

ADDRESS BY HON'BLE SHRI JUSTICE MOHIT S. SHAH, CHIEF JUSTICE,
HIGH COURT OF JUDICATURE AT BOMBAY AT THE FULL COURT
REFERENCE TO LATE MR. JUSTICE MADHAV LAXMAN PENDSE,
FORMER JUDGE OF THIS HIGH COURT, ON 10 JANUARY 2013.

My esteemed colleagues,

Mr. D.J. Khambata
Advocate General

Mr. Kevic Setalvad
Additional Solicitor General of India

Mr. Vitthal B. Konde Deshmukh
Former Chairman & Member, Bar Council of Maharashtra & Goa

Mr. Rohit Kapadia
President, Bombay Bar Association

Mr. Rajiv Chavan
President, Advocates' Association of Western India

Mr. D.R. Zaiwalla
President, Bombay Incorporated Law Society

Senior Advocates,

Members of the Bar,

Members of the bereaved family

Ladies and Gentlemen

We have assembled here this morning to pay tributes to Mr. Justice Madhav Laxman Pendse, former Chief Justice of Karnataka High Court and a former Judge of this Court, who left for his heavenly abode on Monday, 9th December 2013 at Pune at the age of 78 years.

Justice Pendse was born on 11th December 1935. He was educated at Ram Mohan High School, Wilson College and Government Law College, Bombay. He enrolled as an advocate of this Court on 2nd August 1958. Justice Pendse practised on the Appellate Side and argued Civil, Criminal and Writ matters. After practise of about 20 years at the Bar, Justice Pendse was appointed as Additional Judge of this Court on 25th January 1978 and was appointed as permanent Judge on 11th January 1979. He was appointed as Acting Chief Justice of the Bombay High Court on 1st April 1995 and was appointed as Chief Justice of Karnataka High Court on 28th July 1995. He resigned on 25th March 1996.

Justice Pendse delivered a number of landmark judgments covering all branches of law and if I were to refer to all the reported judgments, I would have to borrow the index to AIR Manual and the local Acts.

But I must refer to two significant judgments on the independence of judiciary. In Labour Law Practitioner's Association and another Vs. The State of Maharashtra and others (1980 Bom.C.R. 13), Justice Pendse held that the Labour Courts exercise judicial functions and therefore Judges of Labour Courts are part of the judicial service and they would be under the administrative control of the High Court. It was held that the Labour Court Judges are not merely officers presiding over administrative Tribunals, but they are Judges amenable to the disciplinary control of the High Court under Article 235 of the Constitution of India. Similar view was taken about Judges of the Co-operative Courts in Maharashtra Co-operative Courts Bar Association and others Vs. State of Maharashtra and others (1990{3} Bom. C.R. 437). Justice Pendse held in emphatic terms that Judges of Co-

operative Courts can never be considered to be Government employees under Commissioner for Co-operation and Registrar of Co-operative societies, subject to directions from executive in relation to their judicial work. Such directions to judges by executive would amount to contempt. Government Resolution in question aimed at making serious inroads into judicial independence was struck down.

Reference must also be made to Justice Pendse's well known judgment in the case regarding manipulation of marks in MBBS examination where daughter of a highly placed dignitary was involved.

In this judgment, which cost the dignitary his high office, Justice Pendse observed that undoubtedly there was no direct evidence that the result of his daughter was tampered with at the behest of the dignitary, but it will be a mockery of justice if courts chose to close their eyes to the facts brought on record. Justice Pendse's courage restored the faith of common man in the principle—"be ye ever so high, still the law is above you".

Supreme Court, while confirming the judgment, declined to expunge the strictures passed by Justice Pendse.

In the mercantile and commercial courts he was no less formidable. He was always fully prepared and had the knack of quickly zeroing in on the one or two facets on which an entire case turned. Admissions were completed in just a few minutes and final hearings were disposed of with expedition. In the extraordinarily heavy *Trisure* litigation, he conducted an entire trial on a day-to-day basis. The minute evidence was complete, he started hearing arguments and expected counsel to be ready; and the minute arguments closed he uttered that famous word for which he was so well known,

sending for the steno: bolva. Justice Pendse worked on every side of this Court and he did so with the same rigour, integrity, discipline and dignity. If ever the prestige of this court was enhanced, it was during his tenure when he, and a select group of others, truly made the Bombay High Court the forerunner of all High Courts in India.

He was a stickler for detail. He did not allow or accept shortcuts. He expected counsel to be prepared, and saw it as a discourtesy to the client, the profession and the court when they were not. Those who cut their teeth in his court — some of whom are our seniors and judges today — recall his court as being certainly demanding but also equally rewarding. One of our brothers on the Bench today remembers him in court room 6. Justice Pendse was hearing a summons for judgment. He was against the young lawyer, and he made it known. The lawyer persisted, making his submissions and formulating his propositions. Justice Pendse held in his favour and, after dictating a typically concise order disposing of the matter, stopped the associate from calling out the next matter and said to the lawyer: “That was supremely well argued. Thank you.”

