

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERVENTION APPLICATION (ST) NO. 18348 OF 2021

IN

WRIT PETITION NO. 4947 OF 2021

Samina Arif Khan alias Dhanlaxmi Chandrakant Devrukhkar

... Applicant

In the matter between :

Dhanlaxmi Chandu Devrukar alias Samina Arif Khan,

... Petitioner

Versus

1. The Town Planning/Land Acquisition Officer,
Malad, Mumbai District, Administrative Building,
5th Floor, Natakwala Lane, S.V. Road, Borivali (East),
Mumbai – 400 095 through the Government Pleader,
Appellate Side, High Court, Bombay.
2. The Deputy Director of Land and Survey Record,
DD Building, 1st Floor, Old Tax Building, Fort,
Mumbai – 400 023 through the Government Pleader,
Appellate Side, High Court, Bombay.
3. The District Supt. Of Land and Survey Record,

Administrative Building, 10th Floor,
Government Colony, Bandra (East),
Mumbai – 400 051 through Government Pleader,
Appellate Side, High Court, Bombay.

4. Hon'ble Revenue Minister, Mantralaya,
Fort, Mumbai 400 023 through the
Government Pleader, Appellate Side,
High Court, Bombay.
5. The Mumbai Pradesh Congress Committee,
Veerkope, Vakhadi, i.e. Village Chinchivali,
Bandar Road, Malad (West), Mumbai – 400 064.
6. Sardar Vallabhbhai Patel Academy Trust,
Vittal Sadan, Congress Committee, V.P. Road,
Fort, Mumbai – 400 004.
7. Brahut Bharti Samaj Trust Devrukhwadi Wadi,
Chinchivali, Bandar Road, Malad (West),
Mumbai – 400 064. ... Respondents

WITH

CRIMINAL APPELLATE JURISDICTION

SUO-MOTU CONTEMPT PETITION NO. 1 OF 2021

IN

INTERVENTION APPLICATION (ST) NO. 18348 OF 2021

IN

WRIT PETITION NO. 4947 OF 2021

High Court on its own Motion ... Petitioner

Versus

1. S.M. Naqvi

Advocate and Notary, Government of India,
49, Roshan Estate, Jari Mari, Kurla (West),
Mumbai – 400 070

2. Sandeep Sadanand Dharne,
202, Laxmi Palace, Cross Road No.3,
Liberty Garden, Malad (West),
Mumbai – 400 064.

... Respondents

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 23929 OF 2021
IN
COMMERCIAL APPEAL (L) NO. 23906 OF 2021
IN
INTERIM APPLICATION (L) NO. 23015 OF 2021
IN
EXECUTION APPLICATION (L) NO. 19230 OF 2021
IN

COMMERCIAL ARBITRATION PETITION NO. 20 OF 2020

1. M/s. Sanskriti Developers,
A partnership firm, registered under the
Indian Partnership Act, 1932, having office at
21, 13th Khetwadi Lane, Mumbai – 400 004.
2. Mr. Vijay Jain,
having its office at 207, Mantri Building,

JSS Road, Girgaum, Mumbai – 400 004.

3. Hitesh Bohra,
Having office at 21, 13th Khetwadi Lane,
Mumbai – 400 004.
4. M/s. D.R. Developers,
A proprietary concern through its Proprietor,
Mr. Sailesh Vanigota, having its office at 207,
Mantri Building, JSS Road, Girgaum,
Mumbai 400 004.

... Applicants/
Original Appellants

In the matter between :

1. M/s. Sanskriti Developers,
A partnership firm, registered under the Indian
Partnership Act, 1932, having office at 21,
13th Khetwadi Lane, Mumabi – 400 004.
2. Mr. Vijay Jain,
having its office at 207, Mantri Building,
JSS Road, Girgaum, Mumbai – 400 004.
3. Hitesh Bohra,
Having office at 21, 13th Khetwadi Lane,
Mumbai – 400 004.
4. M/s. D.R. Developers,
A proprietary concern through its Proprietor,
Mr. Sailesh Vanigota, having its office at 207,
Mantri Building, JSS Road, Girgaum,
Mumbai 400 004.

... Appellants/
Respondents

Versus

M/s. Mandal Infrastructure Pvt. Ltd.

A private limited company having its Office at
342, New Corporate Plaza, Ramchandra Lane,
Malad (West), Mumbai – 400 064.

... Respondent

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Mr. Ashok Dhanuka alongwith Mr. Aiqan Memon instructed by W3Legal, LLP for the Applicant in IAST 18348 of 2021.

Mr. Rohan Barge, for the Petitioner in WP 4947 of 2021.

Mrs. S.D.Vyas, 'B' Panel Counsel for the State in WP 4947 of 2021.

Mrs. Aruna Pai, Public Prosecutor, for the State in SMCP 1 of 2021.

Mr. D.P.Singh, for Union of India.

Mr. Sarif S. Khan, for Contemnor No.1 in SMCP 1 of 2021.

Mr. Mohd. Muqim Khan, for Contemnor No.2 in SMCP 1 of 2021.

