

18 May 2020

The Hon'ble Chief Justice,
 Hon'ble Mr. Justice Dipankar Datta,
 Bombay High Court.

Access to Justice during Covid-19 pandemic and thereafter

We write further to the letter of 7 May 2020 addressed by some of us, a copy of which is enclosed.

With the enforcement of the lockdown effective 20 March 2020 functioning of the High Court at Bombay has been drastically reduced, if not at a virtual standstill.

Hearings in Bombay have been limited to about five judges who sit for two days in the week from 12 PM to 2 PM. From the data available on the High Court's website, it appears that since 24 March 2020, our High Court has passed 404 orders of which 182 orders appear to be substantive. There is no information available as to the basis on which these cases were categorised as 'very urgent' or 'urgent' and taken up for immediate hearing. The types of cases heard urgently are set out in the table:

<p>ADMIRALITY LAW:</p> <p><i>Prima facie</i> cases of arrest and detention of vehicles.</p>
<p>ARBITRATION LAW:</p> <p>Section 9 Application – injunction on broadcasting; Section 34 Petition - Written submissions taken on record and matters reserved for pronouncement of orders in a previously heard matter.</p>
<p>CIVIL DEFAMATION:</p> <p>Injunctions issued against defamatory actions.</p>
<p>COMMERCIAL LAWS:</p> <p>Injunctions on invocation of pledges, bank guarantee, auction of property.</p>
<p>CONSTITUTIONAL LAW:</p> <p>Challenge to the appointment of the Chief Minister as a member of the Legislative Council; individual's right to procure basic essentials and food supplies.</p>
<p>CRIMINAL LAW:</p> <p>Bail; anticipatory bail; extension of parole; debit freeze order on bank accounts.</p>

FAMILY LAW: Payment of maintenance of children.
INTELLECTUAL PROPERTY: Restraint on infringement of trademark and copyright.
PUBLIC INTEREST LITIGATION / MUNICIPAL LAW: Health care and medical facilities to be made available.
SERVICE LAW: Non-Payment of salary; termination of employment during the pandemic.

Reports in the media indicate that Mumbai will continue under lockdown at least till the end of May 2020. Even when the lockdown is eased, inevitably normal work life will not be restored as social distancing and other restrictions, self-imposed or otherwise, will continue for an indefinite period. It is unthinkable - but nevertheless a reality - that the fabric of our democratic republic will continue to be imperilled by the continuing curtailment of access to justice. This needs to be remedied now.

Available data, which is incomplete, from the Bombay High Court's website https://bombayhighcourt.nic.in/rtiform_i.php?bhcpair=cGlkPSZtc2c9Mg== indicates that as on 30 June 2019 over 4.5 lakh cases were pending. Further, between 2 March 2020 and 20 March 2020, 1,256 cases were filed (only on the Original Side) i.e. approximately 90 cases per day were filed (see <https://bombayhighcourt.nic.in/dailyfiling.php>). On this basis, it is safe to assume that even if normalcy be restored by 30 June 2020, which is most unlikely, approximately 6,700 fresh cases (that were held back during the lockdown) will be filed on resumption.

Our High Court will not be able to cope with the new filings, leave aside the backlog of cases, unless it resumes sittings of all available judges during usual court working hours. This is perfectly possible by making effective use of technology. Indeed, in the words of the Chief Justice of India, "*E-filing has virtually brought the court registry into the chambers of advocates*". According to Mr. Justice Chandrachud of the Supreme Court, "*E-filing will enhance the right of citizens to efficient justice delivery.*"

In this context, it needs to be recalled that circa 2005 the Government of India announced the National Policy and Action Plan for Implementation of Information and Communication Technology. Circa 2016 the E-Courts Integrated Mission Mode Project commenced. The Judiciary, therefore, has at its disposal the robust architecture and technical support of the NIC. Although lawyers depend on commercially available hardware and software, they have been able to function efficiently except when interfacing with our High Court's technology.

The video conference application earlier used by the High Court was not satisfactory. Even though a more robust platform is now used, connectivity remains a serious issue. This has resulted in periodic disruptions of the limited numbers of video hearings conducted.

With a view to overcome the present situation, we respectfully offer the following suggestions and request early implementation. We will be more than happy to attend, even set up, an urgent meeting, for the purpose at your earliest convenience. In the present circumstances, though the meeting would be on a video platform, these suggestions need to be discussed. The earnest request is that no effort should be spared to ensure that prompt and unrestricted access to justice is again available to all with immediate effect.

While we recognise that some of the suggested measures may be implemented in the relatively medium-term, we believe that many could be implemented and operationalised immediately and consistently with the initiatives of the Supreme Court of India.

