prakash Singh Teji (supra)***, Supreme Court has observed as under:-

> "3. The case of the appellant is briefly stated hereunder:
>
> (a) The appellant, who is a Member of the Delhi Higher Judicial Service, posted as Addl. District and Sessions Judge, Delhi, was transferred in the place of Shri Satnam Singh, Addl. District and Sessions Judge on 13.09.2005. A suit for recovery which was filed in the year 1984 in the Delhi High Court by the first respondent against second respondent herein, subsequently on enhancement of the pecuniary jurisdiction of the Delhi High Court, was transferred to the District Court.
>
> (b) As sufficient opportunities were given to the plaintiff to lead evidence, the appellant, on 19.12.2005, dismissed the suit of the plaintiff. Thereafter, an appeal was filed by the plaintiff against the said judgment and the High Court, by the impugned judgment dated 06.07.2006, allowed the appeal of the plaintiff and remanded the case to the trial Court. The High Court, while remanding the case, made certain remarks and directions against the appellant. <u>When the file of the aforesaid suit was put up before the appellant for retrial, then only he noticed the adverse remarks made against him by the High Court. The appellant immediately filed an application in the High Court for expunction of the aforesaid remarks. The High Court, by order dated 23.03.2007, disposed of the application stating that the remarks are only corrective in nature and do not suggest any lack of integrity on the part of the officer</u>.

(c) The Annual Confidential Report (in short "ACR") of the appellant from the years 2000 to 2006 has been consistently graded as B+ and the High Court has promoted him to the Super-time Scale also. The ACR for the year 2006 was communicated to him on 21.08.2007. On the basis of his service record w.e.f. 12.09.2007 he had assigned much more responsible and onerous task of presiding as a Designated Judge/Special Judge, NDPS, Patiala House Court, New Delhi for conducting the trial of NDPS cases. The High Court, vide letter dated 01.08.2008, has communicated to the appellant the ACR for the year 2007 which has been downgraded from B+ to B. Therefore, he submitted his representation to the High Court for review of the said ACR. He reliably came to know that the said ACR has been downgraded on the basis of the remarks in the judgment dated 06.07.2006 passed in R.F.A. No. 178 of 2006. To the best knowledge of the appellant, there is no report or complaint about his work or conduct by anyone in the year 2007. If the said remarks in the judgment dated 06.07.2006 are not expunged, it would affect his future prospects and if the same are allowed to stay and the ACR is not re-casted, the appellant would suffer substantial loss in future as he has left with eight years of service for superannuation and he is in the zone of consideration for elevation to the Bench of the Delhi High Court.

4. While granting permission to file special leave petition, this Court has impleaded the High Court of Delhi as party respondent. Pursuant to the issuance of notice to the High Court of Delhi, a reply has been filed stating that as per the judgment of the High Court dated 06.07.2006, a copy of the said judgment was placed in the personal file/service record of the appellant as also before the then Hon'ble Inspecting Judge for the year 2006.

5. The appellant was graded as B+ for the years 2000 to 2006 by the Full Court of the Delhi High Court. On the basis of his performance at the relevant time, he was granted Super-time Scale of Delhi Higher Judicial Service. Thereafter, he was posted as Addl. Sessions Judge, NDPS at Patiala House Courts w.e.f. 12.09.2007.

6. On consideration of overall performance of the appellant during the year 2007, the Committee of Hon'ble Inspecting Judges in the meeting held on 15.07.2008, for the year 2007 recorded his ACR as B. The said remarks were communicated to him by letter dated 01.08.2008. On a complaint dated nil made by one Shri G.S. Gorkal, the Committee of Hon'ble Inspecting Judges for the year 2008 ordered that the same may be considered at the time of awarding ACR grading.

7. The appellant had made representation dated 19.08.2008 for review of Grade B for the year 2007. The said representation was duly considered and rejected by a decision dated 01.09.2008 of the Full Court and the same was communicated to the appellant vide letter dated 22.09.2008.

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9. The questions which arise for consideration are:

(a) **Whether in the facts and circumstances of the case**, the High Court was justified in **making adverse remarks/observations** and directions against the appellant in its judgment dated 06.07.2006;

(b) Whether its further direction for placing the said judgment in the personal/service record of the appellant and also before the Hon'ble Inspecting Judge for perusal is warranted?

10. Before considering the grievance of the appellant, it would be useful to refer the remarks/directions of the High Court in the order dated 06.07.2006 which reads thus:

> "Before parting, we wish to make it clear that the learned Judge who passed the impugned judgment and decree need be careful in future, rather than **adopting a hasty, slip shod and perfunctory approach** as is manifest from the judgment delivered by him in this case. We further direct that a copy of this order shall be placed on the personal/service record of the officer, while another copy be placed before the Hon'ble Inspecting Judge of the officer for His Lordship's perusal."

According to the appellant, by making such remarks behind his back, the **High Court failed to appreciate certain relevant facts**.

11. It was pointed out that the suit which was decided by the appellant on 19.12.2005 was filed in the year 1984 and the plaintiff was given sufficient opportunities to lead evidence. The evidence which the plaintiff had already lead when the suit was pending in the Delhi High Court was in fact tagged with the order sheet and the documents on which the plaintiff was relying were not even exhibited. According to the appellant, in view of this the mistake occurred was neither deliberate nor intentional.

12. It was also highlighted by the appellant that the deposition of witnesses P.W. 1 to P.W. 3 was not arranged properly in the file and the same were not traceable. Insofar as evidence of P.W.3 is concerned, according to the appellant, no order sheet reflects that the evidence was actually recorded on 15.04.1991.

13. It was highlighted by Mr. Patwalia that the High Court failed to appreciate that the statement of P.Ws was attached with the order sheet and it was not arranged or placed where it should have been placed as per Rules 8 and 9 of the Delhi High Court (Original Side) Rules, 1967.

14. Apart from the above explanation with reference to the alleged lapse as pointed out by the Division Bench, the appellant has highlighted that his ACR from 2000 to 2006 has been consistently graded as B+ and he was also promoted by the High Court to the Super-time Scale and recently assigned with much more responsibility and onerous task of presiding as a Designated Judge/Special Judge, NDPS, Patiala House, New Delhi.

15. In the light of the explanation, we also perused those relevant materials. As rightly highlighted and pointed out by Mr. P.S. Patwalia, learned senior counsel for the appellant, in the facts and circumstances and the materials available, we are satisfied that the remarks/observations and the directions made in para 10 of the order dated 06.07.2006 are not warranted.

16. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectives of the army. As observed in *A.M. Mathur v. Pramod Kumar Gupta*, the duty of a restraint, humility should be constant theme of our Judges. This quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary.

17. We are not undermining the ultimate decision of the High Court in remitting the matter to the trial Court for fresh disposal. However, we are constrained to observe that the higher Courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. Our legal system acknowledges the fallibility of the Judges, hence it provides for appeals and revisions.

18. A Judge tries to discharge his duties to the best of his capacity, however, sometimes is likely to err. It has to be noted that the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure. They do not have the benefits which are available in the higher courts. In those circumstances, remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put forth his reasonings.

19. In the matter of `K' A *Judicial Officer*, In *re*, it was held that:

> "11. ...Any passage from an order or judgment may be expunged or directed to be expunged subject to satisfying the following tests: (i) that the passage complained of is wholly irrelevant and unjustifiable; (ii) that its retention on the records will cause serious harm to the persons to whom it refers; (iii) that its expunction will not affect the reasons for the judgment or order."

In para 12, it was further held that

> "12. **Though the power to make remarks or observations is there but on being questioned**, the exercise of power must withstand judicial scrutiny on the touchstone of following tests: (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation **must be judicial in nature** and **should not formally depart from sobriety, moderation and reserve**."

20. In the light of the above principles and in view of the explanation as stated by the appellant for commenting on the conduct of the plaintiff, we are satisfied that those observations and directions are not warranted. It is settled law that **harsh or disparaging remarks are** not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case as an integral part thereof. " (emphasis added)

11. In the case of ***Amar Pal Singh (Supra)*** Supreme Court has encapsulated the observations made by the Supreme Court in its various earlier judgments and the relevant observations of the Supreme Court in this regard read as under:-

"4. Being dissatisfied, said Sunil Solanki preferred a revision before the High Court and the learned Single Judge, taking note of the allegations made in the application, found that it was a fit case where the learned Magistrate should have directed the registration of FIR and investigation into the alleged offences. While recording such a conclusion, the learned Judge has made certain observations which are reproduced below:-

"This conduct of chief Judicial Magistrate is deplorable and **wholly malafide and illegal**"

Thereafter the learned Judge treated the order to be wholly hypothetical and commented it was :-

"**vexatiously illegal**"

After so stating the learned Single Judge further stated that Chief Judicial Magistrate has committed a blatant error of law. Thereafter the passage runs thus:-

".....and has **done unpardonable injustice** to the injured and the informant. His lack of sensitivity and utter callous attitude has left the accused of murderous assault to go Scot-free to this day."

5. After making the aforesaid observations, he set aside the order and remitted the matter to the Chief Judicial Magistrate to decide the application afresh in accordance with law as has been spelt out by the High Court of Allahabad in *Masuman v. State of U.P*. Thereafter, he directed as follows-

"Let a copy of this order be sent to the Administrative Judge, Bulandshahar to take appropriate action against the C.J.M. concerned as he deem fit."

6. The prayer in the Special Leave Petition is to delete the **aforesaid comments, observations and the ultimate direction**.

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8. It is submitted by the learned senior Counsel appearing on behalf of the Appellant that the aforesaid observations and the consequential direction were totally unwarranted and indubitably affect the self-esteem and career of a member of the subordinate judiciary and therefore deserve to be expunged.

9. The Learned Counsel for the State has fairly stated that a judicial officer enjoys a status in the eyes of the public at large and his reputation stabilises the inherent faith of a litigant in the system and establishes authenticity and hence, the remarks made by the learned Single Judge should not be allowed to stand.

10. At the very outset, we make it clear that we are neither concerned with the justifiability of the order passed by the Chief Judicial Magistrate nor are we required to dwell upon the legal pregnability of the order passed by the learned Single Judge as far as it pertains to dislodging of the order of the learned Magistrate. We are only obliged to address to the issue whether the aforesaid remarks and the directions have been made in consonance with the principles that have been laid down by the various pronouncements of this Court and is in accord with judicial decorum and propriety?

11. In *Ishwari Prasad Mishra v. Mohammad Isa*, the High Court, while dealing with the judgment of the trial court in an appeal before it, had passed **severe strictures** against the trial court **at several places** and, in substance, had suggested that the decision of the trial court was not only perverse but was **also based on extraneous considerations**. Dealing with the said kind of delineation and the comments, Gajendragadkar, J (as His Lordship then was) authoring the judgment held that the High Court was not justified in passing the strictures against the trial Judge.

12. The Bench in *Ishwari Prasad* case, observed that:

> "27. ....Judicial experience shows that in adjudicating upon the rival claims brought before the courts, it is not always easy to decide where the truth lies. Evidence is adduced by the respective parties in support of their conflicting contentions and circumstances are similarly pressed into service. In such a case, it is, no doubt, the duty of the Judge to consider the evidence objectively and dispassionately, examine it in the light of probabilities and decide which way the truth lies. The impression formed by the Judge about the character of the evidence will ultimately determine the conclusion which he reaches. But it would be unsafe to overlook the fact that all judicial minds may not react in the same way to the said evidence and it is not unusual that evidence which appears to be respectable and trustworthy to one Judge may not appear to be respectable and trustworthy to another Judge. That explains why in some cases courts of appeal reverse conclusions

of facts recorded by the trial Court on its appreciation of oral evidence. The knowledge that another view is possible on the evidence adduced in a case acts as a sobering factor and leads to the use of temperate language in recording judicial conclusions. Judicial approach in such cases would always be based on the consciousness that one may make a mistake; that is why the use of unduly strong words in expressing conclusions, or **the adoption of unduly strong intemperate, or extravagant criticism** against the contrary view, which are often founded on a sense of infallibility should always be avoided."

It is worth noting in *Ishwari Prasad* case emphasis was laid on sobriety, judicial poise and balance.

13. In *Alok Kumar Roy v. Dr. S.N. Sarma*, the Constitution Bench was dealing the issue whether a Judge of High Court can pass order in that capacity while he was working as Head of the Commission of enquiry and whether he can entertain writ petition and pass interim order while being at a place which was not seat of High Court. The learned Chief Justice of High Court while dealing with the matter commented on the Judge that he had passed the order in "unholy haste and hurry". That apart certain observations were made. While not appreciating the said remarks in the judgment against a colleague, their Lordships opined that such observations even about the Judges of subordinate courts with the clearest evidence of impropriety are uncalled for in a judgment.

14. The Constitution Bench in *Alok Kumar Roy* further proceeded to state that:

"8. .....It is necessary to emphasise that judicial decorum has to be maintained at all times and even where criticism is justified it must be in language of utmost restraint, keeping always in view that the person making the comment is also fallible. ...Even when there is justification for criticism, the language should be dignified and restrained."