Mr. Somnath Anchan for the auction purchaser.

Dr. Birendra Saraf, Senior Advocate alongwith Mr. Karl Tamboly, Mr. Satchit Bhogle instructed by Mr. Khan Javed Akhtar, for the Appellant.

Mr. Sharan Jagtiani, Senior Advocate alongwith Ms. Surabhi Agrawal, Mr. Kashish Mainkar, Ms. Treesa Ann Benny instructed by Wadia Ghandy and Co., for the Respondent in Appeal (L) NO.23906 of 2021. .

Mr. D.N.Kher, Court Receiver with Mr. A.B.Malwankar, Section Officer, present.

Mr. Nausher Kohli, Amicus Curiae alongwith Mr. Akash Agarwal present.

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**CORAM : S.J. KATHAWALLA AND
MILIND N. JADHAV, JJ.**

DATE : 18th FEBRUARY, 2022

JUDGMENT (PER : S.J. KATHAWALLA, J.) :

1. In Intervention Application (ST) No.18348 of 2021 taken out in Civil Writ Petition No.4947 of 2021, a Praecipe dated 29th September, 2021 was received from Advocate Shri A.R.Dhanuka on behalf of the Applicant – Samina Arif Khan @ Dhanlaxmi Chandrakant Devrukhkar ('Samina') to place the Intervention Application

for urgent hearing and orders since according to Samina, Advocate Shri Rohan Barge and Notary - Shri S.M.Naqvi alongwith an unknown person have filed Writ Petition No.4947 of 2021 before this Court in the name of Samina, seeking reliefs against the Town Planning / Land Acquisition Officer, Malad and Others, without her consent, knowledge and authority, thereby committing offences of cheating, fraud, impersonation and forgery against her and also this Court.

2. In view of the serious allegations made by Samina, the captioned Intervention Application along with Writ Petition No.4947 of 2021 were placed on Board before this Court on 4th October, 2021. On that day, the Advocate representing – Samina reiterated that Samina had not given any instructions to Advocate Rohan Barge to file the captioned Writ Petition. It was also submitted that after Samina's Advocate obtained a certified copy of Writ Petition No. 4947 of 2021 filed in her name by Advocate Rohan Barge, she noted that the signature after the prayer clause and under the verification clause at pages 11 and 12 respectively of the Writ Petition, are not hers. We therefore passed an Order directing Advocate Rohan Barge to remain present before us on the same day at 2.30 p.m. Since Advocate Rohan Barge was not present at 2.30 p.m., we directed him to remain present in Court on 5th October, 2021, at 2.30 p.m.

3. On 5th October, 2021 Advocate Rohan Barge was present before this Court along with one Mr. R.L.Agawane, a registered clerk and one Shri Sandeep S.

Dharne. An Affidavit of Shri Sandeep Dharne was tendered in Court. In the said Affidavit, which was admittedly drafted by Advocate Rohan Barge, it was stated that in the month of January, 2020, Shri Dharne had approached the Registered Clerk Shri Agawane, who introduced him to Advocate Rohan Barge for filing the above Writ Petition before this Court; that in the meeting with Advocate Rohan Barge, Shri Dharne had appraised him of all the facts in the matter, including the fact that Shri Dharne had with him the Power of Attorney executed in his favour by Samina in the year 2005; that he (Shri Dharne) had contacted Samina and sought her confirmation to file the captioned Writ Petition before this Court; that after the said Writ Petition was drafted by Advocate Barge, Shri Agawane, Registered Clerk, called Mr. Dharne “for presenting the client before the High Court for Notary purpose.” Shri Agawane thereupon read over the contents of the Writ Petition and the said Writ Petition was handed over to him (Shri Dharne) by Shri Agawane “for notary purpose for identification”; that since Samina was hospitalised, Shri Dharne signed the Writ Petition on her behalf and the said fact was not disclosed to Advocate Barge or Shri Agawane; that he was having power of attorney of Samina “for filing all documents in Revenue Departments and Government purposes and also for attending all Courts of Law”; that he inadvertently signed the Writ Petition on behalf of Samina; that Samina has filed the above Writ Petition recording the facts which are incorrect only because she has not paid the legal fees for the matter which Shri Dharane attended on

her behalf in revenue court's and therefore, "he do not have prime role in the Writ Petition."

4. We therefore, asked Shri Dharne to produce the original Power of Attorney, or a copy thereof executed by Samina in his favour. He informed the Court that he is not having the original or the copy of the same "at present". However, he admitted that under the said Power of Attorney which was executed by Samina in his favour, he was to represent Samina only in revenue matters and was not given the power to file Writ Petition No.4947 of 2021.

5. Samina who was also present before this Court on 5th October, 2021 along with her Advocate, informed the Court that she was not hospitalized at the relevant time as alleged and that at no point of time was she informed by Shri Dharne that the above Writ Petition was to be filed, or has been filed before the Court on her behalf.