Another brother on the Bench reminds today that as a junior lawyer, he lost his case in Justice Pendse’s Court but still went out and celebrated because Justice Pendse remembered his name and said sorry while dismissing the case.

The junior bar was always in safe hands in his court.

But all lawyers agreed that Justice Pendse was more than just a judge. He embodied that undefinable spirit and quality that most matters to the litigant, to the common man, to the young lawyer — the confidence that in this court, there is but one cause, and that it will be served, and served well:

justice. His sense of concern for the ordinary litigant was profound; he never allowed himself to be swayed by high-stake litigations between big corporates. In his regime, no matter was unimportant; no matter was bigger or smaller than any other.

So also in life, he stood out from the crowd but he never sought to put himself above or beyond ordinary people. In his illustrious career he managed to hold on to the aspirations of the people to have timely justice. He took over the task to develop the law in line with the ideals of the society and principles of the Constitution.

It was he who, in the mid-1980's, set the trend by entertaining PILs against illegal constructions and FSI violations. His judgments of that time endure to this day and are still cited with authority, because he not only knew what the law is, but also what the law is for.

On his retirement as a judge, besides having some assignments he developed a thriving practice as an arbitrator, much in demand for his acuity and the speed of disposal. The stress, however, took its toll. His health suffered. Ever the disciplinarian, he chose the graceful exit, bowing out while still mentally and physically active. A bachelor retired to Pune, to a life of quiet, a life of kindness and grace, keeping touch with his family and friends, reading, listening to music and enjoying the arts.

His personal life was simple, even austere for his own needs. But for others, Justice Pendse was a philanthropist, who gave donations to many institutions. Justice Pendse was also kind and generous to his staff., to many of whom he extended monetary help also.

He had no fascination for expensive gadgets and acquisitions. Material possessions were of no consequence; this was a life of the mind and the heart, and of a steady, unwavering commitment to work, of rigid discipline.

He loved reading and was devoted to Marathi theatre and Hindustani classical music. There was another side to him, too, one that sometimes emerged in a court quite unexpectedly. This was the Pendse who loved all sports but most especially soccer, tennis and cricket. Even in the midst of most solemn Court proceedings some times, he would ask about the cricket score in an on going match. He would like to watch foot ball matches and in private conversations, would talk of individuals and goals scored.

And not many know of what is perhaps his best-kept secret: his love of Shakespeare's works, especially the Tragedies. These were, he maintained, mirrors to the human emotions and he found in them strength, courage and inspiration.

I had the privilege of meeting Justice Pendse only twice at the commencement and at the conclusion of Sesquicentineal celebrations and on both the occasions his fatherly affectionate toothy smile and kind words touched my heart.

Promptitude, tolerance, common sense, industry, honesty, integrity, decency, dignity and kindness: Justice Pendse had each of these qualities in uncommon measure. We of the Bombay High Court must consider ourselves blessed to have had a judge such as he as one of our own; his kind will not easily be found again.

Daniel Webster is supposed to have said “there is no character on earth more elevated and pure than that of a learned and upright judge who exerts an influence like the dews of heaven falling without observation.” Of Justice Madhav Pendse it can truly be said that here was just such an elevation, just such a purity. His influence is with us still, and it will endure.

Justice Pendse is survived by his brother Mr. Ashok Pendse and sisters Smt. Vimal Mahandale and Smt. Sandhya Manohar, whose daughter Smt. Justice Vasanti A. Naik adorns the Bench of this Court.

It is customary to conclude such address with words of sorrow and with a prayer that the departed soul may rest in eternal peace, but a dynamic person like Justice Pendse would have none of this. Justice Pendse would rather say :

“Do not stand at my grave and weep
I am not there; I do not sleep.
I am in the thousand winds that blow,
I am the diamond glints on snow.
Do not stand at my grave and cry
I am not there; I do not die.”

Address by Shri D.J. Khambata, Advocate General, at the Full Court Reference to Late Mr. Justice M.L. Pendse, former Chief Justice of Karnataka High Court and Judge, Bombay High Court, on 10th January, 2014.

My Lord the Hon'ble the Chief Justice Shri Mohit Shah, Hon'ble Judges of this Hon'ble Court, Shri Kevic Setalvad, Additional Solicitor General of India, Shri Konde-Deshmukh for the Bar Council of Maharashtra & Goa, Shri Rohit Kapadia, President, Bombay Bar Association, Shri Rajiv Chavan, President, Advocates' Association of Western India, Shri D.R.Zaiwalla, President, Bombay Incorporated Law Society, members of Justice Pendse's family and members of the Bar,

I fully join in the sentiments expressed by the Hon'ble Chief Justice. Justice Pendse was a titan. A great Judge of this Court. From 25 March 1978 he dominated our Court for sixteen years by the sheer force of his personality on the Bench. Former Judge and Acting Chief Justice of this High Court and Chief Justice of the Karnataka High Court. None of these appellations can fully describe the man!

