**OFFICE OF THE DISTRICT & SESSIONS JUDGE**
**SHAHDARA DISTRICT : KARKARDOOMA COURTS, DELHI.**

**ORDER**

Pursuant to the directions contained in para no. 17 in W.P. (Civil) No. 2162/2015, titled H.V. Kumar & Ors. Vs. Delhi Treasury & Bar Council of Delhi & Ors. Of Hon'ble High Court of Delhi, Additional District Judge-01 of Shahdara District Karkardooma Courts, Delhi, is hereby given the task with the responsibility of reviewing, on monthly basis, the amounts deposited in court, their timely renewals etc.

(A.S. JAYACHANDRA)
District & Sessions Judge
Shahdara District, KKD, Delhi.

No. 7004-11 /Judl./SHD/Delhi/2017. Dated 27.11.17

**Copy forwarded for information and necessary action/compliance to :-**

1. The Hon'ble Registrar General, High Court of Delhi, New Delhi.
2. The Ld. District & Sessions Judge (HQs),THC, Delhi.
3. The Judicial Officers concerned of Shahdara District, Karkardooma Courts, Delhi along with the copy of aforesaid Order of Hon'ble High Court of Delhi.
4. All the Judicial Officers of Shahdara District, Karkardoom Courts, Delhi, along with the copy of aforesaid Order of Hon'ble High Court of Delhi.
5. OIC, Computer Branch, Karkardooma Courts Delhi.
6. OIC, Nazarat Branch, Account Branch, Shahdara District Karkardooma Courts, along with the copy of aforesaid Order of Hon'ble High Court of Delhi.
7. The Admn. Officers (Judl), Administration Branch, Shahdara District, Karkardooma Courts, Delhi.
8. The Admn. Officer (Judl.), Litigation Branch, Shahdara District, Karkardooma Courts, Delhi.
9. P.S to the undersigned.

District & Sessions Judge
Shahdara District, KKD, Delhi.

27/11

1947/RG/SHD/KKD/2017 dt. 10/11/17

OFFICE OF THE DISTRICT & SESSIONS JUDGE (HQs): TIS HAZARI COURTS DELHI

27896-905

No. /F. 450/Lit./2017 Delhi, Dated 09 NOV 2017

To

The District & Sessions Judge of all the District Courts,
South District Saket / North West District Rohini / South West District Dwarka / East District Karkardooma / Shahdara District Karkardooma / North East District Karkardooma / New Delhi District Patiala House / North District Rohini / South East District Saket / West District Tis Hazari Courts, Delhi.

Sub: W.P. (Civil) No. 2162/2015 titled as H.V. Kumar & Ors. Vs Delhi Treasury & Bar Council of Delhi & Ors.,

Respected Sir/Madam,

Please find enclosed herewith a copy of judgment dated 27.10.2017 passed by the Hon'ble Division Bench of High Court of Delhi, New Delhi in the above noted case for information and necessary compliance.

Thanking you,

Yours faithfully,

( Dinesh Bhatt )
Officer In-charge (Litigation)
For District & Sessions Judge (HQs), Delhi.

Encl: As above

Copy be sent to OIC Computer Branch (KKD) and Judicial Branch (SHD) for information & necessary action.

DJ (SHD)
29/11/17.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision: 27.10.2017**

\+ W.P.(C) 2162/2015

H.V. KUMAR AND ORS. ..... Petitioners
Through: Mr. Sunil Dalal, Advocate

versus

DELHI TREASURY AND ORS. ..... Respondents
Through: Mr. Anuj Aggarwal, ASC with
Ms. Niti Jain, Advocate for R-1 and R-3.
Mr. Satyakam, Advocate/ASC (GNCTD) for R-2.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**MR. JUSTICE S. RAVINDRA BHAT**

1. The petitioners, in these writ proceedings, seek directions to the Respondents (especially the second respondent) to pay them interest in the sum of ₹ 21,21,356/- on the amount of the compensation/award which was to be kept in FDR in terms of the order dated 09.05.2007 passed by Sh.T.R. Naval Ld. ADJ in LAC No. 19A/2006 in an Award under the Land Acquisition Act, 1894 ("the Act").