6. Since Shri S.M.Naqvi, Notary, Government of India, has put his endorsement at page No.12 of the Writ Petition confirming that Samina has affirmed / verified the above Writ Petition before him, we directed Shri Naqvi to remain present before this Court on 6th October, 2021 at 10.30 a.m., along with the Notary Register No.437 wherein he has made entry with regard to the document that he has notarized on 11th February, 2020 under Serial No.478 Page No.41.

7. On 6th October, 2021 the Notary - Advocate S.M.Naqvi appeared in the

morning session and sought time to place his Notary Register before the Court at 2.45 p.m. Upon him producing the Notary Register at 2.45 p.m., we initially showed him the Verification Clause at page 12 of the Writ Petition, whereunder the signature of Samina appears. After the signature of Samina, Advocate Naqvi has put his rubber stamp “BEFORE ME” and thereunder Shri Naqvi has put his signature and has written the date ‘11.2.2020’ in his own handwriting. Below his signature and date, Shri Naqvi has affixed his rubber stamp describing him as ‘Notary – Govt. of India’ and his address thereunder. When we asked the Notary Shri Naqvi whether Samina was present before him and whether she had put her signature in his presence, the Notary – Shri Naqvi answered in the affirmative. We therefore, asked him to show the signature of Samina in the Notary Register produced by him. Thereupon, he made one more false statement that she had signed the Verification Clause before him, but his clerk had by mistake taken the signature of Shri Dharne in the Notary Register. When we warned Shri Naqvi of taking stern action against him for making false statements before this Court, he admitted that he has never met Samina. He stated that the Verification Clause in the Writ Petition was signed in his presence by Shri Dharne as ‘Samina A. Khan’. When we asked him as to how he allowed Shri Dharne to sign as ‘Samina A. Khan’ and how he has put his (Shri Naqvi’s) rubber stamp and signature verifying that Samina A. Khan has signed before him, he stated that he has done it in good faith. When we asked him how much he charged for this

unprofessional conduct, he informed the Court that he has charged Rs. 60/-. However, Shri Dharne informed the Court that he had paid Shri Naqvi approximately Rs. 1000/- to Rs. 1500/- for the same.

8. Since Shri Naqvi, as recorded hereinabove, and also in our Order dated 6th October, 2021, has deliberately made incorrect and false statements knowing the same to be false, thereby scandalizing the authority of this Court and interfering with the administration of justice, we were satisfied that there exists a prima facie case for issuance of a Show Cause Notice for considering action under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971 against Shri S.M. Naqvi, Advocate and Notary. The Registry was therefore, directed to issue Show Cause Notice to Shri S.M. Naqvi (Advocate and Notary) under Rule 9 of Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960 made returnable on 21st October, 2021.

9. Since Shri Dharne had filed Writ Petition No.4947 of 2021 in the name of Samina against the Town Planning / Land Acquisition Officer and others and had affirmed the same in presence of Shri S.M. Naqvi, Advocate and Notary, by signing the same as 'Samina A. Khan', in our view Shri Dharne had scandalized the authority of this Court; interfered with the due course of judicial proceedings and obstructed the administration of justice. We were therefore satisfied that there exists a prima facie case for issuance of notice for considering action under Article 215

of the Constitution of India and the Contempt of Courts Act, 1971 against Shri Sandeep Dharne. The Registry was therefore directed to issue Show Cause Notice to Shri Sandeep Dharne under Rule 9 of Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960, made returnable on 21st October, 2021. A copy of the Order dated 6th October, 2021 recording all the above facts, was directed to be forwarded to Shri. Anil Singh, Additional Solicitor General (Western Region), and the matter was adjourned to 21st October, 2021.

10. Accordingly, show cause notices were issued to Advocate Naqvi as well as to Shri Dharne and Suo Motu Criminal Contempt Petition No.1 of 2021 was registered against them.

11. Pursuant to the above Order, Shri Sandeep Dharne has filed two Affidavits both dated 17th November, 2021. Though he has tried to shift the blame on Samina and has tried to allege that Samina had executed a Power of Attorney in his favour to take steps qua the property mentioned in the said Power of Attorney, he was aware of the fact that though Writ Petition No.4947 of 2021 is filed by him on her behalf, in fact a perusal of the Power of Attorney indicates that Samina had certainly not authorized Shri Dharne to file any Writ Petition in this Court. Since Shri Dharne has not produced any document/s to indicate that Samina was at the relevant time in hospital, and that he had therefore obtained her oral consent, as alleged by him, we do not accept the said statement made by Shri Dharne, more so in light of the fact that

Samina has herself denied before this Court on 5th October, 2021, that she was in hospital at the relevant time. We are therefore, satisfied that Shri Dharne has by signing the Writ Petition in the name of Samina made an attempt to mislead the Court. In any event, since he has in paragraph No.10 of the Affidavit dated 17th November, 2021, tendered an unconditional apology, interalia stating that, “I hereby tender my unconditional apology for my conduct of signing the Petition as Samina before the Notary Public and submitting the said Petition without even informing the Advocate on Record who has filed the Petition in this Court in good faith”, we accept his unconditional apology and direct him to pay Rs.2,000/- to the Maharashtra State Legal Services Authority within four days from the date of uploading this Order. The Power of Attorney executed by Samina in favour of Shri Dharne stands revoked with immediate effect and Shri Dharne undertakes not to act on the said Power of Attorney at any point of time in future.