A great Court shapes and moulds its Judges in its conventions and traditions. But it was Justice Pendse who shaped and moulded the Bombay High Court.

Who can forget the visage of Justice Pendse and the respect and awe, that he invoked in all. His was a Court where expedition and dispatch were the order of the day. The word "adjournment" was a prohibited word in that Court. Woe betide the young junior who was brave enough to seek an adjournment from Justice Pendse. In most cases such a request was rejected without any fuss and usually with a benign smile. There was no raising of voices, only a gentle nod beckoning you to get on with it.

A junior, well prepared, was always received well and an argument well made was immediately appreciated. You always knew how your argument had been received. If you succeeded in provoking the famous Justice Pendse smile, you knew it was the end of the road for you.

It was sometimes felt that Justice Pendse had made up his mind about the matter even before Counsel could open the case. That is an unfair assessment of Justice Pendse. His mind was razor sharp and had cut to the chase of the matter almost at once. Invariably, Justice Pendse had studied the papers overnight and this was true of even the closing matters for that day. What Justice Pendse put to Counsel was the core issue and a refusal to address it immediately, meant that the shutters rightly came down.

Settlement was refused in his Court at your peril. Times out of number your clients' vigorous and negative reaction from behind you effectively sealed his fate. A brother Judge who sat for long with Justice Pendse on a Division Bench, on his retirement confided in us that Justice Pendse was keenly attentive not only to the arguments and reaction of Counsel but to all those who stood behind Counsel and indeed in one case even to a notorious litigant who was prowling the corridors outside the Court room, unwittingly visible to Justice Pendse's hawk eye.

Lawyers who were lions before other Courts turned meek as lambs when they appeared before Justice Pendse! They knew that to raise your voice or to display aggression did not bear fruit in his Court. That made for great decorum and discipline. Calm, precise arguments were digested at once and either accepted by immediate dictation into concise judgments or despatched to their gloomy fate by short orders. *"Rome hath spoken, the case is concluded"* (*"Roma locuta est, causa finite est"*). All in all, the administration of justice benefitted.

I remember appearing before him in the very first year of my practice to argue what now appears to have been an almost impossible case. He heard me with uncharacteristic patience and his characteristic smile. After two hours he dissected and dismissed my argument in a short order. I had been executed with surgical precision, but I never felt any indignity or pain.

Justice Pendse delivered several leading judgments of the day and it would be impossible to recount most of them, let alone all. I therefore recall only a select few.

In the famous Property Owners Association v State of Maharashtra (1992) 1 Bombay Cases Reporter 152, it was a Division Bench headed by Justice Pendse that rejected a challenge to Chapter VIII A of the Maharashtra Housing and Area Development Act 1976 both on the basis of the protection conferred by Article 31C of the Constitution of India as well as on the basis that Chapter VIII A did not violate Articles 14 and 19 of the Constitution. In so holding Justice Pendse observed that the ambit of inquiry in a Petition under Article 226 could not entitle the Court to legislate.

It was also Justice Pendse who delivered what was possibly the first decision analysing the then nascent provisions of Chapter XXC of the Income Tax Act 1961. This was in Shrichand Raheja v. S.C.Prasad (1995) 2 Bom CR 145.

Justice Pendse's judgment for the Full Bench in State Bank of India v. Trade Aid Paper & Allied Products (India) Private Ltd. 1995 (2) MhLJ 81 is a beautifully constructed judgment in which he has explained the rationale underlying the usual appointment of a Court Receiver in enforcement of the security of a bank.

In Swiss Bank Corporation v. Jai Hind Oil Mills Company (1989) 66 Company Cases 241 (DB) Justice Pendse delivered a masterful judgment dealing with the rights and obligations of a Banker in negotiating documents under a Letter of Credit.

In what must be one of his finest judgments in West Coast Builders Private Ltd. v. Collector of Bombay (1995) 4 Bom CR 200, speaking for a Division Bench Justice Pendse dismissed the Appeal of a developer in the strongest terms and rejected the argument of violation of natural justice in the passing of an order for demolition of illegal construction. In language that is prescient Justice Pendse held that there was a growing tendency to flout each and every regulation framed by the Bombay Municipal Corporation and the State Government to regulate construction in the city of Mumbai and held that *“if such actions are permitted, then the day will not be long when the city and its surroundings will stand totally ruined”*. In a valiant cry against corruption Justice Pendse evoked the hope that the demolition order passed by the Municipal Corporation *“would be a lesson to all others who are still under the impression that everyone in this country can be purchased and any construction can be made with a view to earn huge profits”*.