1. The Court should hold hearings with the full strength of all available judges from 11 AM to 2 PM and 3 PM to 5 PM on all regular Court working days, consistent with the Supreme Court's sittings as reported in the media.
2. While mass transit is restricted the Court should make arrangements for bussing travel for all relevant staff of the Court. In this connection, the Kerala High Court has issued an Official Memorandum dated 15 May 2020 that "Steps are being taken to arrange conveyance facility from different locations in the district to the High Court and back, in coordination with KSRTC [Kerala State Road Transport Corporation]".
3. All preparatory measures may be put in place now so that physical hearings may be resumed at the earliest.
4. E-filing facilities:
 - a. Consistent with the Supreme Court practice e-filings should be available for all fresh filings and not restricted to 'very urgent' or 'urgent' cases;
 - b. All e-filings must be in searchable PDF format, with exhibits / annexures bookmarked and hyperlinked so that judges and lawyers can efficiently navigate through the record.
5. In respect of pending matters, the record will be required to be digitized before they can be listed. The High Court may consider employing a technically qualified agency for digitising the records and may also request assistance from the advocates on record / parties concerned. To that intent, directions may be issued to the effect that all filings be replicated and filed in fully searchable PDF format with hyperlinks and bookmarks jointly by the advocates on record / parties with the Prothonotary / Appellate Side Registrar within a prescribed reasonable period after normalcy is restored. This will reduce the burden on the Court to digitise.
6. If any assistance during hearings be required by judges to navigate through the record or screen sharing, junior lawyers or technical staff from Advocates' offices may be allowed to assist the Court.
7. The present system of listing matters on praecipes needs to be revamped:

- a. The judge must consider whether the matter requires to be listed for an urgent hearing. Permission to list must be granted (or refused) only by judges (and not by associates as seems to be done presently);
 - b. Even if listing (or refusal to list) should somehow continue to be delegated to associates then, as done by the Delhi High Court, the Advocates on record must have the right to re-apply on praecipe to the judge via a distinct email ID;
 - c. Each listing praecipe must provide the email ID and mobile number of the Advocate on record and that of the Advocate on record on the other side (if known);
 - d. Each vakalatnama must provide the email ID and mobile number of the Advocate on record;
 - e. All filed matters must be placed for admission / hearing, as the case may be, before the relevant bench in their regular turn as was done before the lockdown;
 - f. In advance of any video hearing each party must file in court and exchange with the other party(ies) soft copies of judgments relied upon and brief written submissions foreshadowing arguments proposed to be advanced at the hearing along with a chronology to be used at the time of arguments.
 - g. In advance of any video hearing each party should provide an estimate of time likely to be taken for its submissions. The Court should make an effort to hold parties to such estimate. [see Rule 17 of the Draft Supreme Court Rules];
 - h. All listings must be communicated by the Court offices to the Advocates on record / the parties at least two working days prior to the date of the hearing via email at the email IDs provided and also via text messages at the mobile numbers provided. The email and text message settings of the Court offices must require a 'delivered' and a 'read' receipt. Such receipts should be sufficient proof of service. Urgent matters should be listed with shorter notice. [see Rule 5(1) and Rule 5(3) of the Draft Supreme Court Rules]
8. Even after the lockdown is eased, social distancing norms, including preventing those aged over 65 years from stepping out, are likely to be continued for quite some time. Therefore, the following measures may be considered:
- a. A hybrid system should be put in place so that advocates / parties who are either forbidden from, or unable to, travel on account of age or otherwise, can address the Court;
 - b. This hybrid system would comprise of physical hearings as well as remote hearings by which one or more parties may address the Court through videoconference (similar to the current virtual court system) by placing requisite computer screens in Court;

- c. A password protected video link should be circulated to all advocates / parties for any video / hybrid hearing;
 - d. Advocates on record / parties may indicate the number of video links required (in addition to the 3 links that are presently being made available);
 - e. The bench must categorise matters (pending as well as fresh matters) under three broad heads for the purpose of hearing:
 - i. Applications and matters which can be disposed of only through e-filing or on paper or via brief video hearings (such as mentioning, adjournments, procedural / case management directions, etc.);
 - ii. Matters that can be disposed of by a remote hearing (such as interim applications for addition of parties or for payment of amounts to guardians, wards, etc.);
 - iii. Matters that will require physical hearing in Court (subject to any request for a hybrid hearing).
 - f. Provisions must be made for parties filing e-submissions, etc. in accordance with the above requirements.
9. Video hearings for final disposal may be directed by the Court and should also be permitted with the consent of the parties so long as the above requirements are complied with.
10. Video hearings in all matters pending before 24 March 2020 may be directed by the Court and should also be taken up for hearing with the consent of the parties, so long as the entire record in fully searchable PDF format with hyperlinks and bookmarks is re-filed with the registry at least one week prior to the date fixed for hearing.
11. Under the present listing system, an unrealistic number of cases are listed before every judge / bench. It is suggested that only a realistic number of cases be listed (if possible, in staggered time slots) so that each bench is able to familiarise itself with the record in advance to ensure an expeditious hearing.
12. The pandemic should be used as an opportunity to streamline processes and increase efficiency for the long term.

We request the Chief Justice to give us an opportunity at an early date to discuss the way forward.