12. As far as the Notary Shri Naqvi is concerned, as stated hereinabove, he on more than one occasion made statement before the Court knowing the same to be false, which statements he later corrected. We are satisfied that Shri Naqvi, Advocate and Notary did make an attempt to mislead this Court and corrected his statements only after he was warned of stern action. However, since in his Affidavit he has stated that he is 72 years old and is tendering an unconditional apology and will be careful in future, we accept the unconditional apology tendered by the Notary Shri S.M. Naqvi.

He shall also pay Rs.2,000/- to the Maharashtra State Legal Services Authority within four days from the date of uploading this Order.

13. Though we have not issued Notice to Advocate Rohan Barge, we have pointed out to Advocate Barge that before preparing the Writ Petition in the name of Samina, on the representation of Shri Dharne that he holds a Power of Attorney of Samina in his favour, it was his duty to call for the said Power of Attorney allegedly executed by Samina in favour of Shri Dharne and verify the statement made by Shri Dharne. To that extent he has been negligent. Advocate Rohan Barge has tendered his unconditional apology and has assured the Court that there will be no such lapse on his part in future whilst dealing with any litigants. We accept the unconditional apology tendered by Advocate Barge and warn him of stern action in the event of such conduct being repeated in future.

14. In view of the above, Shri Dharne seeks to withdraw the above Writ Petition No. 4947 of 2021. The Writ Petition is therefore disposed of. Intervention Application (ST) No.18348 of 2021 taken out by Samina also stands disposed of. Suo Motu Criminal Contempt Petition No.1 of 2021 also stands disposed of. However, Samina will be at liberty to take out appropriate proceedings against Shri Dharne, which if taken out will be decided on its own merits without being influenced by this Order.

15. Whilst we were dealing interalia with the aforesaid unprofessional

conduct of the Notary Shri S.M.Naqvi, one more matter pertaining to the unprofessional conduct of a Notary, i.e. Advocate Shri Sandeep Shah was moved before us through Interim Application (L) No.23929 of 2021 in Comm. Appeal (L) No.23906 of 2021. In this case/matter, Comm. Appeal (L) No.23906 of 2021 was filed by Advocate Khan Javed Akhtar. The Appeal was filed and notarized prior to the Order impugned in the Appeal being uploaded by the Learned Single Judge. In other words, the impugned Order was passed on 12th October, 2021 and was uploaded and made available to the parties only on 13th October, 2021. However, Advocate Khan had prepared the Appeal on 12th October, 2021 stating therein that the impugned Order dated 12th October, 2021 is annexed as Exhibit A to the Appeal, and asked Partner/Director of the Appellant to get the appeal affirmed before the Notary on 12th October, 2021. Mr. Vijay Jain, the Partner/Director of the Appellants has informed us that he got the Appeal notarized on 12th October, 2021 from the Notary - Shri Sandip Shah, since Advocate Khan Javed Akhtar had asked him to do so on 12th October, 2021. He also informed the Court that he had drawn the attention of Shri Sandip Shah to the fact that the impugned Order was not uploaded / made available and therefore, Exhibit 'A' was not annexed to the Appeal. Despite the above, Shri Sandip Shah notarized the above Appeal on 12th October, 2021 with an incorrect endorsement in his own handwriting : **“Ex-A to E are annexed hereunder. Sd/- Sandip Shah, Advocate & Notary”**. Upon noting the aforesaid mischief, we asked Advocate

Akhtar as to why he asked his client to get the Memo of Appeal notarized before uploading of the impugned Order by the Learned Single Judge, to which Advocate Akhtar had no answer. We therefore, directed Shri Shah, Advocate & Notary to remain present before this Court along with his Notary Register on 21st October, 2021 at 04.30 p.m.

16. Accordingly, Shri Shah, Advocate & Notary remained present before us along with his Notary Register. The Notary Register showed that he has notarized the above Appeal on 12th October, 2021. When we asked him as to why he has made an endorsement in his own handwriting at internal page 15, running page 10 of the Appeal on 12th October, 2021, stating that **“Ex-A to E are annexed hereunder. Sd/- Sandip Shah, Advocate & Notary”**, when Exhibit ‘A’ (the impugned Order) was uploaded / made available only on 13th October, 2021, he informed the Court that since in the body of the Appeal prepared by Advocate Akhtar, Exhibits ‘A’ to ‘E’ were mentioned, he was misguided and made the said endorsement, **“Ex-A to E are annexed hereunder Sd/- Sandip Shah, Advocate & Notary.”** When we pointed out to Shri Sandip Shah that the explanation given by him to this Court is false and untenable on the face of the document since when he has put his stamp and signature on each of the Exhibits, i.e. Exhibits ‘B’ to ‘E’, he could not have missed the fact that Exhibit ‘A’ is not annexed to the Appeal, he admitted having given false explanation and expressed regret for his conduct.

