REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 191 OF 2019

NATIONAL LAWYERS CAMPAIGN FOR JUDICIAL TRANSPARENCY AND REFORMS & ORS. …Petitioner(s)

VERSUS

UNION OF INDIA & ORS. …Respondent(s)

1. In the course of arguments in the present Writ Petition, Shri Mathews Nedumpara, learned counsel appearing on behalf of the petitioners, alleged that Judges of the Court are wholly unfit to designate persons as Senior Advocates, as they only designate Judges' relatives as Senior Advocates. On being asked whether such a designation should be granted as a matter of bounty, Shri Nedumpara took the name of Shri Fali S. Nariman. When cautioned by the Court, he took Shri Fali S. Nariman's name again. Thereafter, on being questioned by the Court as to what the relevance of taking the name of Shri Fali S. Nariman was, he promptly denied having done so.

It was only when others present in Court confirmed having heard him take the learned Senior Advocate's name, that he attempted to justify the same, but failed to offer any adequate explanation.

2. We are of the view that the only reason for taking the learned Senior Advocate's name, without there being any relevance to his name in the present case, is to browbeat the Court and embarrass one of us. Shri Nedumpara then proceeded to make various statements unrelated to the matter at hand. He stated that, "Your Lordships have enormous powers of contempt, and Tihar Jail is not so far." He further submitted that lawyers are like Judges and are immune from contempt, as they are protected by law. He also stated that there can be no defamation against a lawyer, as also there can be no contempt proceedings against a lawyer, as the same would impinge on the independence of lawyers, which they ought to enjoy to the fullest. All these statements directly affect the administration of justice, and is contempt in the face of the Court.

3. This is not the first time that this particular advocate has attempted to browbeat and insult Judges of this Court. In point of fact, the style of this particular advocate is to go on arguing, quoting Latin maxims, and when he finds that the Court is not with him, starts

becoming abusive. We also find that this advocate is briefed to appear in hopeless cases and attempts, by browbeating the Court, to get discretionary orders, which no Court is otherwise prepared to give. We have found that the vast majority of appearances by this advocate before us have been in cases in which debtors have persistently defaulted, as a result of which their mortgaged properties have to be handed over to secured creditors to be sold in auction. It is at this stage that Shri Nedumpara is briefed to somehow put off the auction sale. Even the present Writ Petition is a case in which a review petition against the judgment of this Court in *Indira Jaising v. Supreme Court of India*, (2017) 9 SCC 766 has already been dismissed. With full knowledge that a second review petition is barred by Order XLVII Rule 5 of the Supreme Court Rules, 2013, Shri Nedumpara seeks a second review in the form of a writ petition filed under Article 32 of the Constitution of India. Quite apart from this, the said advocate has already indulged in conduct unbecoming of an advocate, which has been noticed by an order dated 19.11.2018 in Special Leave Petition (Civil) No.26424 of 2018, which is set out hereinbelow:

"O R D E R

1. I.A. Nos. 163019 of 2018,163020 of 2018 and 164145 of 2018 in S.L.P. (C) No. 26424 of 2018 are dismissed.

Shri Mathews Nedumpara, Advocate for the Petitioner, appeared before us on 22nd October, 2018. He stated that Rs.80 lakhs would be paid within a period of four weeks from 22nd October, 2018. The Court granted him a period of one week from 22nd October, 2018 to make the necessary payment. The order clearly stated:

> "If the aforesaid payment is not made within one week, the special leave petition shall be dismissed without further reference to this Court."

2. No such payment was made within the period of one week and hence, the special leave petition stood dismissed without further reference to this Court. However, on 14th November, 2018, Shri Nedumpara, appearing with an AOR, mentioned the same matter before us without informing us that the S.L.P. had already stood dismissed without reference to this Court. By suppressing the order dated 22nd October, 2018, Shri Nedumpara obtained an order from this very Bench on 14th November, 2018 stating:

> "List on Monday, the 19th November, 2018 along with IA No. 163019/2018 - Application for Modification of Order and IA No. 163020/2018 - Application for Direction."

3. When the matter was listed before us today, we repeatedly asked Shri Nedumpara, why he did not disclose to us the order dated 22nd October, 2018 when the matter was mentioned before us on 14th November, 2018. To this, there was no answer. We then warned Shri Nedumpara that as a counsel appearing before the Court, his primary duty is to disclose all material facts to the Court before obtaining any order from the Court. We have warned him that such unbecoming conduct of an advocate who appears before this Court, will be sternly dealt with should any future incident of a like nature arise before this Court. We were inclined to impose heavy costs but have not done so only because the appellant,

> for whom Shri Nedumpara appears, already appears to be in dire straits financially."