15. In *Ishwar Chand Jain v. High Court of Punjab and Haryana and Anr., AIR 1988 SC 1395*, it has been observed that while exercising control over subordinate judiciary under Article 235 of the Constitution, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers.

16. In *K.P. Tiwari v. State of Madhya Pradesh, ,* the High Court while reversing the order passed by the lower Court had made certain **remarks about the interestedness** and the **motive of the lower Court** in passing the impugned order. **In that context this Court observed** that one of the functions of the higher Court is either to modify or set aside erroneous orders passed by the lower Court. It has been further observed that:

"4. ...A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. "It is well said that a judge who has not committed an error is yet to be born", and that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts

is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks - more correctly upto their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating a suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, **the proper course for the higher court to adopt is to make note of his conduct in the confidential record of his work and to use it on proper occasions**. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are **criticised intemperately and castigated publicly**. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary than when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other. It must be remembered that the officers against whom **such strictures** are publicly passed, stand condemned for ever in the eyes of their subordinates and of the members of the public. No better device can be found to destroy the judiciary from within. The judges must, therefore, exercise self-restraint. There are ways and ways of expressing disapproval of the orders of the subordinate courts but attributing motives to them is certainly not one of them as that is the surest way to take the judiciary downhill."

17. In *Kasi Nath Roy v. State of Bihar* it has been ruled that in our hierarchical judicial system the appellate and revisional Courts have been set up with the pre-supposition that the lower Courts in some measure of cases can go wrong in decision making, both on facts as also on law. The superior Courts have been established to correct errors but the said correction has to be done in a befitting manner maintaining the dignity of the Court and independence of the judiciary. It is the obligation of the higher Courts to convey the message in the judgment to the officers concerned through a process of reasoning, essentially, persuasive, reasonable, mellow but clear and result orienting but rarely a rebuke.

18. In *Braj Kishore Thakur v. Union of India, 1997 SCR 420* this Court disapproved the practice of passing strictures for orders against the subordinate officers. In that context the two-Judge Bench observed thus:

"11. No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when

judges of higher courts publicly express lack of faith in the subordinate judges. It has been said, time and again, that respect for judiciary is not in hands by **using intemperate language** and by **casting aspersions** against lower judiciary."

19. In *A.M. Mathur v. Pramod Kumar Gupta*, though in a different context immense emphasis was laid on judicial restraint and discipline, it is appropriate to reproduce a passage from the said decision:

"13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other coordinate before the Court as well to other coordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process."

20. In 'K' a *Judicial officer,* in *re* , a two-Judge Bench of this Court was dealing about the **adverse remarks** contained in the judgment of the High Court disposing of a Criminal Misc. Petition Under Section 482 of the Code and the expunction sought by a Metropolitan Magistrate was aggrieved of such remark. After discussing that aggrieved judicial officer could approach this Court for expunging the remarks the Bench opined under what circumstances the exercise of power of making remarks can withstand scrutiny.

21. The Bench in *'K' A Judicial officer,* in *re* case, reiterated the view expressed in *State of Uttar Pradesh v. Mohammad Nairn,* wherein it was clearly stated that:

"12.... The overall test is that the' criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve.....

Thereafter their Lordships referred to the conception of judicial restraint, the controlling power, the expectations of subordinate judiciary form the High Court, the statutory jurisdiction exercised by the High Court and eventually opined that the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their won mischievous infirmities.

22. Thereafter the Court proceeded to enumerate the infirmities. They read as follows:

"15. Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal

natural justice so as to shield against being condemned unheard. Secondly, the harm caused by such criticism or observation may be incapable of being undone. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in open and therefore becomes public. The same Judge who found himself persuaded, sitting on judicial side, to make observations guided by the facts of a single case against a subordinate Judge may sitting on administrative side and apprised of overall meritorious performance of the subordinate Judge, may irretrievably regret his having made those observations on judicial side the harming effect whereof even he himself cannot remove on administrative side. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher Court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge. Fourthly, seeking expunging of the observations by judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court - a situation not very happy from the point of view of the functioning of the judicial system.

Thereafter the Bench laid down how the matter should be handled and should be dealt with on the administrative side and ultimately expunged the remarks.

23. In *Samya Sett v. Shambu Sarkar* the court was dealing with the case where a judicial officer was constrained to approach this Court for expunging the remarks made by Single Judge of the High Court of Calcutta against him. Their Lordships referred to the decisions in *Mohammad Nairn*, *Alok Kumar Roy*, *State of M.P. v. Nandlal Jaiswal* and certain other authorities and opined that the stricture was totally inappropriate.

24. In that context in *Samya Sett* case the court referred to certain passages about the view expressed in other countries. We think it apt to reproduce them:

"18. It is universally accepted and we are conscious of the fact that judges are also human beings. They have their own likes and dislikes; their preferences and prejudices. Dealing with an allegation of bias against a Judge, in *J.P Linahan Inc,In Re* , Frank J. stated:

'If, however, 'bias' and 'partiality' be defined to mean that total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial, and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal create attitudes which precede reasoning in particular instances and which, therefore, by definition are prejudices.'

Justice John Clarke has once stated;

19. 'I have never known any judges, no difference how austere of manner, who discharged their judicial duties in an atmosphere of pure, unadulterated reason. *Alas! we are 'all the common growth of the Mother Earth' - even those of us who wear the long robe.*'"

25. In *State of Bihar v. Nilmani Sahu,* a sitting judge of the Patna High Court had approached this Court for expunction of the some observations made by this Court in disposing of a special leave petition arising out of a land acquisition proceeding. A Bench of this Court had used the expression "We find that the view taken by the learned Singh Judge, Justice P.K. Dev, with due respect, if we can say so, is **most atrocious**". The learned Single Judge had treated this to be stigmatic and approached this Court and raised a contention that it was not necessary for the decision. A two-Judge Bench of this Court after hearing the Learned Counsel for the parties and considering the judgment of this Court opined the expression used in the judgment was wholly inappropriate inasmuch as when this Court uses an expression against the judgment of the High Court it must be in keeping with dignity of the person concerned. Eventually the said observations were deleted.

26. From the aforesaid enunciation of law it is quite clear that for more than four decades this Court has been laying emphasis on the sacrosanct duty of a Judge of a superior Court how to employ the language in judgment so that a message to the officer concerned is conveyed. It has been clearly spelt out that there has to be a process of reasoning while unsettling the judgment and such reasoning are to be reasonably stated with clarity and result orientation. A distinction has been lucidly stated between a message and a rebuke.

27. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent upon use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of judiciary has an insegregable and inseparable link with its credibility. **Unwarranted comments** on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior Courts to take recourse to correctional measures. A reformative method can be taken recourse to on the administrative side.

28. It is condign to state it should be paramount in the mind of a Judge of superior Court that a Judicial officer projects the face of the judicial system and the independence of judiciary at the ground reality level and derogatory remarks against a judicial officer would cause immense harm to him individually (as the expunction of the remarks later on may not completely resuscitate his reputation) but also affects the credibility of the

> institution and corrodes the sacrosanctity of its zealously cherished philosophy. A judge of a superior Court however strongly he may feel about the unmerited and fallacious order passed by an officer, but is required to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of loco parentis has to take a foremost place in the mind to keep at bay any uncalled for any unwarranted remarks."
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> (emphasis added)

12. A reading of the ratios of the judgments of the Supreme Court in the cases of ***Prakash Singh Teji (supra)*** and ***Amar Pal Singh (supra)*** show that unwarranted disparaging comments, adverse remarks, strictures and criticisms of judicial officers should not be so done by the higher courts but simultaneously however the Supreme Court has held that the power in the High Court however to make critical observations is undoubted but that such criticism or observations however must not depart from sobriety, moderation and reserve. It is also relevant to note that in the cases of ***Prakash Singh Teji (supra)*** and ***Amar Pal Singh (supra)*** the remarks which were sought to be expunged were undoubtedly adverse remarks because in ***Prakash Singh Teji's*** case ***(supra)*** the High Court while hearing an appeal against the judgment passed by the concerned judicial officer Mr. Prakash Singh Teji (as he then was) observed that the judicial officer has, in delivering the judgment, adopted a hasty, slipshod and perfunctory approach. Such remarks as made in ***Prakash Singh Teji's***

case ***(supra)*** had adverse effect on the judicial officer and therefore can be said to be adverse remarks. In the case of ***Amarpal Singh (supra)*** the remarks which were made against the judicial officer were that the conduct of the judicial officer was *malafide* and vexatiously illegal. *Qua* that judicial officer it was also observed that the judicial officer had adopted a callous attitude. These remarks are also undoubtedly adverse remarks or a personal criticism of the judicial officer in the facts of that case. The observations made by the High Court against a judicial officer of the sub-ordinate courts however if are only in the nature of judicial comments i.e of judicial nature and the observations made cannot be faulted for their lack of sobriety, then in such a case the observations so made by this Court cannot be said to be in the nature of adverse remarks or strictures or negative disparaging remarks personally against the judicial officer. That the High Court has the necessary control and superintendence of the District Courts/Subordinate Courts working under that particular High Court is not in doubt and for this one can refer to Articles 227 and 235 of the Constitution of India, and which Articles read as under:-

> "**Article 227**. **Power of superintendence over all courts by the High Court**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.
(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:
Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.
(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Article 235. **Control over subordinate courts**
The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

13. This Court at this stage would seek to refer to the ratio of the Constitution Bench judgment of the Supreme Court in the case of ***Padma Sundara Rao (Dead) and Others Vs. State of T.N. and Others (2002) 3 SCC 533*** and the ratio of this Constitution Bench judgment states that ratio of a case is facts dependent and even difference of a single fact can make difference to the ratio of the case. This is

observed by the Supreme Court in para 9 of the said judgment and this para 9 reads as under:-

> "9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."
>
> (underlining added)

14. Therefore, the law is well settled that adverse remarks and strictures cannot be passed against a judicial officer and nor can any remarks be made personally against the judicial officer which will amount to a disparaging adverse remark. Equally however a High Court is completely entitled to make judicial observations and is also entitled to refer a particular judgment of a subordinate judicial officer of the District Court to the Annual Confidential Report (ACR) Committee of the High Court vide para 16 of ***Amar Pal Singh's*** case ***(supra)*** by reference to the judgment in ***K.P. Tiwari's*** case. This power of the High Court to refer a judgment of a judicial officer of a District Court to the ACR Committee of the High Court flows directly from powers of the High Court specified under Articles 227 and 235 of the Constitution of India. Once this is so, then the applicant is

unjustified in seeking the relief that the orders passed by the learned Single Judge of this Court in the four RFAs being the orders dated 16.5.2016, 25.4.2016, 5.5.2016 and 10.5.2016 for referring of the impugned judgments passed which were subject matter of the RFAs (along with the aforesaid four orders of a learned Single Judge of the High Court) to the ACR Committees of the Judicial Officer. Therefore, the prayer made in the applications for expunging of the observations of sending the impugned judgments of the RFAs along with the orders passed by the learned Single Judge to be placed before ACR Committees of the applicant/judicial officer for the relevant years, cannot be ordered to be expunged.

15. Learned Senior Counsel for the applicant, in addition, to seeking expunging of the observations in the four orders dated 16.5.2016, 25.4.2016, 5.5.2016 and 10.5.2016 for referring of all the impugned judgments in each of the appeals along with the orders of the learned Single Judge to the ACR Committees, has also argued that in the four orders dated 16.5.2016, 25.4.2016, 5.5.2016 and 10.5.2016 there are observations which are adverse remarks and that such remarks being adverse remarks should be struck off. This argument

will have to be examined with respect to orders passed in each of the four RFAs and therefore this Court proposes to take each of the orders passed in the four RFAs for examining as to whether the said orders contain any adverse remarks or strictures or any other personal disparaging remarks which would be treated as adverse to the applicant/judicial officer.

16. The first order is the order dated 16.5.2016 in RFA No. 851/2015. In para 3 of this order dated 16.5.2016, the applicant/judicial officer is said to have returned the finding with respect to the non-applicability of Section 58(f) of the Transfer of Property Act, 1882 to Delhi in a casual manner. Therefore, the only word which is said to be an adverse remark is the word 'casual'. In our opinion, the word 'casual' by no stretch of imagination can be said to be an adverse remark or in the nature of unjustified criticism or the remark is any manner a stricture against the applicant/judicial officer. As observed by the Supreme Court in the judgments in the cases of ***Prakash Singh Teji (Supra)*** and ***Amar Pal Singh (supra)*** that observations can be made by the High Court against the judicial officer of the District Court provided the observations made have the

flavor of sobriety and are of a judicial nature. Surely learned Single Judge of this Court observing in the order dated 16.5.2016 that the finding returned by the applicant/judicial officer is 'casual' in nature that can by no stretch of imagination be said to be an adverse and/or personal disparaging remark against the applicant/judicial officer. In fact, the learned Single Judge was justified in making the remark because by the impugned judgment which was challenged in RFA No. 851/2015, the applicant/judicial officer had held that equitable mortgage by deposit of title deeds could not be created in Delhi because Section 58(f) of Transfer of Property Act did not apply to Delhi, and this conclusion was arrived at without any elaborate discussion, though such a finding and conclusion of a court would as rightly as observed by a learned Single Judge in his order dated 16.5.2016 have wide repercussions with respect to every equitable mortgage created in Delhi by deposit of title deeds. The only discussion of the trial court while returning the finding of non-applicability of Section 58(f) of the Transfer of Property Act to Delhi in the impugned judgment which is the subject matter of RFA No. 851/2016 is the following para 25:-

