

The recent outbreak of the novel coronavirus (**COVID-19**) has disrupted several areas of life including the functioning of courts and consequently litigation. In an attempt, to play their part in the effort of social distancing, courts across the country have resorted to several measures to ensure that only urgent matters are heard, whilst curtailing the hearing of non-urgent matters.

### Hearing of matters

The Bombay High Court<sup>1</sup> and Supreme Court of India<sup>2</sup> have been issuing notification/s from time to time to restrict their functioning to hearing of only urgent matters. The Bombay High Court notifications also clarify that for matters due but not listed/not called out or curtailed, ad-interim orders will be continued till next date.

The Bombay High Court in an unprecedented move also heard matters via Video Conferencing. As a further preventive measure, several courts<sup>3</sup> have directed that no litigants are to be present in court unless so mandated and only persons (including advocates) whose presence is imperative are to be present. Similar measures have been taken by the National Company Law Tribunals (**NCLT**) which are hearing only urgent matters. Courts have imposed serious costs when non-urgent matters have been sought to be moved.<sup>4</sup> The Supreme Court has in a one of its kind move, now also started hearing matters (albeit only urgent matters) via Video Conferencing on an experimental/test basis.<sup>5</sup> Following suit, urgent matters before the Delhi High Court can be moved over telephone and heard via Video Conferencing.<sup>6</sup>

The Bombay High court has also in relation to certain urgent matters where demolition of building/s/auction of attached properties/or eviction of properties are in question has directed the concerned Municipal Commissioner/s to "*consider issuing a general directive not to demolish, evict and/or hold auction of attached properties for a specified period with a caveat that if the corporation in some extra ordinary cases, for compelling reasons are required to do so, they shall be at liberty move the appropriate courts and obtain necessary orders.*"

The Kerala High Court and the Allahabad High Court had passed orders to defer all recovery proceedings by tax authorities (Central and State Governments) and banks etc. till April 6, 2020, as well as extend limitations to

<sup>1</sup> <https://bombayhighcourt.nic.in/writereaddata/latest/PDF/ltupdtbom20200313165152.pdf>; See also <https://bombayhighcourt.nic.in/writereaddata/notifications/PDF/noticebom20200314152601.pdf>, <https://bombayhighcourt.nic.in/writereaddata/latest/PDF/ltupdtbom20200319180606.pdf>, <https://bombayhighcourt.nic.in/writereaddata/latest/PDF/ltupdtbom20200319152121.pdf>, <https://bombayhighcourt.nic.in/writereaddata/notifications/PDF/noticebom20200320143201.pdf>, <https://bombayhighcourt.nic.in/writereaddata/notifications/PDF/noticebom20200319162323.pdf>, <https://bombayhighcourt.nic.in/writereaddata/notifications/PDF/noticebom202003231458.pdf>, <https://bombayhighcourt.nic.in/writereaddata/latest/PDF/ltupdtbom202003231850.pdf>

<sup>2</sup> [https://main.sci.gov.in/pdf/Notification/13032020\\_120544.pdf](https://main.sci.gov.in/pdf/Notification/13032020_120544.pdf)

<sup>3</sup> [https://main.sci.gov.in/pdf/LU/15032020\\_072250.pdf](https://main.sci.gov.in/pdf/LU/15032020_072250.pdf); See also [http://www.hcmadras.tn.nic.in/Circular\\_High\\_Court.pdf](http://www.hcmadras.tn.nic.in/Circular_High_Court.pdf), [http://www.hcmadras.tn.nic.in/COVID%2019\\_Administrative\\_directives\\_for\\_high\\_court.pdf](http://www.hcmadras.tn.nic.in/COVID%2019_Administrative_directives_for_high_court.pdf), [http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice\\_Y8SDJXBZ7XP.PDF](http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_Y8SDJXBZ7XP.PDF), [http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice\\_JPITASNDQ5L.PDF](http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_JPITASNDQ5L.PDF), [http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice\\_L07R5UBQP6N.PDF](http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_L07R5UBQP6N.PDF)

<sup>4</sup> Order dated 16 March 2020, Bombay High Court in Notice of Motion No. 2421 of 2018 in Notice of Motion No.1590 of 2018 in Suit No. 876 of 2018

<sup>5</sup> [https://main.sci.gov.in/pdf/LU/23032020\\_153530.pdf](https://main.sci.gov.in/pdf/LU/23032020_153530.pdf); See also [https://main.sci.gov.in/pdf/cir/23032020\\_153213.pdf](https://main.sci.gov.in/pdf/cir/23032020_153213.pdf)

<sup>6</sup> [http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice\\_F96N7ECEFRP.PDF](http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_F96N7ECEFRP.PDF)

conclude tax assessments. The Supreme Court<sup>7</sup> has however stayed the orders of the Kerala High Court and the Allahabad High Court.