Justice Pendse himself was beyond purchase. He was the epitome of rectitude and integrity not only in his judicial bearing but also in his personal life.

Justice Pendse was for several years the senior-most puisne Judge of our Court. He witnessed a succession of Chief Justices. It was Justice Pendse who formed the solid rock of continuity of the administration of the High Court. He soon gathered an exhaustive knowledge of and familiarity with the judiciary and staff over the length and breadth of Maharashtra. He assumed the role of a *pater familias* of the judiciary in Maharashtra.

Truly in those years it could be said that the Bombay High Court was "*Justice Pendse's Court*".

He acted as Chief Justice of this Court from 27th October 1994 to 28th July 1995. He was then appointed as Chief Justice of the Karnataka High Court on 28th July 1995. His resignation on 25 March 1996 was completely consistent with his indomitable character and adherence to principle.

When one window closes another opens and this is what happened with Justice Pendse. His forensic skills, legal intellect, capacity for disposal and complete integrity endeared him to litigants and lawyers alike and he became the arbitrator of choice for many. His arbitration practice increased exponentially and he became a very busy arbitrator. He was soon doing upto three arbitrations a day. When sitting on a Tribunal he would with his quintessential impatience nudge the proceedings along even whilst being deferential to his more senior co-arbitrators. His true *métier* came as Sole Arbitrator. I remember a sole arbitration by Justice Pendse of an extremely complex factual as well as legal question. From the time he issued directions in the matter to the date of the making of the Award it was not much over six months. He heard the evidence of five witnesses, allowed full cross-examination and gave free reign to the oral and written submissions that were made. It was a thoroughly satisfying and educative experience. Whenever Indian arbitration is criticized I cite this as a sterling example of what our Judges are capable of.

Justice Pendse imposed upon himself the same high standards that he expected from others. For him honour and dignity were paramount. He had a large heart but unfortunately medically a weak one. At the time of his first open heart surgery for bypass when he was a sitting Judge of this Court, with the innocence of a child, he recounted to us how he had warned his eminent Surgeon that being a Judge he would not be able to pay fees other than by way of a cheque.

Towards the end of his life in 2006 when his doctors told him that his heart was beating at only 20% of its required strength he at once gave up his entire practice and moved to Pune. It was one more sacrifice in a life full of sacrifices.

The largeness of Justice Pendse's heart is perhaps best exemplified by what I have come to know only recently and that is the great philanthropy and charity that he did both during his lifetime and in his death. I am told that during his lifetime he set up a public charitable trust into which he made large contributions from his income and also made large donations to various charitable causes for example to finance the activities of the Louis Ram Braille library in Central India, finance students in their engineering education, to finance surgery camps in Melghat for tribals, in aid of reserve forests in Tadoba and to fund surgeries and medical treatment. He has bequeathed a large part of his estate to this trust. Justice Pendse's heart will therefore continue to beat strongly in the form of his charity and philanthropy long after his mortal remains have vanished from the face of the earth.

The memory of the great Justice Pendse is immortal and will now become a part of the fabric and history of this Hon'ble Court. A Court is constituted not by the magnificence of its architecture but by the glory of its Judges and lawyers and Justice Pendse will surely be remembered as one of the most glorious sons of this Court.

On behalf of the Bar I extend our deepest condolences to the entire bereaved family.

May his soul rest in peace.

Address by Mr. Kevic Setalvad, Additional Solicitor General of India, at Full Court Reference to Late Mr. Justice M.L. Pendse, former Chief Justice of Karnataka High Court and Judge, Bombay High Court, on 10th January, 2014.

My Lord, the Chief Justice, the Learned Judges of this Hon'ble Court, Mr. Darius Khambata - the Hon'ble Advocate General of Maharashtra; Mr. Rohit Kapadia - the President of the Bombay Bar Association; Mr. Rajiv Chavan - the President of the Advocates' Association of Western India; Mr. Zaiwalla - President of the Incorporated Law Society; Mr. Vitthal Konde-Deshmukh - of the Bar Council of Maharashtra & Goa; members of the Bar.

It is said that the small, mundane and day to day things a human being does determines what kind of a person he is, and shows him for what he actually is. Whilst joining the Learned Chief Justice and Advocate General in commending Justice Pendse as a Judge I thought it would be appropriate, on this occasion, to share a few personal experiences I had with, and in connection with, Justice Pendse.

The first Instance; involved a matter when I was interning in a solicitor's firm, and was asked to keep track of the 45th matter on Justice Pendse's Monday admission board. I entered Justice Pendse's Court when Item 7 was going on, and naively, thought there was enough time for a coffee and a conversation at the Bar Association. I then came back down about 45 minutes later, to a earful from my Senior Solicitor, and found that the entire admission board of 55 matters was over and Justice Pendse had commenced with the final hearing board. This, at 12.45 pm on a Monday

morning! The silver lining to this incident was that I was never again assigned the task of tracking the Board, and was actually allocated some real work - a rarity for a junior in those days!