> "(25) However, before adverting to the facts, I may observe that the term **'Mortgage'** has been defined under **Section 58** of the **Transfer of Property Act** and in so far as the Mortgage by deposit of title deeds is concerned, it only applies to the towns of Madras, Bombay & Kolkata and in any other town which the concerned State Government may by notification in the Official Gazette, specify [as provided under **Section 58 (f)** of the Transfer of Property Act]. There is nothing on record to show that the same would be applicable to Delhi. I now come to the written statement filed by the defendant where at page 2 line 3 it has been mentioned that:
>
> "*….as the aforesaid by deposit of title deeds with the defendant as a Security for payment of any claims damages, loss of or compensation which may be made or claimed against the defendant arising out of loan, transaction or financial dealings….*"

17. Therefore, the observations of the learned Single Judge of this Court made in his order dated 16.5.2016 in RFA No. 851/2015 of the finding being returned by the applicant/judicial officer in a casual manner cannot be faulted with. Therefore not only the expression 'casual' used in para 3 of the order dated 16.5.2016 in RFA No. 851/2015 is not an adverse remark and is not in any manner personally disparaging to the judicial officer and that the same is in the nature of stricture or an adverse remark but also that the fact is that the applicant/judicial officer had indeed without realizing the gravity of the findings being rendered by her of alleged non-applicability of Section 58(f) of the Transfer of Property Act to Delhi, disposed of the issue in just one paragraph by stating that there is nothing on record, and which was clearly a casual approach because applicability of

Statutes can be taken by the Court as a matter of judicial notice under *inter alia* Section 57 of the Indian Evidence Act, 1872. We therefore reject the argument urged on behalf of the applicant/judicial officer that the expression 'casual' in any manner can be said to be an adverse remark which has to be expunged and in fact we find that the said remark is judicial in nature which a learned Single Judge of this Court sitting as an appellate court over the judgment passed by the applicant/judicial officer could have so made.

18. The next order is the order dated 25.4.2016 passed in RFA No. 69/2016. The facts of the said RFA No. 69/2016 showed that the applicant/judicial officer had undoubtedly acted in a harsh manner by closing the evidence of the plaintiff in the said suit on the very first date of hearing fixed for recording of evidence, and also on which date the Advocates were on strike. After closing the evidence of the plaintiff in that suit in terms of the order dated 3.8.2015, the matter was listed for final arguments on the very next date i.e 4.8.2015. In our opinion therefore the learned Single Judge of this Court in passing the order dated 25.4.2016 in RFA No. 69/2016 was completely justified in observing that the applicant/judicial officer had taken a

very harsh stand in passing adverse orders against the plaintiff in that suit closing evidence on the first date, and on which date Advocates were abstaining from work. We therefore find that nothing contained in para 10 of the order dated 25.4.2016 is such that the same can be said to be an adverse remark or stricture against the applicant/judicial officer.

19. The third order is the order dated 5.5.2016 in RFA No. 76/2016. A reading of the order dated 5.5.2016 shows that the applicant/judicial officer had dismissed two suits at the threshold/without trial by which specific performance was sought of two agreements to sell although the defendants in the said suit did not oppose the suit. The applicant/judicial officer dismissed the suit by holding that the agreements to sell were entered into in violation of an interim order passed in CS(OS) No. 2365/1986 and were collusive. The case of the appellant in RFA No. 76/2016 was that agreements to sell of which specific performance was claimed were entered into when there was no interim order i.e on 28.11.2014. Therefore, even if the suits were collusive there was required trial before dismissing of the suits including of seeing as to whether there was an interim order

which was in force when agreements to sell were entered into. Learned Single Judge while allowing the appeal in terms of the order dated 5.5.2016 in paras 8 and 9 has also given the appropriate discussion and reasoning as to how the applicant/judicial officer had illegally passed the impugned judgment subject matter of RFA No. 76/2016 for dismissing the suits including on the ground of improper valuation of the suit although it is not the circle rates of the property which has to be taken for the purpose of pecuniary jurisdiction in suits seeking specific performance since it is the consideration value of the agreement to sell which has to be the pecuniary jurisdiction value for the purpose of pecuniary jurisdiction, and as so specified in the Court-Fees Act, 1870. The observations of a learned Single Judge of this Court in the order dated 5.5.2016 in RFA No. 76/2016 of the impugned order being passed by the applicant/judicial officer, including out of angst against the counsel for the appellant, without realizing the expenses and inconvenience to which appellant would be put by the impugned order which was subject matter of RFA No. 76/2016, therefore is correct, and in fact very much a part of judicial reasoning of judicial nature required to be given by an appellate court

for setting aside the impugned judgment of the trial court passed by the applicant/judicial officer. We therefore do not find any adverse personal remarks against the applicant/judicial officer in the order dated 5.5.2016 for the applicant/judicial officer to seek expunging of remarks, and as already stated above the observations in fact are only judicial in nature. Further, so far as referring the order of the learned Single Judge dated 5.5.2016 along with the judgment passed by the applicant/judicial officer which was subject matter of RFA No. 76/2016 before the ACR Committee cannot be faulted with and as already discussed in detail above with reference to the ratios of the judgments in the cases of ***Prakash Singh Teji (supra)*** and ***Amar Pal Singh (supra)*** along with the applicability of Articles 227 and 235 of the Constitution of India.