4. We also find that Shri Nedumpara has misconducted himself repeatedly before the Debt Recovery Tribunal, Bombay and before the Bombay High Court. This is reflected in certain orders passed by the Bombay High Court. Thus, in *High Court on its own Motion v. Nedumpara Mathews*, Criminal Suo Motu Contempt Petition No. 9 of 2012, an order dated 18.09.2012 recorded:

> "**1.** …… Mr. Mathews has disrupted the proceedings of the Court and refused to conclude, insisting that the Court is a servant of justice and is bound to hear him. No member of the Bar or Litigant can insist that the mentioning of matters or their listing should be at his or her convenience. Mr. Mathews is habituated to being disruptive in Court. Several Benches of this Court have directed the Registry not to list his matters before those Benches. Today, despite efforts to make him see reason, Mr. Mathews has persisted in disrupting the proceedings, preventing matters from being called out. Before we passed this order, which we do with extreme circumspection, we have put Mr. Mathews on notice that should he continue to disrupt the proceedings of the Court, the Court would have no option but to issue a notice to show cause under the provisions of the Contempt of Courts Act, 1971. Unfortunately, there has been no change in his behaviour.
>
> **2.** …… If any member of the Bar or the litigating public is allowed to compel the Court to take up a matter at his own convenience, the orderly functioning of the Court will be seriously affected. Mr. Mathews has persisted in

> disrupting the proceedings and has not heeded to being counselled.
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> **3.** In the circumstances, the registry is directed to issue a notice to show cause to Mr. Nedumpara Mathews, Advocate calling upon him to state as to why proceedings should not be adopted against him under the Contempt of Courts Act, 1971. The hearing of the notice shall be placed before the appropriate Bench in accordance with the assignment of work."

In *Lalita Mohan Tejwani v. Special Recovery Officer*, Notice of Motion (L) no. 175 of 2013 in Writ Petition (L) No. 2772 of 2012, by order dated 20.06.2013, a *suo motu* notice for criminal contempt was issued by a Division Bench of the Bombay High Court, stating as follows:

> "**5.** When the present Notice of Motion was called out on 8 May 2013, the learned Counsel appearing for the Authorized Officer of Jankalyan Sahakari Bank Ltd., (the Respondent No. 2 herein) tendered an Affidavit dated 25 March 2013 of Mr. A. S. Tambe, Assistant General Manager of Janakalyan Sahakari Bank Ltd., which indicates that a person posing himself as a Sitting Judge of this Court spoke to Mr. A. S. Tambe from a mobile phone which is traced to be that of Mr. Mathews J. Nedumpara."
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> xxx xxx xxx
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> "**8.** It is submitted that the affidavit states that Mr. Tambe had a conversation with a person having Mobile Number viz: 9820535428 and the person at the other end told him that, "I am (name of a sitting Judge of this Court) here, Matthews is before me. Ask your Advocate to call me." The affidavit of Tambe, further states that the said mobile belongs to the firm of Advocates – M/s.

Nedumpara and Nedumpara, who appear for the Petitioner.

9. In view of the above affidavit, on 13 June 2013 after hearing the parties, this Court directed the service providers – Vodafone Ltd. and Idea Cellular Ltd. to place on record the call details of three cell numbers – 9820535428, 9819846333 and 8108066202 for 4 March 2013 and 5 March 2013. This information was necessary to determine whether there is any element of truth in the allegations made in the affidavit dated 25 March 2013 of Mr. Tambe.

10. Today, affidavits have been filed on behalf of the said service providers, placing on record the call details. Copies of the affidavits filed by the service providers are also served upon Advocate Mr. Nedumpara in Court. We also directed the service of a copy of the affidavit of Mr. A. S. Tambe dated 25 March 2013 which was kept in a sealed cover, upon Advocate Mr. Mathews J. Nedumpara and the same was done in our presence. On perusal of the call records, we find that there has been contact between the above three mobile cell numbers.

11. As per the affidavit filed on behalf of Vodafone (India) Ltd. the number 9820535428 is subscribed in the name of Mr. Mathews J. Nedumpara and mobile number 9819846333 is of Mr. Sanjeev Mohan Tejwani, who is son of the Petitioner. While as per the affidavit filed on behalf of Idea Cellular Ltd., the mobile number 8108066202 is subscribed in the name of Mr. Sanjay V. Kale address at Jankalyan Sahakari Bank Ltd. Chembur, Mumbai 400 071. Learned Counsel for Respondent-Bank states that mobile no. 8108066202 is presently being used by Mr. A. S. Tambe, Assistant General Manager of the RespondentBank. Advocate Mr. Mathews J. Nedumpara admits that the mobile no. 9820535428 is his own mobile number.

12. In view of the contents of the affidavits of service providers, it appears that the statements made in the affidavit of Mr. A. S. Tambe if correct, would amount to

> criminal contempt on the part of the person who spoke from cell no. 9820535428 to Mr. A. S. Tambe. As per the record of Vodafone, the said cell number is of Advocate Mr. Mathews J. Nedumpara and Mr. Mathews J. Nedumpara admits that it is his mobile number. In view of the above, it appears that this is a fit case for initiating Suo Motu proceedings under the Contempt of Courts Act, 1971 and Advocate Mr. Mathews J. Nedumpara be joined as respondent No. 1 and State of Maharashtra as respondent No. 2 in the Suo Motu Contempt Proceedings.
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> **13.** The Registry to issue notice to Mr. Mathews J. Nedumpara to show cause why appropriate action should not be taken against him for Criminal Contempt as defined in the Contempt of Courts Act, 1971. Since, this Court is only issuing a notice and not issuing a rule at this stage, no further observations are called for."