The 2nd Instance; involved an opinion which had been obtained from Justice Pendse (after he had stepped down from the Bench) by a Company in which a very close relative was a Director. The opinion involved detailed issues of Company Law, the Stock Exchange and SEBI regulations, and an opinion was obtained through a Solicitor's firm from Justice Pendse. The opinion was a detailed and comprehensive one and the fee charged by Justice Pendse was duly paid by the Company. Around the same time, I was appearing before Justice Pendse in an ongoing arbitration. On the morning of the arbitration, before the arbitration commenced, Justice Pendse handed over an envelope containing a cheque. I was quite shocked, and had no idea why he was giving me a cheque! He then informed me that he had learnt that the opinion had been obtained at the instance of my relative, and that although the opinion was for the Company, he could not charge a fee. I insisted that I had nothing to do with the opinion. That the opinion had been obtained for the Company. That the Company could well afford to pay, and ought to be made to pay the fees. Justice Pendse simply smiled, and said that one lawyer does not charge another, and insisted that I return the cheque to the Company on his behalf.

The third Instance; is in connection with an arbitration proceeding where Justice Pendse was the Sole Arbitrator and which had been fixed for 5 full days, from Monday to Friday, to complete the cross examination of the other side's witness, whom I was cross examining. Each day we promptly started proceedings at 11 am, continued until 2 pm, then resumed at 2.45 pm and continued until 4.45 pm or a little beyond. Needless to say the arbitration sessions, which involved complicated facts, and detailed accounts, were exhausting for me. However, what struck me was that during the entire 5 day period Justice Pendse (who was a good 30 years and more older) never wavered. He was in the arbitrator's chair at about 10.50 am and virtually never rose, except for a 5 minute break at 2 pm. Then he was back in his chair, upto 2.45 pm, perusing the cross examination, which had by then been printed out. He did not break for lunch. His lunch was a cup of tea and two or three Marie biscuits. The discipline and devotion he showed was, to say the least, admirable.

To me, these simple instances epitomize the man. Simple in his living, disciplined and devoted to his work, and dignifiedly oblivious and unaffected, by the unilateral and ad hoc adjudications of others. When commenting upon Justice Pendse, one of our greatest at the Bar, Mr. Fali Nariman says, in his book - '*Before Memory Fades ...*' - (and I quote) that "*Justice M.L. Pendse of the Bombay High Court, transferred for a while as CJ of Karnataka, who resigned office in March 1996, was a fine Judge, he delivered justice without delaying it.*" Put simply by Mr. Nariman, in true Pendse style.

On demitting office as the Chief Justice of the Karnataka High Court, Justice Pendse quickly established an unmatched arbitration practice; and in a matter of a few short weeks became the most sought after arbitrators of his day. As an arbitrator he continued to function in the same fearless and objective manner as he had as a judge and in the same vein as he had when he passed severe strictures against the then Maharashtra Chief Minister in a case which involved the Chief Minister's daughter's admission to a post graduate college programme.

To my mind Justice Pendse was a judge par excellence. One of the best, and undoubtedly one of the quickest. Who, to a chagrin of many a Counsel, ever so often, with a quick "Shhye - Shhye" stopped Counsel who were in full flow in their tracks, and dismissed their Petitions with a sinister grin.

Unfortunately, he was taken away from the law in the last years of his life, under medical advice, after his 3rd heart attack, when he retired at Pune and where he peacefully lived out the rest of his years.

May his soul rest in eternal peace.

Address by Shri Vitthal Bhaurao Konde-Deshmukh, former Chairman of Bar Council of Maharashtra and Goa, at the Full Court Reference to Late Mr. Justice M.L. Pendse, former Chief Justice of Karnataka High Court and Judge, Bombay High Court, on 10th January, 2014.

My Lord, the Hon'ble Chief Justice Shri Mohit Shah and other Hon'ble Judges of the Bombay High Court, Mr. D.J. Khambata, Hon'ble Advocate General, State of Maharashtra, Shri Kevic Setalvad, Hon'ble Additional Solicitor General of India, Mr. Rohit Kapadia, Hon'ble President of the Bombay Bar Association, Mr. Rajiv Chavan, Hon'ble President of the Advocates' Association of Western India and Shri Zaiwalla, Hon'ble President of the Bombay incorporated Law Society and my colleagues at the Bar, distinguished ladies and gentlemen.

We have assembled here this morning to mourn the sad demise of Hon'ble Mr. Justice Madhav Laxman Pendse, Acting Chief Justice of Mumbai High Court and Chief Justice of Karnataka High Court, who left for his heavenly abode on 9th December, 2013 at the age of 78 years.