Respectfully yours,

Iqbal M. Chagla, Senior Advocate

Sd./-

Janak D. Dwarkadas, Senior Advocate

Sd./-

Fredun E De Vitre, Senior Advocate

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Darius J. Khambata, Senior Advocate

Sd./-

M.P. Bharucha, Advocate & Solicitor
Partner at Bharucha & Partners

Sd./-

Encl.: a/a.

7th May 2020

To,

The Hon'ble Mr. Justice Dipankar Datta
The Chief Justice, Bombay High Court

Re: Additional suggested measures for conduct of litigation before the Bombay High Court during the Covid-19 pandemic

We the undersigned, who practice mainly on the Original Side, would like to take this opportunity to congratulate you on your appointment as Chief Justice, Bombay High Court and welcome you to our Court.

We would also like to this opportunity to make the following suggestions in addition to those contained in the Joint Letter dated 5th May, 2020 sent by Mr. Anil Sakhare and others:

Continuation of virtual courts through a hybrid system

Since post the easing of the lockdown, social distancing norms are likely to be continued for quite some time, including preventing those aged over 65 years from stepping out, the following measures may be considered:

1. A hybrid system should be put in place so that Advocates and parties-in-person who are either forbidden from traveling on account of their age or do not wish to appear physically in Court, can address the Court.
2. This hybrid system may comprise of physical hearings as well as remote hearings by which one or more parties may address the Court through videoconference (similar to the current virtual court system) by placing sufficient number of computer screens in Court.

3. A video link with a password unique to each case where such a virtual hearing is requested should be circulated to all parties in that case. This would avoid the audio and video quality problems which the virtual courts are currently facing.

Practice directions to be followed for all matters hereafter

4. The Court or individual Judges must categorise all matters (pending as well as fresh matters) under three broad classes for the purpose of hearing:
 - a) Applications and matters which can be disposed of through an e-filing of written applications alone (such as mentioning, adjournments etc.);
 - b) Matters that can be disposed of by a remote hearing (such as matters which may not require much argument, for e.g. interlocutory applications (previously called Chamber Summons) for addition of parties or for payment of amounts to guardians, wards or such other matters);
 - c) Matters that will require physical hearing in Court (subject to any request for a hybrid hearing).

(Note: Provision can be made for parties to make e-submissions on such classification before or after it is made)

5. Rules can be made for e-filings as a default mode (and for additional e-filing in matters where not already done) by providing separate platforms/ folders for each of the following:
 - a) Pleadings, petitions, applications and affidavits, including specifying size of page, font and spacing.
 - b) Each annexure or document filed as an annexure thereto or therewith must be separately electronically book marked for direct access.
 - c) A separate folder should also be made available to the respective parties for filing of a list of dates (with a limit of preferably 15 pages), written submissions (with a limit of preferably 20 pages) and authorities, each indexed and bookmarked separately.
 - d) A separate folder should be made available for filing of supplemental authorities or documents in response to the submissions of the opposite party.

6. In respect of pending matters, the record will be required to be digitized before they can be listed. The High Court should consider employing a technically qualified agency for the same. Assistance of the Advocates of the parties concerned may also be taken at the time of digitization which will facilitate compliance with practice directions set out in paragraphs 5(a) and (b) above. Advocates of the parties should be advised to comply with practice directions set out in paragraphs 5(c) and (d) above after the record of the pending matters is digitized and before they are placed for hearing.
7. Suitable time frames should be imposed for filing of submissions and authorities in advance of the hearing.
8. No submissions/ authorities should be automatically accepted by the Court platform after the time limits have expired other than with the leave of the court, sought by a reasoned e-application. There will be no requirement to allow the other side an opportunity of responding to such application.
9. Provision may be made for allowing shorter post hearing submissions as well.
10. In all matters, the Court should seek an estimate, prior to the hearing, for oral arguments. As far as possible, the Court shall hold the Advocates to the estimates given by them.
11. At least one remote hearing must be held by either the Court or an authorised officer by way of a case management conference to ensure that all filings are complete in accordance with the rules.

Rules for conduct of physical hearings

12. In respect of physical hearings in Court:
 - a) provision should be made for a limited number of matters being placed on board and being grouped in batches of preferably 5 matters each at a

maximum of every half hour or hour (based either on the estimate of time given; or the time likely to be taken depending on the nature of the matter).

- b) Limits must be placed on the number of people, including lawyers, attending.
- c) Persons should be permitted entry into the High Court premises only after full procedures for sanitisation, checking of temperature, compulsory wearing of masks etc. are completed and only just before the relevant session is about to begin.
- d) Those persons not directly involved in the matter being heard must stay outside the court room and at appropriate social distance from each other.
- e) The Courtroom must be cleared and the Court may rise after each session, for sanitisation of the Courtroom.

(Note: as suggested earlier, a facility should be given for representation or attendance in the matter via videoconference even if the matter is assigned to a physical hearing category)

- 13. Owing to the impending monsoons, the High Court may consider requesting the State Government to take over and make available exclusively for the High Court's use, the road between HSBC Bank and the High Court. This space can be used to set up an enclosed facility for security and sanitization, vetting etc.

Yours sincerely,

(SD/-)

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(SD/-)

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