20. The last order to be examined is the order dated 10.5.2016 passed in RFA No.304/2016. Again the only aspect which is stated in the order dated 10.5.2016 is for placing of the order dated 10.5.2016 along with the impugned judgment which was subject matter of RFA No.304/2016 before the ACR Committee and once again it is held that this aspect cannot be called into question by the

applicant/judicial officer as there are no adverse remarks or strictures or any adverse personal disparaging remarks of a grave nature against the applicant/judicial officer for the applicant/judicial officer to make an application for striking off any observations in the order dated 10.5.2016. In fact, as already stated above, High Court being the Administrative Court of the applicant/judicial officer, and a Court of record, this Court has complete power of superintendence over the subordinate district courts within its jurisdiction and the learned Single Judge of the High Court therefore is completely entitled to refer to the judgment of a subordinate judicial officer of a District Court to the ACR Committees of this Court dealing with ACR of the concerned judicial officer for the relevant years. We therefore do not find anything whatsoever which requires to be expunged in the order dated 10.5.2016 in RFA No.304/2016.

21. In view of the aforesaid discussion, all the aforesaid four applications being CM No. 33469/2016 in RFA No. 851/2015, CM No. 33472/2016 in RFA No. 69/2016, CM No. 33473/2016 in RFA No. 76/2016 and CM No. 33475/2016 in RFA No. 304/2016 are clearly misconceived and thus have to be and accordingly are

dismissed. In our opinion the remedy of the applicant/judicial officer was to move the High Court on the administrative side whenever the orders of the learned Single Judge passed in the four RFAs would have been considered by the ACR Committees of the relevant years 2015 and 2016, and in fact we put this to the applicant/judicial officer through her counsels who appeared in this case, and we also accordingly adjourned this case on 27.10.2017 to 8.12.2017 and on 8.12.2017 to 15.12.2017, in the fond hope that the applicant/judicial officer will instead of pursuing the applications filed on the judicial side would seek her remedy by filing representations before the administrative side of this High Court, however, for the reasons which we cannot fathom, the applicant/judicial officer still insists that a judgment be passed by this Court for allowing of her applications filed on the judicial side in the four RFAs. Accordingly, we dismiss CM No. 33469/2016 in RFA No. 851/2015, CM No. 33472/2016 in RFA No. 69/2016, CM No. 33473/2016 in RFA No. 76/2016 and CM No. 33475/2016 in RFA No. 304/2016.

22. Ordinarily we would have concluded the matter here itself, however a reading of the averments made in the subject four

applications filed by the applicant/judicial officer has caused us to wonder as to whether the applicant/judicial officer can at all have said what is stated by her in the various paras of her applications. What is stated in certain paras of the applications being CM No. 33469/2016 in RFA No. 851/2015, CM No. 33472/2016 in RFA No. 69/2016, CM No. 33473/2016 in RFA No. 76/2016 and CM No. 33475/2016 in RFA No. 304/2016 are such averments which this Court has found that they are shocking. In our opinion, the applicant/judicial officer is guilty of gross contempt of this Court and which contempt of this Court is a criminal contempt of Court. To understand this aspect of the complete lack of discipline by the applicant/judicial officer resulting in the applicant/judicial officer being guilty of contempt of Court, we would hereafter reproduce in its entirety one application filed by this applicant/judicial officer in RFA No.851/2015 and which is C.M. No.33469/2016. The other three applications filed in other RFAs are more or less identical to what is stated in C.M. No.33469/2016. It may be noted that all the aforesaid four applications are signed by the applicant/judicial officer personally and

also duly verified by her with verifications under her signatures. The entire application being C.M. No.33469/2016 is reproduced as under:-

"IN THE HIGH COURT OF DELHI AT NEW DELHI
CM-33469/2016
IN THE MATTER OF:
MARUTI SUZUKI INDIA LTD. … PETITIONER
VS.
DELHI AUTO GENERAL FINANCE PVT. LTD.
…RESPONDENTS
APPLICATION FOR MODIFICATION OF ORDER DATED 16.05.2016.
RESPECTFULLY SHOWETH:

"1. That the applicant is an officer of the Delhi Higher Judicial Services, presently posted as Additional District Judge-II (Central), Tis Hazari Courts, Delhi and is a serving Judicial Officer in Delhi for the last almost 24 years.

2. That the applicant, a Judicial Officer has been compelled to rush to this court on the judicial side on receipt of orders in four appeals (i.e. RFA No.304/16, RFA No.851/15, RFA No.76/16 and RFA No.69/16) wherein certain comments and uncalled for observations have been successively made touching upon the unsullied reputation of the applicant. These comments/observations are not only totally unwarranted and indubitably effect the self-esteem, judicial reputation and career of the applicant but also violate the norms of Judicial Proprietary and the mandate of law to be observed by the Supreme Courts in Judicial Hierarchy as enumerated in numerous decisions time and again over the last almost 40 to 50 years. (*Reference in this regard is made to the case of "**Amar Pal Vs. State of U.P. & Anr."** in **Criminal Appeal No.651 of 2009 decided on 17.05.2012).***

3. That despite the fact that the Hon'ble Appellate Court failed to notice that no Notification under Section 58(f) of the Transfer of Property Act had been proved during the trial of the case or highlighted at any point of time, the applicant makes it clear that she is neither concerned with the justifiability or legality of the orders passed, nor with the merits of the case before the appellate court. The observations/comments in question as detailed below being totally unwarranted and indubitably effecting the self esteem and career of the applicant, a member of the District Judiciary, she accordingly seeks the expurgation/deletion of the same. The details of the cases/Regular First Appeals wherein these observations/comments have been made are detailed as under:-

Sr. No.	***Details of the case/order***	***Status***	***Comments made by the High Court***

1..	RFA No.304/2016, CM No.17596/2016 and 17597/2016 under the title "TDI Infrastructure Ltd. Vs. Rajesh Mittal & Anr. decided on 10.05.2016	Pending before this court for 21.10.2016	Para 13 "…..A copy of the impugned judgment and decree along with a copy of this order be placed before the Committee of the Inspecting Judges of the Learned ADJ….."(Page 3 Para 13 of the Order).
2..	RFA No.851/2015 and CM No.30785/2015 under the title "Maruti Suzuki India Ltd. Vs. Delhi Auto General Finance Pvt. Ltd." decided on 16.05.2016. (Annexure-A)	Pending before this court for 09.11.2016	Para 4 "…..A copy of the impugned judgment along with a copy of this order be placed before the Committee of the Inspecting Judges of this court of the Learned Additional District Judges…." (Page 2, Para 4 of the Order).
3.	RFA No.76/2016 and RFA No.79/2016 under the title "Mukesh Kumar Gupta Vs. Rajneesh Gupta & Ors". decided on 05.05.2016	Disposed off by this court on 05.05.2016	A copy of the impugned judgments and decrees along with the copy of this order be placed before the Committee of the Inspecting Judges of the Learned Additional District Judge…..(Page 10, Last Page of Judgment, comments made after the judgment)
4.	RFA No.69/2016, CM No.4972/2016 and CM No.4973/2016 under the title "Meena Kumari Vs. Rajinder Kumar & Anr". decided on 25.04.2016	Disposed off by this court on 25.04.2016	Para 14 "……A Copy of this judgment be also placed before the Inspecting Judges of the Additional District Judge….." (Page 4 Para 14 of the Judgment, comments made at the end of the Judgment)