In *International Asset Reconstruction Company Pvt. Ltd. v. Phoenix Alchemy Pvt. Ltd.*, Company Petition No. 423 of 2010, by an order dated 01.03.2014, the Bombay High Court devoted several paragraphs under the caption "*The Conduct of Mr. Mathews Nedumpara, Advocate for the ex-Directors*". Excerpts under this sub-head read as follows:

> "**58.** When I told Mr. Nedumpara that he would have his turn to argue after the Advocate for the Official Liquidator, he was adamant and insisted on raising this issue of maintainability. He was addressing the Court in an aggressive, discourteous and offensive manner. This went on for quite a few minutes, during which time I was repeatedly requesting him to take his seat and await his turn. During this time, he was not even willing to listen to

the Court and kept addressing the Court and making remarks that were most inappropriate and to the effect that he is not getting an opportunity of being heard and that he was used to 'insults' from the Court.

59. It was clear to me that this was nothing but a stalling tactic to ensure that the matter on the Official Liquidators Report does not proceed. All through these initial few minutes his demeanour was loud, brash and disrespectful. The Court was crowded and it was almost as if Mr. Nedumpara was playing to the galleries, as much of what he was saying had little to do with the matter or for that matter his point of maintainability."

xxx xxx xxx

"**62.** Finally, when Mr. Nedumpara was asked to address the Court in response to the Official Liquidators Report, he insisted on addressing the Court only on the issue of maintainability of a Petition at the instance of Secured Creditors who had adopted (or as he put it "elected") other remedies. Even during this part of the hearing, Mr. Nedumpara was extremely disrespectful and offensive in the manner in which he addressed the Court. Just because the Court wanted him to address it on the Official Liquidators Report, he repeatedly said how he is not being heard. His tone and tenor was accusatory, often times breaking into Latin Maxims in the context of his most improper suggestion that he is not being heard or that he was being treated unfairly.

63. This went on again for quite a few minutes during which time he resolutely refused to address even a single query from the Court or address the Court on the merits of the matter/Official Liquidator's Report that was before the Court.

64. Mr. Nedumpara's demeanour was obstructive and to my mind intended to interfere with the administration of justice and lower the dignity and authority of the Court. In a situation such as this, in my opinion, the Court would have been entitled to take note of the conduct of Mr. Nedumpara as contempt in the face of the Court and

> deal with it summarily and immediately or to direct the issuance of a Show Cause Notice to treat it as 'criminal contempt' under the Contempt of Courts Act, 1971, read with the Rules framed thereunder."
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> xxx xxx xxx
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> "**69.** These judgments establish that conduct of Advocates, such as has been described by me in the foregoing paragraphs of the Order, can constitute sufficient reason to issue Show Cause Notice for criminal contempt or to be dealt with immediately and summarily as contempt committed in the face of the Court.
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> **70.** Having said that, in this case I have done neither. Let this Order be a strict and final warning to Mr. Mathew Nedumpara that the Court will not tolerate this conduct and if such conduct is repeated in the future, the Court may be constrained to act."

5. As a sequel to this order, Shri Nedumpara filed an application in which he requested that the aforesaid Single Judge of the Bombay High Court should recuse himself from hearing matters in which Advocate Nedumpara appears for one of the parties. This application was dealt with by an order dated 23.12.2014 in *Brian Castellino v. Official Liquidator of M/s. RTec Systems Pvt. Ltd.*, Official Liquidators Report No. 347 of 2014 in Company Petition No. 452 of 2010. In the course of submissions made before the learned Single Judge, a compilation was submitted by one of the learned counsel. This is reflected in paragraph 13 of the said order as follows:

"**13.** Mr. Kapadia has submitted a compilation, inter alia, containing (i) orders passed by the Single Judges and Division Benches of this Court setting out the conduct of Advocate Nedumpara in the matters that he appears, (ii) resolutions passed by the Debt Recovery Tribunal, Mumbai, resolving not to take up any matters where Advocate Nedumpara and/or his Juniors appear and (iii) criminal complaints filed against Advocate Nedumpara by the Debt Recovery Tribunal, Mumbai for serious offences. Mr. Kapadia has from the said compilation of documents/orders pointed out as follows:

(i) That three of the Division Benches and three Single Judges of this Court have recused themselves in matters where Advocate Nedumpara has appeared.

(ii) The Division Bench comprising of A.H. Joshi and M.L. Tahaliyani, JJ. has whilst recusing itself vide order dated 22nd May, 2013 in Writ Petition (L) No. 1272 of 2013 recorded the conduct of Advocate Nedumpara and his client as follows:

> *"1. An affidavit in answer to query put by the Court is filed.*
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> *2. In the affidavit the Petitioner has used language as his Advocate's opinion, expressing impropriety on the part of court in putting questions to the petitioner. The language exhibits total lack of etiquettes of drafting and lack of respect to the court akin to insinuation.*
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> *3. Since the litigant and counsel do not respect the court and express anguish with discourteous language, it is considered necessary that this bench should not hear this case. Hence we recuse.*
>
> *4. Liberty to move before the appropriate court."*

(iii) That by an order dated 18th September, 2012, a Single Judge of this Court has issued suo motu criminal contempt notices against Advocate Nedumpara.

(iv) That by an order dated 20th June, 2013, a Division Bench of this Court have issued suo motu criminal contempt notices against Advocate Nedumpara.