2. The petitioners are legal representatives and heirs of one Sh. J.N. Kataria, owner of property bearing No. W-2 (Old No. 42/2), West Patel Nagar, measuring 800 Sq.yds. (hereafter referred to as "the property"), who died intestate on 17.02.1978. The suit property was acquired in 2003-04 for construction of Shadipur Metro Station. According to the petitioners, no

notice or intimation was given to them regarding the acquisition of the property and they were informed that an amount of ₹ 1,29,06,450/- was awarded to them by Award no. I/DC(W)/04-05. One Mohinder Singh allegedly fabricated the will of late Sh. J.N. Kataria and tried to claim the compensation amount and filed objections before the LAC, which were referred to the court of the Additional District Judge under Sections 30 and 31 of the Land Acquisition Act by LAC No. 19A/2006 titled "Union of India versus Mohinder Singh and Others" in the court of Sh. T.R.Naval, Ld. ADJ, Tis Hazari Courts, Delhi. As compensation was not disbursed, the petitioners filed an application before the Court, under Section 151 of the Civil Procedure Code, 1908 ("CPC"), requesting that the amounts be deposited in a Fixed deposit. The Court, by its order dated 09-05-2007 (LAC NO.19A/2006) directed as follows:

> *"Notice of Shri Mohinder Singh, IP No.1 received back unserved.*
>
> *Issue fresh notice to Shri. Mohinder Singh to be served by way of process serving agency as well as through Halka Patwari for 17.8.2007.*
>
> *Counsel for IP Nos. 2 to 8 an application under. Section 151 CPC for depositing the amount of compensation in FDRs; Application is allowed. Amount of compensation be deposited in SBI, Tis Hazari in FDRs for a period of one year with automatic renewal till further orders."*

3. The Petitioners approached this Court for getting the amount of compensation released in their favour by the Ld. LAC Court. The Hon'ble High Court by order dated 06.11.2008 ordered for release of the compensation amount to the Petitioners. Thereafter the matter was taken up

in the court of Sh. Ashwani Sarpal, ADJ/ Delhi (West) in LAC No. 114/08/06. Though the amount of compensation was released to the Petitioners, however it did not include the amount of interest which should have accrued on it in terms of the order for keeping the same in FDRs, as it was revealed that the said order was not complied by the Respondents and the amount was not kept in FDRs. The Petitioners filed an application U/s 151 of the CPC for taking Departmental action against the erring officials of the District court establishment. The Petitioners' application was dealt in order dated 02.04.2009, which reads as follows:

> *"An application under Section 151 CPC has been moved on behalf of IPs no. 2 to 5 for taking Departmental action against the erring officials for non compliance of the order of the Court dated 9-5-2007. The court vide order dated 9-5-2007 directed that the compensation amount be converted into FDR, however, the report of the District Nazir shows that the amount was not sent to the bank for preparation of FDR and is still lying in the treasury.*
>
> *According to counsel for IPs no. 2 to 5, due to non preparation of FDR, his client had suffered loss of Rs.20 lakhs which would have accrued on account of loss of interest. Previously also similar type of incidents happened in few cases and the complaint was sent to the Id. District Judge-III. Let copy "of this complaint be also forwarded to the Ld. Distlict Judge-III with a request to take appropriate action against the defaulting officials and the interest to be accrued on the compensation amount had FDR prepared be recovered from the salary of the defaulting officials besides taking strict Departnienial action against them. Copy of the order be sent a/long with formal complaint to Ld. District Judge III with copy to Ld. District Judge-land Judge In-charge (Vigilance).*
>
> *District Nazir is directed to prepare the refund voucher of IPs no. 2to 5 today itself and of the L&DO as and when it file authority letter cum undertaking."*

4. The petitioners advert to an application filed by them, on 21.12.2010, seeking information about the action taken, under the Right to Information Act, 2005, and various replies which led to no fruitful outcome; an appeal, was preferred on 21.02.2011, a subsequent application under RTI Act, on 10.12.2011 and 22.01.2013, which was responded to on 13.02.2013, to the following effect:

> *"case bearing no. LAC No. 114/08//06 has been consigned to Record Room Vide Goshwara No. 193/D, Date of Decision 02.04.2009, you are therefore requested to collect the information sought in this application from Record Room".*

The petitioners then state that they were constrained to file an appeal, as no information as to what follow up action was taken, was revealed to them. Since the RTI appeal resulted in intimation that the information they sought could not be disclosed by reason of Section 8 (j) of the Right to Information Act, they say, they withdrew it and thereafter approached this court, through the present writ petition.