4. That the Hon'ble Supreme Court recently in a similar case of a Judicial Officer where the High Court had directed that "…..a copy of the order be placed before the Inspecting Judge of the officer….." expressed its serious concern and anguish over the manner in which such unwarranted comments found a way into judicial orders which it observed had become a trend, persistent like an incurable cancerous cell which explodes out at the slightest imbalance..(***Amar Pal Singh Vs. State of U.P. & Anr. Crl Appeal No 651/09 decided on 17.05.2012).*** The Hon'ble Apex Court not only expunged these disparaging comments by observing

that a judicial officer enjoys a status in the eyes of the public at large but further observed that the reputation of an officer stabilizes the inherent faith of litigant in the system and established authenticity and therefore held that these observations/comments could not stand. The relevant paras are quoted as under:

"1. .....The present appeal frescoes a picture and exposits a canvas how, despite numerous pronouncements of this Court, while dealing with the defensibility of an order passed by a Judge of subordinate court when it is under assail before the superior Court in appeal or revision, the imperative necessity of use of temperate and sober language warranting total restraint regard being had to the fact that a judicial officer is undefended and further, more importantly, such unwarranted observations, instead of enhancing the respect for the judiciary, ***creates a concavity in the hierarchical system and brings the judiciary downhill, has been totally ostracised. Further, the trend seems to be persistent like an incurable cancerous cell which explodes out at the slightest imbalance.....***

19. .....A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of judiciary has an insegregable and inseparable link with its credibility. Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law.....

21. .....The learned Single Judge, as is manifest, had a different perception of the whole scenario. Perceptions of fact and application of law may be erroneous but that never warrants such kind of observations and directions. Regard being had to the aforesaid we unhesitatingly expunge the remarks and the direction which have been reproduced in paragraph three of our judgment. If the said remarks have been entered into the annual confidential roll of the judicial officer the same shall stand expunged....."

5. That the impugned observations/comments have also been made by ignoring the report of **First National Judicial Pay Commission (Vol.-I), Chapter-4 (duly accepted by the Hon'ble Apex Court),** and also to the principles, guidelines and the directions of the Hon'ble Apex Court in various judicial pronouncement as under:

a) **K.P.Tiwari vs. State of MP reported in 1994 Supp (1) SCC 5401.**

b) Braj Kishore Thakur vs. Union of India & Ors. (1997) 4 SCC 65

c) A.M.Mathur Vs. Pramod Kumar Gupta (1990) 2 SCC 533 (at page 539).

d) State of Rajasthan vs. Prakash Chand & Ors. (1998) 1 SCC 1.

e) R.C.Sood vs. High Court of Judicature at Rajasthan reported in **AIR 1999 SC 707**.

f) In the matter of 'K' A Judicial Officer reported in AIR 2001 SC 972.

6. That the applicant, a judicial officer with unsullied reputation humbly implores his Hon'ble court to appreciate that *threat and fear of Administrative Action on every order of the subordinate court so set aside by the Higher Court in revision, appeal or writ adversely affects Administration and Dispensation of Justice and is not a healthy precedent as it* ***tends to create a fear phychosis*** *amongst Subordinate Judges thereby infringing upon their independence and efficiency.* ***An Officer not involved in judicial work or not passing any order on merits does not stand the risk of scrutiny of his judicial orders by the Higher Courts and it is only those officers who dedicate themselves wholly to judicial functioning and disposal of cases, who stand this risk of the Higher Courts taking a different view in the orders passed by them.*** *It would therefore be highly unfair to* ***penalize*** *such officers unless the order under scrutiny smacks of malafides or on the face of it is perverse.*

7. That the applicant with greatest respect and all humility submits that the manner in which the *applicant has been* ***selectively*** *castigated,* ***humiliated and condemned*** *by the Hon'ble Court who has made the impugned comments so made a part of the various judgments/orders* ***in quick succession,*** *is highly unjustified and uncalled for,* since these judgments/orders of the High Court find a circulation with the litigating parties, Advocates, government officials and public persons and as such as affected the unsullied reputation of the applicant and lowered her esteem in the eyes of public, lawyers and all those who have read these judgments/orders which reputation everyone in this country possesses and is entitled to preserve, the Right to Reputation being an important facet of Right to Life under Article 21 of The Constitution of India (*Reference is being made to the observations of Hon'ble Mr. Justice Dipak Misra in the case of* ***Amar Pal Singh Vs. State of U.P. & Anr. in Criminal Appeal No.651/2009 decided on 17.05.2012 &*** in the case of ***Omprakash Chautala Vs. Kanwar Bhan and others*** reported in ***2014 (5) SCC 417).***

8. *That orders/judgments of the appellate court available on the Website for the last almost 6 months reveal that in case of no other officer such remarks have been passed under similar circumstances and* ***that too successively****. This has caused immense personal hurt to the applicant apart from denting her reputation. The* ***manner*** *in which these comments have been made* ***successively and selectively*** *is not only contrary and in*

deviation to the repeated directions of the Hon'ble Apex court as aforesaid but it also gives an ***impression of some preconceived bias****, at least the applicant feels so.* In fact, what is directly and expressly prohibited, also cannot be permitted to be done indirectly.

9. That the Hon'ble Supreme Court ***In the matter of 'K' A Judicial Officer*** reported in ***AIR 2001 SC 972*** has specifically provided that a subordinate judge faced with disparaging and undeserving remarks made by a Court of superior jurisdiction is not without any remedy. He may approach the High Court invoking its inherent jurisdiction seeking expunction of objectionable remarks which jurisdiction vests in the High Court by virtue of its being a court of record and possessing inherent powers as also the power of superintendence. Faced with these unfortunate circumstances and there being no other alternative efficacious remedy and reposing full faith in this Institution of Justice, the applicant is approaching your Lordships in person with the following prayers:

PRAYER

1) To expunge/delete the remarks made in the impugned orders/judgments to the extent "……*Copy of the impugned and decree along with copy of this order be placed before the committee inspecting judges of the Ld. Addl. District Judge……." In* RFA No. 851/15 **(Page 2 Para 4 of the Order)** and correspondingly to direct the necessary changes/modifications on the Web Portal.