17. By our Order dated 21st October, 2021, passed in Interim Application (L) No.23929 of 2021, after recording the aforesaid conduct of Advocate Khan and Shri Sandip Shah, Advocate and Notary, we have interalia recorded as under :

“8. In view of the above, it prima facie appears that Advocate – Khan Javed Akhtar appearing for the Appellant, as well as Shri Sandip A. Shah, Advocate & Notary, are not only guilty of unprofessional conduct but they have made statements before the Court which are false and incorrect to their knowledge with a view to mislead the Court. Advocate – Khan Javed Akhtar and Shri Sandip A. Shah, Advocate & Notary shall therefore file their respective Affidavits on or before 27th October, 2021 explaining why action should not be taken against them for their afforested conduct.

9. The Court Receiver, Bombay High Court, shall take possession of the flats as ordered by the Learned Single Judge and put his locks on the said flats. Needless to add that the said exercise shall be carried out subject to further orders passed by this Court on the adjourned date and / or any other date when the above Appeal is taken up for admission / hearing.

10. Stand over to 27th October, 2021 to enable the Advocate – Khan Javed Akhtar appearing for the Appellant as well as Shri Sandip A. Shah, Advocate & Notary to file their respective Affidavits.

11. A copy of this Order shall be forwarded to the Learned ASG Shri Anil Singh.”

18. Accordingly, Advocate Javed Akhtar Khan filed his Affidavit, paragraph No.10 of which is reproduced hereunder :

“10. I say that I hereby tender my unconditional apology and unqualified apology for the said mistake of not mentioning in paragraph 2 of the Appeal Memo that the copy was unavailable at the time of Notary. I have hereinabove explained the circumstances in which the said error has taken place. I had not intended to file any false information or to tamper with the

proceedings or court proceedings or notary proceedings with malafide intentions or with ulterior motive. I say that the said mistake is not intentional to gain anything nor I have any interest in the matter to gain unlawfully. I say that henceforth I will be taking extra care and will be extra cautious in such matters. I say with folded hands that I am the sole bread earner of my family consisting of wife and two kids who are studying in class X and Class VI respectively therefore, request this Hon'ble Court for not action to be taken against me."

19. Advocate Sandeep Shah has also filed an Affidavit, paragraph 10 of which is reproduced hereunder :

"I say that I hereby tender my unconditional and unqualified apology for the said mistake committed by me at page No.10 or page No.136 or page No.138 of the Appeal memo and I have hereinabove explained the circumstances in which the said error has taken place. I had not intended to file any false information. I say that henceforth will be taking extra care or will be extra cautious of the said mistake committed by me. I say that I am the only bread earner of my family. I say that the mistake being unintentional therefore, this Hon'ble Court should have a mercy on me and family members. I say that I undertake to this Hon'ble Court that I shall not commit such mistake / errors in future. I say that I am having no source of income other than this. I say that all my children at studying and any adverse orders being passed shall impede their education. I say that I am suffering from high diabetes and also from hypertension."

20. In view of the above, we accept the unconditional and unqualified apology tendered by Advocate Javed Akhtar Khan, as well as Notary Shri Sandeep Shah. However, they shall also pay Rs.2000/- each to the State Legal Aid Fund, Maharashtra State Legal Services Authority within four days from the date of

uploading this Order.

21. In the above Appeal, the Court Receiver was directed to put up the office premises of the Appellants for sale. The Appellants have in order to avoid sale of the same, without prejudice to their rights and contentions, deposited an amount aggregating to Rs.4.40 Crores with this Court, i.e. Rs.4 Crores with the Court Receiver, High Court, Bombay, and Rs.40 Lakhs with the Prothonotary and Senior Master of this Court. The Court Receiver will transfer the amount deposited with him to the Prothonotary and Senior Master of this Court. The Respondent – Mandal Infrastructure Pvt. Ltd. may move the Single Judge in execution proceedings seeking withdrawal of the amount deposited by the Appellant, or part thereof which Application will be heard on its own merits. The Execution Application/proceedings shall be heard and disposed off by the Learned Single Judge at the earliest and all contentions of the parties are kept open. The above Appeal is accordingly disposed of. Interim Application (L) No.23929 of 2021 also stands disposed of. The Show Cause Notice issued to Shri Vijay Jain for putting up a new door in front of the original door of the office with a view to cover the Court Receiver's board put up on the original door, stands discharged. The Court Receiver's Report stands disposed off.

22. In view of the above unprofessional manner in which the Advocates appointed as Notaries are functioning, by our Order dated 26th October, 2021 we recorded that we would like to make certain suggestions/recommendations *qua*

changes required in the Notaries Act, 1952 and to the Rules framed thereunder, as also the Circulars issued from time to time, so as to avoid any mischief being played by any Advocate, Notary or a party, in the course of getting any document notarized. We therefore appointed Advocate Nausher Kohli as Amicus Curiae, to assist the Court in its aforestated endeavour.

