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THE BOMBAY INCORPORATED LAW SOCIETY

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29th November 2020

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

Dear Hon'ble Chief Justice,

Re: Brief Suggestions for your appropriate consideration for continuation of the virtual and physical working of the High Court for the period 1st December 2020 till further orders

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We refer to the joint meeting held on 25th November 2020 with Your Lordship and the Senior Puisne Judges of the Bombay High Court, and the representatives of our Society, the Bombay Bar Association and the Western India Advocates' Association, the Advocate General of Maharashtra and the Additional Solicitor General of India, for the continuation of the virtual and physical working of the High Court for the period 1st December 2020 and until 10th January 2021 and the Office Order dated 27th November 2020 in that regard.

We are thankful to Your Lordship for the manner in which the working of the Courts have been conducted in the past eight months thereby giving relief to the litigants straddling all strata of society. Whilst we do believe that some operational, technical and logistical challenges continue to remain in the working of virtual hearings, the experience of our members has been mostly satisfactory. Though there have been challenges (especially during the Diwali vacation) in the working of the physical courts, we all felt it necessary to continue the gradual opening of physical hearings especially to assist lawyers and litigants who do not have satisfactory access to the virtual court system. Hence, we welcomed the suggestion of a few more courts being opened for physical hearings.

Despite the fact that the representatives of the State Government did express a situation which appeared to be in better control, the number of Covid-19 afflicted people in Mumbai are still not encouraging, and it is our concerted view that this may not sustain the smooth functioning of a larger number of physical courts as we had in the meeting envisaged.

After a great amount of deliberation and concerns expressed by our members, it is our humble request that Your Lordship do reconsider and modify the Office Order issued on 27th November 2020 in so far as it relates to the opening up of physical courts during the period 1st December 2020 till 10th January, 2021.

In this respect, our Society is pleased to suggest the following for Your Lordship's consideration:-

- a) Post Meeting of 25th November 2020, in view of rising Covid-19 cases, the Maharashtra Government has, on 27th November 2020, extended the lockdown in the State of Maharashtra till 31st December 2020;
- b) Local train travel, which is used by most of our members and their registered clerks continues to be restricted, both in timings as well in convenience, and does not operate in a smooth and seamless manner. The process to obtain tickets for travel by local train is also very cumbersome and only one way tickets are issued, inconveniencing lawyers and their clerks to travel back home or to other courts in the city. They have to wait in long queues to get a ticket every time they need to travel and also have to wait till late evening to travel back home even when their work is over.
- c) To effectively operate in physical courts, the clerks, peons, stenographers and support staff of law firms need to remain present, and for which local train and regular bus travel is essential. Without the support office staff, our law firms are handicapped.
- d) A large number of solicitors and senior counsel, in addition to Judges and court staff, are above the age of 50 years. Coupled with co-morbidities, several of our members and counsel are reluctant to appear in physical hearings. This would be a serious curtailment of their ability to handle matters on behalf of their clients. Since only the arguing lawyers in the matter will be permitted, it would restrict solicitors, juniors and their clerks who assist in the matter to remain present.
- e) It is extremely difficult to regulate the continuous interaction of persons in courts. Despite their best intentions, there will always be some who will not maintain this discipline and, considering the nature of the virus, will cause the disease to spread further. The mere fact that so many physical courts will be opened on 1st December 2020, there will be an uncontrolled crowding in the court premises.
- f) On account of the large number of physical courts, it will be nigh impossible to regulate the number of people entering, and more importantly remaining, in the High Court premises. The corridors are narrow and are not suitable for overcrowding.
- g) Entry points into the High Court premises will see serpentine queues of lawyers, clerks and others attempting to come for their matters. Temperature and security checks will add to the delay and prevent social distancing.

- h) A major concern is the sanitization of toilets that will be required when the number of people attending courts will increase during this period. Not only are the toilets in the High Court premises insufficient for lawyers and litigants, at a time like this, the sanitization facilities will remain inadequate. Cleaning and sanitization of table and where lawyers address the court will be extremely difficult to carry out

Whilst we do appreciate the need for opening physical courts, after hearing the concerns of our members and members of the other Associations, we humbly request Your Lordship to reconsider the further opening up of physical courts for the period 1st December 2020 till further orders, and if thought appropriate to modify the Office Order of 25th November 2020 in the manner suggested below:-

- (i) Virtual Hearings be continued. Matters which have been partly heard by video conferencing be allowed to be heard in the same manner, and not impose physical hearings on such matters.
- (ii) 2-3 physical courts may be added to the existing physical courts to facilitate physical hearing.
- (iii) As proposed by the Bombay Bar Association, the nature of the matters to be heard by physical courts, may be such that do not entail the presence of too many lawyers viz. final hearing single judge writ petitions under Articles 226 and 227, final hearings from Appeals from Orders, Final hearing of first and second appeals, etc.
- (iv) The Hybrid system of virtual and physical hearing being adopted in the Court of the Chief Justice be adopted in other courts as well. This will give the lawyers the option to appear physically or by video conferencing, and obviate any excuses not to remain present for the matter;
- (v) Clerks, peons, stenographers and other support staff of law firms be permitted to travel by local railways.
- (vi) To limit matters in physical courts and provide time slotting viz. *“the matters listed from serial numbers 10 to 20 will not be taken up before 12 noon, etc.”*).
- (vii) The number of counters and tokens for physical filing be increased and segregated for Civil, Criminal, Original, Appellate, Testamentary, etc. so that there is no rush for physical filing.

We will be pleased to have another meeting with you to express our concerns. We regret the inconvenience caused to the Hon'ble Court, but considering the situation, we thought it appropriate to address our members' concerns with Your Lordship.

Yours faithfully,
For the Bombay Incorporated Law Society



President