(v) That by an order dated 9th April, 2014, passed by a Division Bench of this Court it has been observed that Advocate Nedumpara has made reckless, irresponsible and contemptuous allegations against the Bench and the opponents. After recording an apology of Advocate Nedumpara which is noted as 'belated', the Division Bench has expressed in paragraph 13 that a message goes to all advocates including M/s. Nedumpara & Nedumpara so that in future, this Court has no occasion to observe anything or initiate any proceedings. Mr. Kapadia submitted that the aforesaid observations are in the context of an attempt on the part of the juniors of Advocate Nedumpara to approach one of the members of the Bench at his residence and the apologies were for addressing a letter thereafter to the Hon'ble Chief Justice making allegations against the learned Judge who refused to give a hearing to the juniors at his residence.

(vi) That by an order dated 1st October, 2014, a Division Bench of this Court rejected the request for recusal made by Advocate Nedumpara.

(vii) That Advocate Nedumpara addressed letters to the President of India, Vice President of India, Prime Minister of India, Home Minister of India. Chief Minister of Maharashtra, Minister for law and justice, Leader of Opposition, etc. making wild, baseless, contemptuous allegations against the Constitutional functionaries of this Court.

(viii) That a Resolution dated 19th May, 2014 was passed by all three learned Presiding Officers of the Debts Recovery Tribunal, Mumbai (DRT) resolving that no matters of Advocate Nedumpara or his juniors be listed before them. The Resolution is reproduced hereunder:

> "*A very unfortunate and shocking situation has been created today by Advocate Mr. Mathews J. Nedumpara along with his juniors Mr.*

Navneet Krishnan, Mr. Nishant, Ms. Rohini and alleged clients in the open Court Hall of DRT I, II, III and that to the extent that the smooth functioning of the Tribunal has come to halt and justice delivery system has got obstructed. They have willingly and intentionally created this scenario in the open court with ulterior motive. The dignity and trust of the Tribunal has been lowered down and all the Officers and staff of the Tribunal has been offended. Presiding Officers of the Tribunals have to retire to their chambers and complaint has also been lodged with the police by the Presiding Officer of DRT I, Mumbai in this regard. We are apprehending that this kind of bad and turbulent situation may again take place and working of the Tribunals may be disturbed. Considering the dimension and seriousness of the situation we all felt that this situation may be adverted by taking Resolution that we should not take up the matters in which the aforesaid Advocates are engaged. The litigants may engage other lawyers in the cases in which the above Advocates are engaged. Meanwhile the Registry is directed to shortlist the cases in which the above said lawyers are engaged and not to place their cases before the Tribunal. This Resolution be notified for information.

Copy of this Resolution is also transmitted to Hon'ble Chairperson, DRAT Mumbai for necessary information and needful.

Dated this 19th May, 2014".

(ix) That a complaint has been filed by the DRT, Mumbai, alleging criminal offences committed by Advocate Nedumpara."

A reading of this paragraph leaves no manner of doubt that Shri Nedumpara is in the habit of terrorising Tribunal members and using intemperate language to achieve his ends before several Judges of the Bombay High Court. The order dated 23.12.2014 then went on to state:

> "**33.** In present times, a huge number of disputes are brought before the Courts for adjudication. The monetary stakes involved in the matters are also very substantial. In other cases, personal status of parties is involved, and these matters are invariably emotionally charged. The demands of the litigants over their Advocates have seemingly increased. Many dishonest/ desperate litigants along with some lawyers, who are not as honest as they are expected to be, leave no stone unturned to avoid a Judge that they perceive to be inconvenient or unfavourable or to obfuscate issues or to delay the proceedings and frustrate the course of justice. To achieve this end, they attempt to criticize judges, cast uncalled for aspersions on Judges with the intention that the Judge so attacked will give up the matter. A judge who is showered with criticisms and insinuations, though baseless, may be inclined to recuse himself so as to stay out of harm's way of the baseless suspicion or allegation or to avoid being unpopular or to just avoid taking over the burden of a matter which is intentionally made heavier by litigants and/or their Advocates. However, as held by the Hon'ble Supreme Court in *Subrata Roy's case* (supra), a Judge who prefers the recusal route despite knowing that the criticisms/insinuations made against him are baseless, would not be true to his oath of dispensing justice without fear or favour. In my view, a Judge would be failing in his duty if he endeavours to become popular amongst the members of the bar or members of the public by avoiding difficult situations or following the route of appeasement. A Judge accepts

judgeship to dispense justice without fear or favour and not to attain popularity of any kind. Again, he will not be true to his oath if he feels that it is convenient to recuse himself from a matter rather than facing a lawyer or a litigant who gives him sleepless nights by criticizing him or casting aspersions on him which are totally incorrect and untrue. In this regard, the observations made in the case of *Triodos Bank NV vs. Dobbs, [(2005) EWCA 468]* are apposite:

> "*It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly a litigant who does not have confidence in the Judge who hears his case will feel that if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is that – If judges were to recuse themselves whenever a litigant – whether it be a represented litigant or a litigant in person – criticized them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases, simply by criticizing all the judges that they did not want to hear their case. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticized – whether that criticism was justified or not."*

34. I am therefore of the view that the grounds on which the Application of recusal is made by Advocate Nedumpara and his client are wholly baseless and unfounded. I have no doubt that the present Application

> seeking recusal of this Court, to borrow the language of the Hon'ble Supreme Court is to avoid this Court, obfuscate issues, delay the proceedings and frustrate the course of justice. The Application is therefore rejected. I have decided not to deal with the compilation of documents relied upon by Mr. Kapadia in support of his contention. Instead I would rather join Mr. Chinoy, the Learned Amicus Curiae, in advising Advocate Nedumpara to introspect and find fault with oneself before finding faults with others. I may end by expressing a sincere hope that the assurance given by Advocate Nedumpara to this Court that he takes the advice of Mr. Aspi Chinoy to heart, that he will introspect and correct himself wherever he has gone wrong, is fulfilled in the right spirit."