We have all heard the sentiments expressed by the Hon'ble Chief Justice on sad demise of Justice M.L. Pendse. I share every sentiments expressed by Hon'ble Chief Justice and hasten to add few of my own.

I would like to pay humble tributes on my behalf and on behalf of Bar Council of Maharashtra and Goa to late Justice M.L. Pendse, the distinguished jurist and able administrator, whose sterling contribution added a new dimension to our service jurisprudence. He was indeed many splendored personality, intellectual Judge, able administrator, orator, no peril, having beautiful sense of humour, the list of endless. Justice M.L. Pendse was a kind hearted person.

Late Justice M.L. Pendse was born on 11th December, 1935. He was educated at Ram Mohan High School, Girgaon, Mumbai and later did his graduation from Wilson College, Mumbai and obtained his Law Degree from Government Law College, Mumbai. Justice M.L. Pendse was enrolled as an Advocate of Mumbai High Court on 2nd August, 1958. He was practiced on the Appellate Side specially in Civil, Criminal and Writ. Justice M.L. Pendse was appointed as Additional Judge, High Court, Mumbai, with effect from 25th January, 1978 and was appointed as a permanent Judge on 11th January, 1979. I had an occasion to assist my Senior and to appear independently before Justice Pendse in so many matters.

After serving as an Acting Chief Justice of Bombay High Court, he became the Chief Justice of Karnataka High Court on 28th July, 1995 and resigned on 25th March, 1996.

Many of you must be aware that Mr. Justice M.L. Pendse also headed the Commission whose recommendations of criminal conspiracy by printing bogus tickets for the One Day Cricket Match between India and Australia at Margao in 2001 was accepted by Goa Cabinet.

Late Justice M.L. Pendse was a luminary of Bombay High Court and after contributing his service, was appointed as a Chief Justice of Karnataka High Court. With his experience of Bombay High Court, late Justice Pendse a legend leaves behind an exemplary legacy which I am indeed sure would be substantial guidance to the Bench and the Bar.

My Lords, on behalf of Bar Council of Maharashtra & Goa, I join your Lordships in offering my condolence to the bereaved family.

May his soul rest in peace.

Address by Shri Rohit A. Kapadia, President, Bombay Bar Association, at the Full Court Reference to Late Mr. Justice M.L. Pendse, former Chief Justice of Karnataka High Court and Judge, Bombay High Court, on 10th January, 2014.

We meet today to mourn the passing away of one of the best judges seen by this hobble court in recent times.

Almost all speakers before me have told you ABT his legendary speed. However any attempt to put it in words is doomed to failure. From the word go the LDL judge went! On his first sitting on the OS, a writ petition for which I was briefed reached at 12.30 although it was 42nd on the list. But that's not all. When I mentioned my appearance, he just looked around the courtroom. I thought maybe he had not heard me, so I mentioned my appearance again. No effect – the looking around the court continued. Just then, Mr. R. J. Joshi was seen running to the center of the first row whereupon the LDL judge said: "Mr Joshi are you appearing in this matter? I am admitting it – what have you to say of the interim relief?" 1231 and it was item 43! He was very good at marshalling the law and facts. Not for him any delay even in his judgments. I do not remember him to have adjourned any matter for judgment. As soon as counsel sat down, the LDL judge started dictating his judgment. When counsel finished arguing one particular appeal at 4 p.m., he commenced his judgment right away – although the involved facts required him. To dictate his judgment. For 2 days running thereafter.

As my lord the Chief Justice has told you the famous expression of Mr. Justice Pendse was ' *bolwa* '. I would like to share with you the origin of this. In one of the first writs he had taken-up for final hearing, an eminent Counsel of this Court appeared and told him that the two writ petitions in which he appeared raised a question of Excise law in which Excuse Duty was said to be recovered after a period of 7 years. He promptly turned to the Counsel appearing for the Union of India and asked him whether that was true. Counsel stated that the two writ petitions raised a very interesting question as to who was the manufacturer. The learned Judge stated and, I quote, "After 7 years, neither is the manufacturer" he then stated ' *bolwa* '. He then turned to the Senior Counsel appearing before him and said "Give me a few facts". I need them for the judgment".

His favourite expression was " tchhi " when he found a particular argument particularly unpalatable. He was not lacking in humor. When a counsel objected to the word " tchhi " being used, he inquired of the counsel why he objected. Upon being told that the only reason was that the bar did not know how to respond, he grinned!

He was courteous. On his daily board there was a note to the effect that any pair of advocates could come together at any time and have their matter taken up for hearing, even out of turn. He was also firm - the same note went on to say that on Wednesday. Morning the bench would commence hearing matters in order and that matters would be taken up and disposed of, whether advocates concerned were present or not. Talk about iron fists and velvet gloves!