23. Mr. Kohli, Learned Advocate has submitted his Report dated 9th December, 2021. We have perused the Report submitted by Mr. Kohli. Mr. Kohli has taken us through the ancient and distinguished history of Notaries emanating from the Roman Empire. We note that this Court in *Prataprai Trumbaklal Mehta vs Jayant Nemchand Shah and Anr.*¹, has held that Notaries enjoy high status throughout the country and our Courts take judicial notice of the seal of a Notary. Significant weight is attached to a document attested by a Notary. Undisputedly, the office of a Notary assumes immense legal significance.

24. The President of India granted assent to the Notaries Act 1952 on August 9, 1952 (“Act”). The Act came into force on December 14, 1956. Prior to the passing of the Act, the Government of India was empowered to appoint Notaries Public under Sections 138 and 139 of the Negotiable Instruments Act, 1881, for the functioning of Notaries. Prior to the passing of the Act, the Master of Faculties in England would appoint Notaries Public in India for performing notarial functions.

25. In exercise of the powers conferred by Section 15 of the Act, the Central

¹ 1991 SCC OnLine Bom 205

Government has framed the Notaries Rules, 1956 (“**Rules**”).

26. Notaries are governed by the Act and the Rules. In addition, in order to curb instances of mischief, the Government of Maharashtra, Law & Judiciary Department, had issued Circulars dated December 18, 2001 and January 25, 2008 (“**Circulars**”).

27. Despite the Act and Rules having been enacted approximately 70 years ago, there have till date, not been any major amendments / reforms introduced to the Act and Rules. Illustratively, a Notary is entitled to charge travelling allowance by road at the rate of Rs.20/- per kilometre. This figure was inserted by an amendment in 2014, i.e. 7 years ago. The cost of fuel has certainly increased over the past 7 years. Similarly, the fees payable to a Notary for undertaking a notarial act was also last amended in 2014.

28. Amongst the various functions of a Notary, perhaps the most important is that of attesting signatures on documents. This is aimed at reducing fraud / misrepresentation. However, as set out hereinabove, as of late, it has been observed that documents are being notarized by a Notary in the absence of the signatory. Quite often, the document to be notarized is sent to a Notary who then notarizes the document in the absence of the signatory to the document. There are multiple ways in which this malpractice is conducted. A Notary often leaves a blank row in his / her Register which is filled subsequently. More often than not, the person signing the

Register is different from the person who signed on the document to be notarized, or the signatory to the document affixes his signature subsequently, i.e. after the notarization, both in the document faultily notarized and in the Notary Register, and the Court before which such document is filed is ignorant of the mischief played, unless the mischief is caught out due to some lapse in the document. Such illegal practices defeat the very purpose for which a document is required to be notarized. It is distressing to note that in some cases, even Advocates support such illegal practices by approaching the Notary Public to notarise a document/affidavit to be filed in a judicial proceeding without being accompanied by the person whose signature has to be affixed in presence of the notary.

29. Furthermore, other instances of malpractice have recently come to light. Illustratively, in the present matter, whilst notarizing documents such as an Appeal, it has been observed that the Notary did not thoroughly check the Exhibits / total number of pages and mechanically proceeded to notarize such court filing. Another challenge faced is that even after the registration of a Notary is suspended / cancelled, such Notary continues to notarize documents. Moreover, persons not registered under the Act also notarize documents.

30. Needless to state that the Courts, when confronted with the conduct as discussed in the preceding paragraphs, must proceed to deal with all the parties responsible for the same, strictly and take them to task, in order to prevent recurrence

of the same.

31. Mr. Kohli has brought to our notice that this Court and various Courts across India have repeatedly encountered instances of misuse / mischief by parties / Advocates and Notaries². Whilst so observing, guidelines and strictures have been passed from time to time. It was in these circumstances and owing to several complaints received from the public at large regarding professional misconduct, that the Government of Maharashtra proceeded to issue the Circulars with a view to curb the mischief. Despite the aforesaid corrective measures, the Act and Rules have been found lacking in preventing the prevalent misuse and mischief.

32. It has recently been observed that the Notaries have started notarizing documents from vehicles parked in a public parking lot instead of an office/chamber. It has also been observed that Notaries have been operating from public taxis around the vicinity of this Court. Though several photographs of such vehicles/public taxis have been produced before us, only by way of illustration we are producing hereunder three photographs which shows to what extent the legal profession has degraded causing anguish not only to the judiciary but also lowering the dignity of the profession in the eyes of general public / common man.

² Bar Council of Andhra Pradesh vs. B. Narayan Swamy & Anr. [(2014) 16 SCC 516] , Prataprai Trumbaklal Mehta vs. Jayant Nemchand Shah & Anr. [1991 SCC OnLine Bom 205] and J.G. Hegde vs. R.D. Shukla [2003 SCC OnLine Bom 908]







33. Though we are told that many Advocates who are Notaries have due to the pandemic, surrendered their office premises which they were using as licensees, and are carrying on their job of notarizing documents in the aforesaid manner there are several notaries who have been operating from private vehicles and taxis much

before the pandemic. In any event though we have full sympathy for the Advocates who do not have their offices of their own to function from, we do believe that the dignity of the profession needs to be maintained and the legal profession cannot be allowed to function from the streets. We are also not able to understand how the Municipal Corporation of Greater Mumbai (MCGM) and also the Appropriate Authority have not taken any action till date in regard to the abovementioned functioning of Advocates and Notaries from parking areas and streets manned by the MCGM.