2) In case if the same have been so communicated to the Inspecting Committee or have percolated in the Annual Confidential Rolls of the Applicant, to direct the copy of modified order to be placed on the personal file of the applicant with directions that these comments/observations to be treated as expunged/deleted.

3) Any other relief as this Hon'ble Court deems fit and proper in the given circumstances.

Prayed accordingly." (emphasis added)

23. We are indeed perturbed and upset at the language used by the applicant/judicial officer in her applications and which we have emphasized by underlining and italicizing the same. The applicant/judicial officer in para 2 has stated that the learned Single Judge of this Court is guilty of violation of the norms of judicial proprietary. Surely it is impermissible for the applicant/judicial officer

to make such observations against the Single Judge of this Court who is exercising appellate jurisdiction over the judgment passed by the applicant/judicial officer, and that too in such cases where we do not find that there is anything whatsoever in the four orders in the four RFAs which are in the nature of the adverse remarks or strictures against the applicant/judicial officer as the remarks are in fact only judicial in nature. The applicant/judicial officer however has not stopped there in causing about criminal contempt of Court by what is stated in para 2 of the application by averring the lack of judicial proprietary by a learned Single Judge of this Court, the applicant/judicial officer has gone much further to the shocking extent of stating in paras 7 and 8 of the application that the learned Single Judge is selectively and successively targeting the applicant/judicial officer whereas we have already reproduced four orders passed by the learned Single Judge of this Court to show that each of the orders reflect correct judicial observations having been made by the learned Single Judge of this Court against the four impugned judgments and the orders passed by the applicant/judicial officer which are subject matters of the four RFAs. We found it unbelievable and unacceptable

that the applicant/judicial officer has crossed all norms of acceptable behaviour and made personal allegations against the learned Single Judge of this Court who passed the orders in four RFAs including stating that the learned Single Judge of this Court is selectively targeting the applicant/judicial officer. On a reading of paras 7 and 8 of the application we at first could not believe that a senior judicial officer of the rank of ADJ could have gone to the extent by making personal allegations against a learned Single Judge of this Court and has stated that the learned Single Judge of this Court is selectively and successively allegedly targeting the applicant/judicial officer. In this regard, we may note that the applicant/judicial officer has sought to buttress her averments with respect to the learned Single Judge of this Court successively and selectively targeting the applicant/judicial officer by stating that the applicant/judicial officer has gone to the website of this Court for the last almost six months and that in the last almost six months no such remarks have been passed in similar circumstances and that too successively. We fail to understand that how the applicant/judicial officer has adopted an approach which is in fact in the nature of examining the conduct of the learned Single

Judge of this Court who was sitting in appellate jurisdiction over the judgments and orders passed by the applicant/judicial officer.

24. The finality of this issue of criminal contempt being committed by the applicant/judicial officer is seen by reference to para 6 of the application wherein it is stated that the learned Single Judge by passing the four orders in the four RFAs has tended to create a fear psychosis amongst subordinate judges thereby infringing upon independence and efficiency of the District Courts. The applicant/judicial officer has proceeded to give a certificate to herself that she is one of the hard working judicial officers and that only those judicial officers like the applicant/judicial officer who do work and do disposal of cases take the risk of the High Court taking a different view in the orders passed by them. By making such aforesaid statement we feel that effectively the applicant/judicial officer has stated that every judge of this Court in every ACR which is made for every judicial officer would not be affected by those judicial officers who do not do work but would be affected by judicial officers such as the applicant/judicial officer who are very good at disposal and passing judgments.

25. We really wonder as to how can the applicant/judicial officer can descend to the extent of making grave and unfounded averments as made in the said four applications.

26. Accordingly we are of the *prima facie* opinion that the applicant/judicial officer, Dr. Kamini Lau, ADJ is guilty of criminal contempt of court. Criminal contempt of court is defined under Section 2(c) of the Contempt of Courts Act, 1971. Section 2(c)(i) of the Contempt of Courts Act clearly states that anything which scandalizes or tends to scandalize, or lowers or tends to lower the authority of a court, will amount to criminal contempt of court. We are of the opinion that the averments made by the applicant/judicial officer in her applications clearly amount of scandalizing or tending to scandalize or lowering or tending to lower the authority of this Court and which this Court undoubtedly has *inter alia* because of Articles 227 and 235 of the Constitution of India. We are also of the *prima facie* opinion that the averments made by the applicant/judicial officer in her four applications, i.e as many as four times, interferes or tends to interfere with, or obstruct or tends to obstruct, the administration of justice. There cannot exist situations where learned Single Judges of

this Court exercising appellate jurisdiction would have to keep in mind that a judicial officer whose judgment is being examined in appeal by learned Single Judge in the appellate side would file misconceived and non-maintainable applications on the judicial side for expunging of remarks although there are no adverse remarks or strictures or any personal adverse disparaging comments against the judicial officer tending to sully reputation or otherwise unfairly prejudicially the judicial officer.

27. Accordingly, let notice of criminal contempt of court be issued to Dr. Kamini Lau, ADJ, and which be served to the judicial officer as also through principal District and Sessions Judge, Tis Hazari Courts, Delhi, returnable on 16th February, 2018. Be listed on 16th February, 2018 before the Roster Bench hearing criminal contempt petitions.

28. Notice of criminal contempt be issued without any process fee and be served through the High Court process serving agency.

29. In addition to issuing notice of criminal contempt of court against the applicant/judicial officer, we direct that let a copy of

the present judgment along with the copy of the application filed in each of the four RFAs be placed before the ACR Committees of the concerned Judge for the years 2015 and 2016, so that the ACR Committees can take note of the conduct of the applicant/judicial officer of making unacceptable and unfounded statements in her applications.

30. We are also of the opinion that independent of the issue of applicant/judicial officer being guilty of criminal contempt of court, the averments made in the four applications filed by the applicant/judicial officer are such that necessary administrative action be taken against the applicant/judicial officer in terms of the rules applicable, and an administrative enquiry be initiated in accordance with law as to why departmental action be not taken against the applicant/judicial officer including for the uncalled for and unfounded allegations made by the applicant/judicial officer in her CM No. 33469/2016 in RFA 851/2015, CM No. 33472/2016 in RFA No. 69/2016, CM No. 33473/2016 in RFA No. 76/2016 and CM No. 33475/2016 in RFA No. 304/2016 or that such misconceived applications ought not to have been filed. Copy of this judgment be

accordingly placed before Hon'ble the Acting Chief Justice for information and necessary action.

VALMIKI J. MEHTA, J

INDERMEET KAUR, J

DECEMBER 22, 2017
Ne/ib/godara