He would never refuse to hear an advocate even if he was stating the unstatable. His only reaction would be: "I follow." When the learned judge said that, THAT was THAT!

All the attributes of a judge were there. He was courteous, intelligent, sympathetic to the downtrodden, punctual and very much on the ball! It is a great pity that he was not elevated to the Supreme Court, but then he is not the only surprising omission.

In his passing away the Bombay bar has lost an institution and the world an upright judge.

On behalf of the bar association, myself and all of us here, I extend all sympathies to his family with an assurance that he may be gone, but is not forgotten.

Address by Shri Rajiv Chavan, President, Advocates' Association of Western India, at the Full Court Reference to Late Mr. Justice M.L. Pendse, former Chief Justice of Karnataka High Court and Judge, Bombay High Court, on 10th January, 2014.

My Lord the Chief Justice, the other Hon'ble Judges of the High Court, Mr. Darius Khambata, Learned Advocate General, Mr. Kevic Setalvad, Learned Additional Solicitor General of India, Mr. Konde-deshmukh, representative of the Bar Council of Maharashtra and Goa, Rohit Kapadia, President of the Bombay Bar Association, Mr. Zaiwalla, President of the Bombay Incorporated Law Society and Members of the Bar.

We have assembled here this morning to mourn the sad demise of Mr. Justice Madhav Laxman Pendse who left for his heavenly abode, at the age of 83 on 09 December, 2013 at Pune.

Justice Madhav Laxman Pendse, born on 11th December, 1935, was educated at Ram Mohan High School, Girgaum and Wilson College in Mumbai. He studied Law at Government Law College, Mumbai. Justice Pendse enrolled as an Advocate on 02nd August, 1958 and practised on the Appellate Side. He worked as a part-time Professor in Public International Law, Law of Torts, Hindu Law, Law of Crimes and Law of Contract. He was also a part-time Professor in Government Law College, Bombay, and taught Transfer of Property Act, Hindu Law & Jurisprudence.

During his practice at the bar, he had earned a reputation of a hard-working lawyer who had ably handled civil, criminal & writ matters on the Appellate side. During the period when emergency was proclaimed in 1977 Justice Pendse was asked to become a Judge of this Hon'ble Court. Since he was opposed to the curbs on the freedom of speech and expression, he simply refused the offer. Later in 1978 after the emergency was lifted he was once again asked about the Judgeship and he accepted. Thus he was appointed as an Additional Judge of the High Court at Bombay with effect from 25th January 1978, went on to become permanent Judge on 11th January 1979 and went on to become the Acting Chief Justice of Bombay High Court on 1st April, 1995. Thereafter, he became the Chief Justice of Karnataka High Court on 28th July, 1995. He resigned on 25th March, 1996.

Justice Madhav Laxman Pendse was described as a selfless and courageous Judge who always kept himself away from public glare since he was publicity shy. He was a highly studious Judge with a magnificent photogenic memory.

As a Judge of this High Court, he presided over many important and delicate cases. On March 12, 1986, Justice Pendse passed severe strictures against the then Chief Minister of Maharashtra. The case involved the Chief Minister's daughter's admission in a Post Graduate program in the K.E.M. Medical College. It was found that her answer papers in the entrance examination were doctored to manage her admission. The Chief Minister had to resign. The matter went to Supreme Court and the decision of Justice Pendse was upheld.

In another matter, the Builders had constructed several buildings on a big plot of vacant land. The individual flat purchasers of each building were interested in registration of separate buildings. The Registrar refused the proposal on the grounds that the plots were not subdivided. The aggrieved party filed a Writ Petition against the State of Maharashtra being Writ Petition No.1642 of 1983. In this case Justice M.L. Pendse observed:- "The Registration of the Society cannot be refused on the grounds that 90% of the flat Purchasers have not signed the application. The objection raised by the Registering Authority is without any substance and the Registering Authority is bound to register the Society as all the requirements are complied with". This verdict gave great relief to many flat owners.

Justice Pendse served as the Director of the National Stock Exchange Ltd. for some time. He also headed the Commission whose recommendations of criminal conspiracy of printing bogus tickets for the ODI cricket match between India and Australia at Margao in 2001 was accepted by the Goa Cabinet.

Another judicial commission headed by Justice Mr. M.L. Pendse was constituted by the Goa Government to probe irregularities in the state-owned Economic Development Corporation. The EDC granted loans to industries. Justice Pendse Commission pointed out several irregularities in the disbursal and recovery of loans by the EDC. The then Chief Minister was indicted. The commission further suggested that the EDC should be handled by financial experts rather than by politicians.