6. In *Lalita Mohan Tejwani v. Special Recovery Officer and Sales Officer, Jankalyan Sahakari Bank Ltd. and Ors.*, Writ Petition No. 2334 of 2013, a Division Bench of the Bombay High Court, by an order dated 15.03.2017, recorded as follows:

> "**3.** Mr. Nedumpara, learned counsel for the petitioner replied that he does not want to answer any questions of the Court as for the petitioner as "dominus litis" he should be heard. We had not prevented Mr. Nedumpara from arguing but wanted him to answer the basic issue as urged on behalf of respondent Nos. 1 and 2. At this stage, the manner in which Mr. Nedumpara conducted himself and behaved before the Court to say the least was most abusive, contemptuous, lowering the dignity of the Court, as also unbecoming of an advocate and officer of the Court. This conduct of Mr. Nedumpara, in our opinion, amounts to contempt in the face of the Court. Not only that but his demeanour as an officer of the Court was also highly objectionable. Mr. Nedumpara not only created a scene in the Court but

also made abuses at the learned counsel appearing for respondent Nos. 1 and 2. In fact, learned counsel appearing for respondent Nos. 1 and 2 pointed out that on every occasion Mr. Nedumpara was behaving and conducting himself in this manner.

4. What happened thereafter is further shocking. When the hearing was in progress and the learned counsel for respondent Nos. 1 and 2 was pointing out to us the details of the earlier decisions and the similar proceedings, Mr. Nedumpara walked out of the arguing seat and went behind and sat in the last row showing utter disregard and indifference to the sanctity of the court proceedings. Thereafter, when learned counsel for respondent Nos. 1 and 2 was addressing this Court, Mr. Nedumpara came forward and interrupted the learned counsel for respondent Nos. 1 and 2 and was again abusive towards the Court, and vehemently insisted that he be heard and he need not answer any query of the Court. When we pointed out that our queries on the basic issues were required to be answered so that further hearing can be proceeded, Mr. Nedumpara walked out of the Court and then did not return.

5. We find that what happened in the Court today is not only most unfortunate but highly objectionable affecting the solemnity and sanctity of the judicial proceedings. The conduct of Mr. Nedumpara has seriously affected not only the dignity of the Court but also the interest of administration of justice. We may observe that the solemn function of the Court is to dispense justice according to law and, therefore, it is well settled that the proceedings inside the Court are always expected to be held in a dignified and an orderly manner. The counsel of the Court is expected to be a responsible officer of the Court and if such contemptuous behavior on the part of Mr. Nedumpara is not seriously dealt with, the same would erode the dignity of the Court and corrode the majesty of the Court impairing confidence of the public in the efficacy of the institution of the Court. This conduct of Mr. Nedumpara, in our opinion, amounts to a gross

contempt of the Court and, therefore, it is necessary that an action as per the provisions of the Contempt of Court Act, 1971 is initiated.

6. We, accordingly, issue notice to Mr. Mathew Nedumpara, Advocate under Article 215 of the Constitution of India and section 14 of the Contempt of Court Act, returnable after two weeks. Mr. Nedumpara is directed to show cause as to why action should not be taken against him under Article 215 of the Constitution of India and under the Contempt of Court Act on his conduct and behavior as noted by us above in detail."

7. Shri Nedumpara features in yet another order passed by a learned Single Judge of the Bombay High Court on 05.03.2018 in *Anand Agarwal and Anr. v. Vilas Chandrakant Gaonkar and Ors.*, Notice of Motion (L) No. 706 of 2017 in Commercial Suit No. 614 of 2017. The order states as follows:

"**1.** At this point of time, the Judiciary is mired in challenges of a very grave nature, perhaps like never before. It is being observed that there is, amongst some litigants and their Advocates, virtually no fear or hesitation in making false statements and misrepresentations before the Court, which should under any and all circumstances be dealt with the iron hand of the judiciary with zero tolerance for such blatantly unethical and mala-fide behaviour.

2. The dignity and respect of the Court along with its prescribed procedures is being unabashedly violated by certain litigants who are using foul and unfair means to demean and denounce the august Judiciary by making frivolous and baseless allegations against the Judges, and/or their opponents and their Advocates, with a view to rescind and back-track on solemn undertakings and

statements earlier made in Court. This malicious *modus operandi* of certain dishonest litigants is absolutely unacceptable, as it seeks to subvert the very foundations of justice that the Judiciary is committed to uphold. With no merit in their case, and in a bid to avert an unfavourable order being passed against them, such dishonest litigants collude with their Advocates to use underhanded means to ensure favourable orders and their consequent success in litigation instituted or defended by them.