5. The petitioners complain that the interest which would have accrued on the amount of compensation of ₹ 1,29,06,450/-, is ₹ 21,21,356/- and they are also entitled to further interest @ 9% on the amount from the date of disbursal of the compensation till its realization. The Petitioners allege that they have suffered due to the failure of the court officials to do their duty. It is stated that the dereliction of duty by the court officials has led to the infringement of fundamental rights of the Petitioners, and their right to property. It is argued that interest has already been decided in their favour by the court. It was then that the court directed the amount of compensation

to be deposited in the State Bank of India, Tis Hazari branch. But, the failure on the part of the court staff has led to huge losses to the Petitioners.

6. The second respondent, through an Administrative officer, largely confirms the facts, leading to the award, the direction to deposit the amount in an FDR, the dispute referred under Section 30/31 of Land Acquisition Act and the subsequent determination that the petitioners were entitled to the amounts. It is however, averred that at some stage, the issue of tax deduction at source cropped up; the concerned court sought explanation of the Land Acquisition Collector (LAC) who acknowledged an error in that regard. At that stage, it was realized that the entire determined compensation could not be disbursed to the petitioners, as the suit property was leasehold and the Land and Development Officer (L&DO) was entitled to 20% share of compensation. It is also admitted that this Court, in its order dated 06.11.2008 had directed release of compensation to the petitioner. This direction was sought to be complied with by the ADJ, on 27.02.2009, when the District Nazir asked to prepare refund voucher. It is stated that on 01.04.2009, the Nazir reported that the amount was lying in the treasury, meaning thereby that the previous order to deposit the amount in the Bank had not been complied with.

7. The second respondent's counter affidavit also states that the petitioners accepted 75% of the compensation amount, as determined and acknowledged that the balance was to be paid to the L&DO. It is also admitted that the ADJ directed action, by way of disciplinary inquiry and forwarded the necessary papers and documents for action. According to the respondents, one Sh. Ved Prakash, former District Nazir, was charged-for not getting the amount of compensation converted into FDR and an inquiry

was held. Final inquiry report was received from the Inquiry Officer. The District and Session Judge (HQs) thereafter passed an order in respect of the said Inquiry. A copy of the order dated 23.09.2015 was produced along with the counter affidavit.

8. The said disciplinary order, imposing penalty on the erring official, *inter alia*, reads as follows:

> *"It is not in dispute that the delinquent was posted as District Nazir at relevant time. In his own deposition, delinquent equally admits the receipt of the subject file on 11.5.2007 for preparation of FDR. Why he did not take steps for FDR getting prepared in pursuance of the order dated 09.05.07, he seeks to explain on the premises that after the receipt of the file, the concerned Ahlmad had taken back the subject file on 16.05.2007, when an application under Order 5 Rule 20 CPC had come to be filed in the case and it was not sent back to him. To that effect, but for his such bald deposition, no worthwhile evidence has however, come to be adduced by the delinquent. As per the deposition of CW1 during cross, the application under Order 5 Rule 20 CPC Ex.CW1/D1 was heard and disposed off on 24.05.2007. There is, however, no material on record to show as to when was the file for the purpose given by the delinquent to the Ahlmad. Be that as it may, assuming, the file for any purpose was handed over to Ahlmad either on 11.5.2007 or later on 24.5.2007 or there around, it was incumbent upon the delinquent Nazir to follow up the matter for ensuring compliance of the order dated 09.5.2007 at least after 24.5.2007, when the application under Order 5 Rule 20 CPC got disposed off. He, however, slept over the matter and on his own part did nothing to ensure compliance of the order dated 9.5.2007.*
>
> *13. The plea of the delinquent that he was overburdened with the work as he was looking after LAC work of nine districts, there is nothing on record to substantiate so. Delinquent, but, far bald deposition to that effect, has failed to even indicate the*

*actual pendency of work with him. Moreover, neither alleged huge pendency nor paucity of time can be a justification for non compliance of the order passed by the court.*

*14. In view of the aforegoing, having gone through the record and the report of the Inquiry Officer, I have no reason to differ with the conclusion arrived at by the Inquiry Officer and the delinquent is held guilty for the charge framed against him.*

*15. As per record of the office, the delinquent has retired from the Government service on 31.10.2012, on attaining the age of superannuation and in the light of the observations and findings as discussed above, the charges- established against the delinquent Sh. Ved Prakash are of grave negligence on his part. The present inquiry was instituted while the delinquent was in service and, therefore, after the instant departmental proceedings, the final retirement of the delinquent, are deemed to be proceedings under Rule 9 of the CCS (Pension) Rules, 1972 and are concluded in the manner, as, if, the delinquent had continued in service.*