In relation to private disputes, the question of what would constitute urgent matters would depend on a case to case basis. However, violation of intellectual property rights where monetary reliefs may not suffice, termination of a contract which is time sensitive and the like are likely to be treated as urgent. In most such cases, courts may direct parties to maintain status quo, however in the case of trademark infringement and the like (especially when orders are obtained ex-parte), the implementation of search and seizure order/s may prove to be a challenge when the strength of officials is at an all-time low.

### Filing/s

Parties, in cases, where they are unable to file physical copies owing to an urgency or other difficulties, have the option of e-filing. NCLT<sup>8</sup> has recently commenced a facility for e-filing, whilst the Bombay High court has a system available since 2011. However, those facilities are likely to now be put to use.

Given the present situation and the notification/s from the Central and State governments directing offices to remain shut, it is uncertain how much the initiative of e-filing is likely to come to the rescue, especially in view of the logistical nightmare of notarization of pleadings (which has presently not been exempted), collation of documents (sometimes voluminous), scanning thereof et al.

In relation to court given deadlines to file pleadings (i.e. replies and rejoinders), courts are likely to take a liberal view and extend the deadlines post-facto.

### Limitation

The Supreme Court of India has on March 23, 2020 (in exercise of its power under Article 142 read with Article 141 of the Constitution) taken suo motu cognizance of the difficulties faced by litigants in filings of proceedings to comply with the statutory periods of limitation. Accordingly, the Supreme Court, clarified that *“the period of limitation in all proceedings [i.e. Suits/Petitions/Applications/Appeals whether under general law or special law (central or state)] irrespective of limitation prescribed (whether condonable or not) shall stand extended w.e.f. March 15, 2020 till further orders”*.

The order<sup>9</sup> has been directed to be sent to all high courts for being communicated to all subordinate Courts/Tribunals within their jurisdiction. The above order would be binding on all Courts/Tribunals and authorities. The implication of the order is that parties would now have a breather and not have to rush to comply with statutory period/s of limitation despite the dire circumstances.

The Delhi High Court has also issued a notification inter alia clarifying that Lockdown/Suspension of work of Courts, shall be treated as closure of the Court (for the purpose of the limitation Act) and as such the period of limitation would stand extended.

### Measures that Courts ought to take

- Issue notification/s to sufficiently deal with the issue of notarization of pleading/s, e-filing of pleading/s without annexure/s etc. to aid parties to file pleadings to stop limitation

<sup>7</sup> Order dated 20 March 2020, Supreme Court of India, SLP (Civil) Diary No. 10669/2020

<sup>8</sup>Notification/s dated 31 January 2020 and 19 March 2020 i

<sup>9</sup> Order dated 23 March 2020, Supreme Court of India, W.P.(Civil) No. 3/2020

- Have a set of clear guidelines to effectively deal with such situation/s in the future which would encompass matter/s such as attendance of staff, moving of urgent matters, hearing of urgent matter/s only through video conferencing.
- Digitize its processes to aid remote functioning (including mandatory and exclusive e-filing).
- Guidelines for effective processes in criminal matters, especially those requiring production of the accused.
- Setting up of appropriate infrastructure to enable e-hearing, filing and remote functioning of the court in such scenarios
- Effective training should be imparted to the staff to enable them to function remotely in such scenarios.

## Foreign Jurisdictions

Courts across the globe, have curtailed the hearing/s- including by postponing hearing/s or hearing matters through video conferencing or deciding matters on the basis of briefs<sup>10</sup>.

### Conclusion

Whilst restricting the hearing of matters to urgent ones is a short-term measure that can be adopted, should such a situation continue, it is likely to add to the already heavy pendency list of the court/s and effective permanent solutions to deal with such situations are necessary.

If the courts/Advocates/Litigants alike become accustomed to remote hearing/s (as now being attempted by the Supreme Court), not only would the same save immense costs for litigants (in terms of having advocates having to travel from one city to another) it would also reduce the time invested by Advocates. In the world of tomorrow, remote hearing could in fact pave the way for a new normal.

To summarize, the courts have presently adopted the policy of whosoever comes to court must come with urgency and clean hands (in every sense).

***PS: The readers are assured that the present Article is written after washing of hands as mandated with soap and water, for not less than 20 seconds!***

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<sup>10</sup><https://www.paulhastings.com/about-us/advice-for-businesses-in-dealing-with-the-expanding-coronavirus-events/u.s.-court-closings-cancellations-and-restrictions-due-to-covid-19>  
<https://www.thelawyer.com/coronavirus-and-the-courts-a-boost-for-online-reform/>  
<https://www.jdsupra.com/legalnews/covid-19-managing-civil-litigation-47470/>  
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