3. Certain Advocates sadly seem to have forgotten the code of ethics that enjoins upon all Advocates, that they are Officers of the Court first and Advocates of their clients only thereafter. It is anguishing to note that such Advocates facilitate the unethical misadventures of their clients, often encouraging their clients' dishonest practices, causing grave stress to the Judiciary, and unfortunately bringing the entire judicial system to disrepute. It has become a vicious and despicable cycle wherein dishonest litigants with malafide intentions seek out unethical Advocates, who for hefty fee and the lure of attracting similar new and unscrupulous clients, conveniently choose to disregard and/or forget all ethics and the code of conduct enjoined upon this august profession. It is with a heavy heart, that Courts at times note that clients have no hesitation in replacing good and honest Advocates, with unscrupulous ones, who go to any dishonest lengths, merely to secure favourable orders for their clients.

4. The present case and the conduct of the Defendant No. 1 / Applicant strongly affirms the aforesaid observations. The Defendant No.1 Shri Vilas Chandrakant Gaokar had throughout the hearing of his case, remained present and appeared before the Court with his Counsel as well as the Advocate on record. He took the assistance of this Court in resolving his issues pertaining to the Suit, gave undertakings in pursuance of it, obtained consent orders and also acted in consonance with the same. However, Defendant No.1 breached one

of the undertaking given by him and being fully aware of the consequences thereof, he craftily and quickly changed his Advocates (who had already been previously changed) and briefed Counsel Mr. Mathew Nedumpara, who in turn advised him to file this Notice of Motion. In this Notice of Motion, he has stated that all the previous orders passed by this Court are null and void for reasons which are utterly false and dishonest to the knowledge of his client Shri Vilas Chandrakant Gaokar.

5. This malicious and mala-fide Notice of Motion sets out/alleges totally baseless and contemptible allegations against this Court, which are completely unacceptable and are a mere shenanigan to circumvent the action of contempt of Court. This reprehensible attempt at intimidating and manipulating this Court into not taking any action under the Law of Contempt calls for censure in the strongest terms. In an attempt to cover up the mala-fide intent, which is crystal clear and amply evident, the litigant Shri Vilas Chandrakant Gaokar dishonestly/falsely reiterates in the Application that he holds the Court in the highest esteem and respects its integrity. It will not be out of place to mention here that in an earlier matter before me, in which Mr. Mathew Nedumpurra appeared for one of the parties, he, after repeatedly reiterating that he holds the Court in the highest esteem and respects its integrity, had proceeded to pray that I recuse myself from all the matters in which he appears. That Application was, however, rejected by a detailed Judgment dated 23rd December, 2014, reported in *2015 (2) Bom. C.R. 247*.

6. Therefore, such unethical and unacceptable behaviour needs to be met with the iron hand of the Court. The Courts must tackle all such unethical conduct fearlessly by taking stern action against litigants, and if need be their unethical Advocates as well. A failure to do so, will result in seriously jeopardising the Judiciary and will erode the Rule of Law, which is absolutely integral to the justice system in the country. The Courts must act swiftly and firmly, without getting intimidated by false and

frivolous charges, and utterly baseless, malicious and dishonest allegations that are levelled against the Judges."

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"**18.** …… Again, the Defendant No.1 being aware that he has made false and incorrect statements in the Affidavit in support of his above Notice of Motion and his earlier Advocates will not support his dishonest stand, has changed his Advocates and dishonestly contended, through Mr. Mathew Nedumpara, that it was at the instance of the Plaintiffs that this Court recorded that by consent the matter be treated as part-heard, and that he had not given his consent. Though it is true that my regular assignment from June, 2017 did not pertain to commercial matters, a statement showing the disposal of the 30 matters finally disposed of and the balance matters which were heard and treated as part-heard by me, by consent of the parties was prepared by the Section Officer, Statistics Department which was subsequently handed over to the Registrar, Judicial-I, who forwarded the same to the Learned Chief Justice. In the said statement forwarded to the Learned Chief Justice, even the dates fixed by me for hearing of the matters treated as part-heard, including the dates fixed in the above matter after reopening of the Court on 5th June, 2017, are also mentioned. After the Court reopened, Defendant Nos. 1 to 5, along with their Advocates, appeared before me on 12 different dates of hearing and several orders were passed by me in the matters without any party or the Advocates representing them making any grievance. As stated earlier, it is only when the Defendant No. 1 wanted to wriggle out of his undertakings that he discharged his earlier Advocates who were aware of the true and correct facts in the matter and instead briefed Mrs. Rohini Amin and Mr. Mathew Nedumpara to make the above Application, by suppressing facts, and on grounds which are false and dishonest to his knowledge.

19. After the Order dated 26th April, 2017, was served on Defendant Nos. 1 to 5, the manner in which the matter has progressed is set out in detail by the Plaintiffs in their Affidavit-in-Reply and in their submissions at the hearing of this Notice of Motion. The same is referred to hereinafter. It is pertinent to note that Defendant No. 1 has in his Rejoinder reiterated his allegations and made a general denial, but has not specifically dealt with the facts set out in the Affidavit in Reply. Even during his arguments Mr. Nedumpara has not submitted that what is stated by the Plaintiffs in the Affidavit in Reply is incorrect."