34. Subsequent to the passing of our Order dated 26th October, 2021, Mr. Kohli has brought to our notice that the Department of Legal Affairs has published the Notaries (Amendment) Bill, 2021 (“**Draft Bill**”) and has invited comments and suggestions on the Draft Bill by December 15, 2021.

35. A salient feature of the Draft Bill is that it proposes the digitization of the records of a Notary. Further, provisions have been proposed for the digitization and automation of notarial work undertaken by Notaries.

36. In view of this recent development, *viz.* the statement inviting comments and suggestions to the Draft Bill, this Court alongwith Mr. Kohli and other Advocates of this Court, engaged in discussions and exchange of suggestions, based on which Mr. Kohli has prepared a Report proposing the following suggestions to the Draft Bill:

1. USE OF TECHNOLOGY :

1.1 In addition to providing for digitization and automation of notarial work undertaken by Notaries, the proposed Application / Portal must furnish an updated data-base of Notaries registered under the Act, along with their name, photograph, registration number, date of expiry of registration etc. This will provide the general public with an additional safeguard to verify whether or not the Notary they have approached is duly registered under the Act. Simultaneously, the proposed Application / Portal must have an in-built mechanism which would prevent a person from carrying out a notarial act unless such person is duly registered under the Act and their registration has been confirmed on the Application / Portal.

(i) During the course of undertaking a notarial act, the proposed Application / Portal must enable a Notary to simultaneously upload a photograph and such other biometric identifiers, such as a fingerprint scan to confirm the presence of the signatory before a Notary. The Application / Portal may also consider a simultaneous upload of geographical identification metadata with the photograph of the signatory. This process of GeoTagging will confirm the exact latitude and longitude coordinates of the Notary and the signatory whilst undertaking the notarial act. This measure will certainly remedy the mischief of a Notary notarizing a document in the absence of the signatory.

2. AMENDING FORM XV :

2.1 Rule 11(2) of the Rules mandates that every Notary shall maintain

a Register as per the form prescribed in Form XV. The form prescribed as on date is inadequate and must be amended to add the following additional requirements:

- (i) The time of the notarization;
- (ii) No. of pages contained in the document being notarized including its Annexures / Exhibits;
- (iii) Venue of notarization;
- (iv) Method by which the person signing the document was identified and by whom;
- (v) Remarks that the Notary may want to include such as the capacity of the signatory / the physical condition of the signatory etc.

2.2 Form XV along with the aforesaid additions must also be simultaneously introduced on the Portal pursuant to the Draft Bill.

3. IMPLEMENTING PRACTICES FROM FOREIGN JURISDICTIONS :

3.1 As a result of the pandemic Covid-19, immense difficulty was faced in notarizing documents. In order to solve this difficulty, various jurisdictions have empowered Notaries to notarize documents remotely. Illustratively, various states in the United State of America have enabled notaries to notarize documents remotely by a facility called 'Remote Online Notarization' (**"RON"**). The process provides for the remote notarization of documents using a video conferencing software such as Zoom and Cisco Webex.

3.2 Reference in this regard can be made to the Executive Order No.202.7 by the State of New York and the Guidelines to Notaries on implementing Executive Order No.202.7 authorizing RON published by the New York Department of State. In *Ryerson vs. Ryerson*, 2021 N.Y. Slip. Op. 21172, the Supreme Court of New York upheld the notarization of documents via videoconferencing.

3.3 The Department of Legal Affairs may therefore also consider incorporating a provision for RON in the Draft Bill.

4. AUTHENTICATING INSERTIONS / ALTERATIONS /
DELETIONS SUBSEQUENT TO A DOCUMENT BEING NOTARIZED :

4.1 In the event that a document contains any alterations, insertions or erasures subsequent to it being notarized, the same shall be authenticated by the Notary by affixing his / her initials near such alterations, insertions or erasures with a note forming a part of the document which sets out the paragraphs in which such modifications are carried out. This note shall be followed by the signature (rubber stamp) of the Notary, along with the date, time and location. The note may be added at the end of the document after the Jurat in the following format:

I, [name of notary], hereby state that paragraph/s [•] of this document contains alteration / insertion / erasure. This / These alteration / insertion(s) / erasure(s) have been done before me by the Deponent on [date] at [time] and [place]

[Notary signature with the Stamp]

5. RIGHT TO PRIVACY :

5.1 A Notary's Register contains sufficient sensitive and confidential information to enable identity theft / misuse / impersonation etc. This sensitive and confidential information, such as a party's biometric identifier merits protection.