*16. As a result of the above discussion, failure of the delinquent in effectively discharging his duties and his negligence in strict compliance of the order, has resulted into pecuniary loss to the parties concerned. Having perused the record, I conclude that the delinquency established against the delinquent was of 'grave negligence'. Since the delinquent has already retired from service on his superannuation on 31.10.2012, any penalty at this stage, under CCS (CCA) Rules, 1965 cannot be implemented. Keeping in view the totality of the facts and circumstances, in my considered view, ends of justice would be met, if the pension of the delinquent is withheld to the extent of40% of the pension for a period of seven years under Rule 9 of the CCS (Pension) Rules, 1972. Suffice to say, it is not a case, where any amount was misappropriated by the delinquent.*

*17. Accordingly, it is directed that 40% of the pension ofthe delinquent/ pensioner be withheld for seven years.*

*18. As per record of the office, earlier the said Sh. Ved Prakash has been imposed a penalty of withholding oftwo increments with cumulative effect vide order dated 26.09.2011 in inquiry file No. F.1479/Vig and on filing Service Appeal, the said penalty was reduced to one increment without cumulative effect. The said penalty shall be implemented first and thereafter, the present order shall be given effect.*

*Sd/- District & Sessions Judge (Hqrs) Delhi"*

9. The position taken on behalf of the District Judge, however, is that though there was negligence and omission on part of the District Nazir, no fault can be attached to the establishment, because the negligence was not attributable to the institution. It is submitted that the petitioners were not entitled to the full compensation and the amount that had to be paid to them was rectified, when the lessor's rights too were accommodated. Therefore, the office of the District Judge cannot be saddled with responsibility to pay any amount over what was determined in judicial proceedings. It was also argued, during the hearing, that the petitioners cannot maintain any actionable claim for damages because the inaction of the court falls within the doctrine of sovereign immunity. Reliance was placed upon the judgment of the Supreme Court in *Kasturilal Ralia Ram v State of UP* AIR 1965 SC 1039 which held that if a tortious act is committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a

private individual for the same purpose. It was submitted that when the Nazir omitted to deposit the amount in bank, it was in his capacity of a public servant, acting in course of a delegated sovereign power. Therefore, no interest by way of damages was payable.

10. This court notes at the outset that the essential and main facts, relating to compensation determination, the direction of the court to the officer to deposit the amount in the bank, non-compliance with that direction, the fact that this omission came to light subsequently and that the failure to comply was viewed seriously, are admitted facts. Equally, the petitioner was kept in the dark, with regard to action taken to hold anyone responsible; it was only after he withdrew the RTI appeal and approached the court, that the order of the District Judge, imposing cut in pension of the former District Nazir, was disclosed to the court, in the counter affidavit.

11. The order of the District Judge in fact pointedly holds in respect of the charged officer that *"failure of the delinquent in effectively discharging his duties and his negligence in strict compliance of the order, has resulted into pecuniary loss to the parties concerned."*

12. In a decision earlier to *Kasturi Lal*, i.e *State of Rajasthan v Vidyawati* AIR 1962 SC 933, the Supreme Court had stated as follows:

> *"Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the United Kingdom, was based on the old feudalistic notions of Justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held*

*liable to be sued in tort or in contract, and the Common Law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. The Court has deliberately departed from the Common Law rule that a civil servant cannot maintain a suit against the Crown. In the case of State of Bihar v Abdul Majid (1), this Court has recognised the right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown based on common Law in the United Kingdom has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution in, our opinion, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the vicarious liability of the State. Article 300 of the Constitution itself has saved the right of Parliament or the Legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the Legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of the East India Company."*

13. In *N. Nagendra Rao & Co vs State Of A.P* AIR 1994 SC 2663 the Supreme Court placed the doctrine of sovereign immunity, contextually, in the backdrop of a democracy with a written constitution, in the following terms:

*"23.... In the modern sense the distinction between sovereign or non-sovereign power thus does not exist...."*

*24. But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as "sovereign and non-sovereign or "governmental or non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found it place either because of the financial instability of the infant American States rather than to the stability of the doctrine theoretical foundation, or because of 'logical and practical ground', or that 'there could be no legal right as against the State which made the law' gradually gave way to the movement from, 'State irresponsibility to State responsibility.' In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social,*

*economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."*

14. There is no gainsaying that in the present case, there is practically no controversy, save the respondent's assertion that the omission cannot lead to fault, because the official was an employee of the court- and by implication, that since he acted in that capacity, the court cannot be held responsible. That a court order existed, directing the amount- a substantial one, to be deposited in the bank, that the order was flouted, that the reasons given by the official for not complying with the order (inadvertence, heavy work load, etc) were rejected in a full fledged inquiry into the official's conduct, that he was imposed with penalty for causing loss to a third party (none other than the petitioners) are recognized- indeed are matters of record. Furthermore, the court cannot also shut its eyes to the fact that the direction to deposit the amount in a bank was at the request of the petitioners, as a measure of prudence, because they were aware that appropriation under Section 30/31 of LA Act, could be a time consuming process and that leaving the substantial sum of ₹ 1,29,06,450/- in treasury meant that it would be utterly unproductive. The court too recognized this fact, and immediately directed the deposit. This meant that the court's *judicial order* was, flouted. From another angle, the court does not – unless asked for in specific cases, require deposit the amount in a bank. That is not a legal requirement. So when a specific request in that regard was made and accepted, the duty was more in

the nature of trust, imposed upon the court, to ensure prudent safekeeping of the amount of compensation, so as to ensure that interest accrued. However, the court's acknowledgement of this: by reason of its order (and later, that non compliance resulted in loss) was to no avail, because the amount remained in the treasury.

15. At one level, it seems wrong to impose liability on the court establishment for a fault of the individual. However, one must recognize the fact that the court is a service provider, which ensures compliance with law from those who negate or flout it, and is the agency exclusively invested with the authority to speak about the correct interpretation and implement the law. In *Gurdit Singh v State of Punjab* AIR 1974 SC 1971, the Supreme Court underlined this aspect of the courts' functioning:

> *"A judgment of a court is an affirmation, by the authorised societal agent of the state, speaking by warrant of law and in the name of the state, of the legal consequences attending a proved or admitted state of facts. Its declaratory, determinative and adjudicatory function is its distinctive characteristic. Its recording gives an official certification to a pre- existing relation or establishes a new one on pre-existing grounds.."*

16. That this exclusive function is assigned to courts, by society, through the Constitution and the laws, invests them with a high degree of responsibility in ensuring that their orders and directions are complied with, and non compliance is visited with some sanctions or consequences to the responsible party or its agency nevertheless, it is immune. Courts ensure accountability of institutions – public and private. At the same time, they provide services to the largest cross section of society. It is now recognized that court orders based on violation of basic rights can be corrected or set

aside (*Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388). To say, therefore, that despite injury to parties as a result of omission of its employees (who are held liable departmentally) it is immune and cannot be asked to restitute the injured party, - in this case, by making payment towards loss of interest – is antithetical to notions of justice and fair play. As a vital institution, it is important not only to be seen dispensing justice, but also ensuring that injustice is not done to any one, on account of the fault or omission of anyone, including the court or its agencies, or even their systems. For these reasons, it is held that the second respondent is liable to pay- as a restitutionary measure, the amount of interest that the petitioners would have earned for their 75 % share of the interest (on ₹ 1,29,06,450/-,) for the period after the initial direction to deposit the amount, till the date the share was actually paid, in May, 2009. The interest payable shall be at 9% per annum.

17. The court also directs, that to avoid repetition or avoidance of such omissions, in future, every deposit made in the District courts, shall, unless otherwise ordered, be kept in revolving fixed deposits, to be renewed at periodic intervals (quarterly or half yearly, as may be decided by the District Judge). A judicial officer not below the rank of Additional District Judge, shall be tasked with the responsibility of reviewing, on a monthly basis, the amounts deposited in court, their timely renewals etc. The District Judge is directed to constitute a committee of not more than 3 officers, including one senior District Judge, to work out the modalities of implementation of these directions; for facility and convenience of tracking such deposits (and their periodic renewals), the District Judge shall ensure that a proper computer software is developed. As and when orders of disbursal are made, the

amounts deposited shall be disbursed with interests accrued (subject to TDS, if any, till date of disbursement). Suitable guidelines to be adopted by all courts in Delhi shall be framed and published for implementation, in all District Courts. The District Judge shall ensure that draft guidelines are forwarded to the Registry of this court, which shall then place them for formal approval before the concerned committee and later implementation, within six weeks from today.

18. The writ petition is allowed in terms of the directions in Para 15 above with respect to payment of amount of interests, to be implemented within 6 weeks. The direction to create guidelines for implementation of deposit of amounts shall be finalized in terms of Para 16 above within 6 weeks. The petitioner is entitled to costs quantified at ₹ 25,000/-.

**S. RAVINDRA BHAT, J**

**SUNIL GAUR, J**

**OCTOBER 27, 2017**