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"**49.** As set out hereinabove, Defendant No. 1 was conscious of the fact that all the allegations made by him are false and incorrect. He was well aware that his earlier Advocate will not be a party to his dishonest design of making allegations against the Court only because he was wanting to wriggle out of his undertakings recorded in the Order dated 12th May, 2017. He therefore, changed his Advocate and briefed Mr. Mathew Nedumpara to appear on his behalf in the above Notice of Motion, making false and scandalous allegations against this Court.

50. In view of the facts and circumstances narrated hereinabove, the case laws relied upon by Mr. Nedumpara does not assist him in any way. As held in the decisions of the Hon'ble Supreme Court and this Court, set out hereinabove, the undertakings given by Defendant No. 1 are binding on him and he is estopped from going back on the same.

51. In view thereof, the following Order is passed:

(i) The above Notice of Motion is dismissed.

(ii) The Defendant No. 1 is directed to pay exemplary costs of Rs.10 Lacs to the Plaintiffs within a period of two weeks from today."

8. The result of this order was that Shri Nedumpara felt emboldened enough to file a writ petition, being Writ Petition (L) No. 1180 of 2018, in his own name against the Single Judge of the Bombay High Court who passed this order, the said Single Judge being arrayed as the sole respondent in the said petition. The prayers in the said petition are set out in paragraph 2 of the order dated 26.07.2018. The petition was dismissed holding that it was not maintainable. Paragraph 2 of the said petition reads as follows:

> "**2.** The learned Judge (respondent herein) who has taken up the said Notice of Motion, vide Judgment pronounced on 05/03/2018 rejected the Motion moved by said Vilas Gaokar by imposing exemplary costs of Rs. 10,00,000/- on the said Vilas Gaokar. However, while rejecting the Notice of Motion, the learned Judge made certain observations about the petitioner which according to the petitioner are prejudicial. In the circumstances, the petitioner has filed this petition under Article 226 of the Constitution of India seeking following reliefs:
>
> > *a. To declare that the citizen whose fundamental rights are infringed by a judicial order is entitled to all legal remedies, common law, equitable and declaratory, compensation and damages, so too, even criminal action like such infringement at the hands of legislature, executive and fellow citizens, and to assume otherwise will render part III of the Constitution nugatory.*
> >
> > *b. In the event of prayer (a) above being granted in favour of the Petitioner, he is entitled to initiate civil and even criminal proceedings against Respondent no. 1 (though the*

Petitioner intends to institute no criminal proceedings) in as much as the observations of Justice Kathawalla, one rendered behind his back is exfacie false and defamatory, even assuming that the said observations were made without any ulterior or malicious intentions.

c. To declare that no distinction can be made between subordinate judiciary and superior judiciary in so far as the prohibition contained in Article 13 (2) of the Constitution is concerned and that the superior judiciary also falls within the ambit of "State" under Article 12 just like the subordinate judiciary.

d. To grant compensation of Re. 1/- as damages, though the damage suffered by the Petitioner by virtue of the Order at Exhibit A, dated 05.03.2018 at the hands of Justice Kathawalla is irreparable and cannot be adequately compensated in terms of money.

e. Without prejudice to the reliefs (a) to (d) above and in furtherance thereof relegate the Petitioner to the civil court for the enforcement of the remedies vested in him, his fundamental rights being violated by virtue of Ex P1 at the hands of Justice Kathawalla, Respondent no. 1 above.

f. Any other order as this Hon'ble Court may deem fit in the interest of justice."

It is clear that prayers (b), (d), and (e) are clearly contemptuous, and an attempt to bring the administration of justice by a premier High Court of this country to a grinding halt. If lawyers can be bold enough to file writ petitions against judges of a High Court on observations

judicially made by a Judge of the High Court, the very independence of the judiciary itself comes under threat. Given the course of behaviour of Shri Nedumpara before Tribunals, the Bombay High Court, and this Court, it is clear that the said advocate has embarked on a course of conduct which is calculated to defeat the administration of justice in this country.

9. When contempt is committed in the face of the Court, judges' hands are not tied behind their backs. The majesty of this Court as well as the administration of justice both demand that contemptuous behavior of this kind be dealt with sternly. An early judgment of this Court in *Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh*, 1954 SCR 454 proceeded cautiously, but made it clear that where a judge is personally attacked, it would be proper for the judge to deal with the matter himself, in cases of contempt in the face of the Court. This Court stated the law thus:

> "We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example in a court where

> there is only one judge or two and both are attacked. Other cases may also arise where it is more convenient and proper for the Judge to deal with the matter himself, as for example in a contempt *in facie curiae*. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will comfort themselves with that dispassionate dignity and decorum which befits their high office and will bear in mind the oft quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by Judges who have no personal interest or concern in his case."
>
> (at pp. 464-465)
> (emphasis supplied)

10. In *Leila David (2) v. State of Maharashtra*, (2009) 4 SCC 578, two learned Judges differed on whether contempt in the face of the Court can be dealt with summarily, without any need of issuing notice to the contemnors, and whether punishment can be inflicted upon them there and then. Pasayat, J. held that this is, indeed, the duty of the Court. Ganguly, J. differed. A three-Judge Bench of this Court, in *Leila David (6) v. State of Maharashtra*, (2009) 10 SCC 337, settled the law, making it clear that Pasayat, J.'s view was the correct view in law. This Court held:

> "**28.** As far as the suo motu proceedings for contempt are concerned, we are of the view that Arijit Pasayat, J. was well within his jurisdiction in passing a summary order,

having regard to the provisions of Articles 129 and 142 of the Constitution of India. Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large, including Senior Law Officers, such as the Attorney General for India who was then the Solicitor General of India.