5.2 Whilst amending the Act and Rules, additional responsibilities must be cast on Notaries to ensure safe keeping and protection of the sensitive and confidential data with which they are entrusted with.

6. MANTADORY ISSUANCE OF A RECEIPT FOR THE FEES CHARGED BY A NOTARY :

6.1 Rule 11(9) of the Rules provides that every notary shall grant a receipt for the fees and charges realized and maintain a register showing all the fees and charges realized for every single notarial act. However, it has been observed that notaries do not follow this mandate and default in issuing receipts. This was observed by the Bombay High Court in Prataprai Trumbaklall Mehta vs Jayant Nemchand Shah and Anr. (Supra)

6.2 It is therefore recommended that the proposed Application / Portal provide for means to make online payments to Notaries. Further, the proposed Application / Portal must mandatorily issue an electronic receipt for every notarial act undertaken.

7. INCREASE IN FEES :

7.1 As per Rule 10(1) of the Rules, every Notary may charge fees for notarizing the document not exceeding the rates mentioned in the Rules.

7.2 Further, as per Rule 10(3) of the Rules, a Notary may charge travelling allowance when travelling by road or by rail at the rate of Rs.20 per kilometre.

7.3 It is pertinent to note that since 1956, the fees charged by Notaries have increased marginally. Hence, taking into account the increased inflation / fuel prices etc., and the other hardships faced by the notaries, it is suggested that the Draft Bill include provisions for an increase in the fees charged by Notaries. This is all the more required considering that Notaries will now be required to expend additional monies in order to equip themselves technologically to comply with the Draft Bill once enacted.

8. INTRODUCTION OF A MODEL CODE OF CONDUCT :

8.1 The Act and the Rules do not provide for a code of conduct for Notaries. It is recommended that a code of conduct for Notaries be introduced along with the Draft Bill. Useful reference may be made to the Notary Public Code of Professional Responsibility published by the National Notary Association in this regard.

8.2 The proposed code of conduct for Notaries would provide for a code of ethics, as also the requirement of periodical training for Notaries. The code of conduct for Notaries may also incorporate general provisions such as regular dos and don'ts in respect of notarizing documents. This will enable Notaries to adapt to latest developments in their field.

9. ADDITIONAL MEASURES :

9.1 As mentioned hereinabove, Notaries have started notarizing documents from vehicles parked in a public parking lot instead of an office/chamber. It has also been observed that Notaries have been operating from public taxis around the vicinity of this Court.

9.2 It is therefore also recommended that this Court issue orders and directions including to subordinate courts in Maharashtra prohibiting the aforesaid practice. In support of this proposed prohibition, reference may be made to Rule 10(2) of the Rules which provides that :

“The rates of fees to be charged by a notary shall be displayed by him in conspicuous place inside as well as outside his chamber or office.”

(emphasis supplied)

9.3 Further, Rule 15 of the Rules provides :

“Each notary shall have an office within the area mentioned in the certificate issued to him under Rule 8 and he shall exhibit it in a conspicuous place there at a board showing his name and his designation as a notary.”

(emphasis supplied)

9.4 A perusal of the aforesaid Rules indicate that the legislature, whilst enacting the Act and Rules contemplated that Notaries would operate from their office / chamber and certainly not from a public or private vehicle around the vicinity of a Court.

9.5 It cannot be disputed that Notaries perform notarial acts around the vicinity of Courts in India. The presence of Notaries in close proximity of Courts is essential and ought to be recognized. Therefore, it is recommended that Notaries be provided with a designated place in and around the premises of Courts without Notaries having to incur the costs towards purchasing / renting an office / chamber.

37. We have considered the submissions of the Learned Amicus Curiae Mr. Kohli and have given due consideration to his comprehensive Report covering the prevalent law in India and the recent developments across the World, including in the United States of America. In our considered opinion, undoubtedly, the Act and Rules framed thereunder are in pressing need for major reform. We are, on a daily basis, coming across matters wherein Notaries, Advocates and Parties are mischievously getting documents notarized. However, we are now pleased to note that the Draft Bill has been published proposing digitization of the records of a Notary and digitization and automation of notarial work undertaken by Notaries. We would like to believe that by the use of Information Technology, the prevalent mischief will be reduced to a great

extent.

38. In the circumstances aforesaid and considering that the Department of Legal Affairs has invited comments and suggestions on the Draft Bill by December 15, 2021, we deem it appropriate that the Registrar General of this Court forthwith forward a copy of this Order alongwith the Report dated 9th December, 2021 submitted by the Learned Advocate Mr. Nausher Kohli, to the Department of Legal Affairs for their due consideration. We request the Department of Legal Affairs to give due consideration to this Order and the Report dated 9th December, 2021 submitted by Mr. Nausher Kohli, Learned Advocate whilst enacting the Draft Bill.

39. Writ Petition No.4947 of 2021 alongwith Intervention Application (St) No.18348 of 2021 and Suo-motu Contempt Petition No.1 of 2021 stand disposed off. Commercial Appeal (L) No.23906 of 2021 alongwith Interim Applications taken out therein also stand disposed off.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)