In another significant case, India was seeking the extradition of a famous Music Director who was the main accused and conspirator in the assassination of music baron Gulshan Kumar in Mumbai in August, 1997. The Music Director's lawyers filed an affidavit in a London Court alleging that police torture, intimidation and obtaining confessions under duress was endemic in India. Justice M.L. Pendse was called as an expert witness by the Crown Prosecution Service to rebut these charges by this Music Director. In his forthright and straightforward style he told the London Court that the defence was "going too far" to tarnish the image of the judiciary and the police in Maharashtra. Although there could be some aberrations, the police as well as the judiciary in India acted according to the law and complaints of torture, unlawful detention or obtaining confessions under duress were "few and far between". During his cross examination he told the Court that "You would be having similar aberrations in the London police,". Justice Pendse also challenged the contention of the defence citing Amnesty International, the US State Department and the National Human Rights Commission of India reports which alleged that this Music Director would not get a fair trial in India. He said Maharashtra had a strong, independent judiciary and a vigilant free Press, which provided ample safeguards against judicial or police malpractices.

My Lord, this was the straightforward, courageous, selfless, honest Judge who was superseded in 1996. When Chief Justice M.L. Pendse was superseded, senior lawyer Mr. Fali S. Nariman lamented (to Law Resource India): "There may have been good reasons why a judge

with an excellent record was not appointed in one of the vacancies in the Supreme Court. But this 'non-appointment' has put in doubt the continuance of a system by which secrecy governs the entire selection process. We do not know, and we cannot know, why Justice Pendse was overlooked. No one can be asked what were the written reasons for not appointing one of the then senior-most judges in the country, and a person of reputed competence and integrity. The judges' lips are sealed, because of confidentiality; inevitably this gives rise to gossip and rumour which cannot be contradicted without breaching the code of confidentiality. This is not good for the system. It is not good for the Chief Justice of India nor for the judges of the Supreme Court."

Justice Madhav Laxman Pendse will go down in the history as a legendary Judge who selflessly served the Judiciary and the common man.

My Lord, on behalf of Advocates Association of Western India, I fully associate with the sentiments that have been expressed here by Your Lordship as well as my colleagues at the Bar and I pay my humble respects on behalf of the Association to the departed soul and offer our condolences to the bereaved family.

Address by Shri D.R. Zaiwalla, President, Bombay Incorporated Law Society, at the Full Court Reference to Late Mr. Justice M.L. Pendse, former Chief Justice of Karnataka High Court and Judge, Bombay High Court, on 10th January, 2014.

My Lord the Chief Justice Mr. Mohit Shah, the Hon'ble Judges of the Bombay High Court, Mr. Darius Khambata, the Learned Advocate General, Mr. Kevic Setalvad, Additional Solicitor General of India, Mr. Rohit Kapadia, President of the Bombay Bar Association, Mr. Rajiv Chavan, President of the Western India Advocates Association, Mr. Konde-Deshmukh for the Bar Council of Maharashtra and Goa, my Colleagues at the Bar, Members of the family of Justice Pendse.

On behalf of the Incorporated Law Society and the fraternity of Solicitors I am called upon to convey our members grief on the sad demise of Justice Pendse who left us on 9th December, 2013.

With respect I concur with the sentiments so eloquently expressed by my Lordship the Chief Justice and the Learned Speakers.

Such glowing well deserved tributes have been already paid by the Learned previous speakers. What more can I say.

Justice Pendse was an Institution. He will be remembered by the Bar and the Bench as one of the great Judges of the Bombay High Court. If I could characterize Justice Pendse in two words it would be "brilliant and simple". On the Bench he had a sixth sense and could see through any matters in a flash. It was once said that the most powerful Division Bench of this Court was when Justice Pendse was sitting with the Chief Justice Mr. Dinshaw Madon also a doyen and a great Judge of this Court. I remember Justice Pendse telling me with humility that

every day is a learning experience sitting on this Bench with Chief Justice Madon. Justice Pendse had an uncanny knack of hitting at the pith and substance of the matter and hence he would quickly bring long winding arguments to the point in question with his traditional smile and this is why he had to his credit large effective disposals. It made little difference to him as to who is appearing before him. He would just promptly decide without fear or favour. He was a hero to our Nationalized Banks because he was hard on devious debtors. One of the Managing Directors of our Bank had said to me God Bless Justice Pendse because of whom the Bank has been able to recover substantial non-performing assets.

We have lost this great Judge but then life and death are inseparable and inter related duality of an essential whole and we all have to pass through an allotted space of time given to each one of us.

On behalf of the Incorporated Law Society and the fraternity of Solicitors I convey our members grief to the family members of Justice Pendse and to ease their loss I may be permitted to quote a scriptural text:

“ There is no death, life is a continuous event that the inner soul of man clothes itself with a new garment discarding the old and begins the new journey”.

May the spirit of demised Lordship rest in peace and keep us in eternal guidance.