29. While, as pointed out by Ganguly, J., it is a statutory requirement and a salutary principle that a person should not be condemned unheard, particularly in a case relating to contempt of court involving a summary procedure, and should be given an opportunity of showing cause against the action proposed to be taken against him/her, there are exceptional circumstances in which such a procedure may be discarded as being redundant.

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

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"**35.** Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the

> courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a court proceeding, the object is not to merely scandalise or humiliate the Judge, but to scandalise the institution itself and thereby lower its dignity in the eyes of the public."

11. *Leila David (6)* (supra) has been followed in *Ram Niranjan Roy v. State of Bihar & Ors.*, (2014) 12 SCC 11 thus:

> "**16.** Thus, when contempt is committed in the face of the High Court or the Supreme Court to scandalise or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalising the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempt committed in the face of the court need a strict treatment. The appellant, as observed by the High Court was not remorseful. He did not file any affidavit tendering apology nor did he orally tell the High Court that he was remorseful and he wanted to tender apology. Even in this Court he has not tendered apology. Therefore, since the contempt was gross and it was committed in the face of the High Court, the learned Judges had to take immediate action to maintain honour and dignity of the High Court. There was no question of giving the appellant any opportunity to make his defence. This submission of the appellant must, therefore, be rejected."

12. In *R.K. Anand v. Delhi High Court*, (2009) 8 SCC 106, a three-Judge Bench of this Court examined the law and stated that a direction prohibiting the advocate from appearing in a Court for a specified period was a punishment that could be imposed in the contempt

jurisdiction. After examining the judgments on the point, this Court held:

> "**238.** In *Supreme Court Bar Assn.* [(1998) 4 SCC 409] the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practise law and the bar was considered as a punishment inflicted on him. [Though in para 80 of *Supreme Court Bar Assn. case* [(1998) 4 SCC 409], as seen earlier (in para 230 herein), there is an observation that in a given case it might be possible for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt.] In *Ex. Capt. Harish Uppal* [(2003) 2 SCC 45] it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and orderly functioning of the courts but may become necessary for the self-protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately, these examples are not from imagination.

These things are happening more frequently than we care to acknowledge.

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

240. It is already explained in *Ex. Capt. Harish Uppal* [(2003) 2 SCC 45] that a direction of this kind by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts does not affect the right of the lawyer concerned to carry on his legal practice in other ways as indicated in the decision. We respectfully submit that the decision in *Ex. Capt. Harish Uppal* v. *Union of India* [(2003) 2 SCC 45] places the issue in correct perspective and must be followed to answer the question at issue before us."

(emphasis supplied)

13. Conduct of this kind deserves punishment which is severe. Though we could have punished Shri Nedumpara by this order itself, in the interest of justice, we issue notice to Shri Nedumpara as to the punishment to be imposed upon him for committing contempt in the face of the Court. Notice returnable within two weeks from today.

14. This judgment is to be circulated to the Chief Justice of every High Court in this country, the Bar Council of India, and the Bar Council of Kerala, through the Secretary General, within a period of four weeks from today.

15. Insofar as the Writ Petition is concerned, the Writ Petition, in essence, seeks a second review of our judgment reported in *Indira Jaising v. Supreme Court of India through Secretary General and Ors.*, (2017) 9 SCC 766. Even otherwise, it is settled law that an Article 32 petition does not lie against the judgment of this Court. We are also of the view that Section 16(2) of the Advocates Act, 1961 is a provision which cannot be said to be unconstitutional and the designation of Senior Advocate cannot be as a matter of bounty or as a matter of right.

16. For these reasons, the Writ Petition stands dismissed.

…….....J.
(ROHINTON FALI NARIMAN)

.....J.
(VINEET SARAN)

New Delhi;
March 12, 2019.

ITEM NO.1501 COURT NO.5 SECTION X

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 191/2019

NATIONAL LAWYERS CAMPAIGN FOR JUDICIAL TRANSPARENCY AND REFORMS & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date : 12-03-2019 This petition was called on for pronouncement of order today.

For Petitioner(s) Mr. Rabin Majumder, AOR

For Respondent(s)

*****

Hon'ble Mr. Justice R.F. Nariman pronounced the reportable order of the Bench comprising His Lordship and Hon'ble Mr. Justice Vineet Saran.

The Court, while dismissing the Writ Petition, came to the following conclusion:

> **"13. Conduct of this kind deserves punishment which is severe. Though we could have punished Shri Nedumpara by this order itself, in the interest of justice, we issue notice to Shri Nedumpara as to the punishment to be imposed upon him**

for committing contempt in the face of the Court. Notice returnable within two weeks from today.

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Pending applications, if any, stand disposed of.

(R. NATARAJAN) **(RENU DIWAN)**

COURT MASTER (SH) **ASSISTANT REGISTRAR**

(Signed reportable order is placed on the file)