A.F.R.

Court No. - 2 **Reserved**

Case :- SPECIAL APPEAL DEFECTIVE No. - 23 of 2022

Appellant :- Jyoti Sikka
Respondent :- State Of U.P. Thru.Legal Remembrancer Dept. Of Law And Justice Lucknow
Counsel for Appellant :- Lalta Prasad Misra,Naveen Shukla
Counsel for Respondent :- C.S.C.

Hon'ble Devendra Kumar Upadhyaya,J.
Hon'ble Subhash Vidyarthi,J.

Order on C. M. Application No.1 of 2022

1. Office has reported delay of 18 days in filing the Special Appeal.

2. We have heard the learned counsel for the appellant and learned Chief Standing Counsel representing the sole respondent and have also perused the averments made in the application supported by an affidavit.

3. We are satisfied that the delay has sufficiently been explained.

4. Accordingly, the application is allowed and the delay in preferring the Special Appeal is hereby condoned.

Order on C. M. Application No.3 of 2022

1. Heard learned counsel for the appellant and learned Chief Standing Counsel and perused the averments made in the application with the prayer to grant leave of the Court to file Special Appeal which is supported by an affidavit.

2. Though, the appellant is not a party in the writ petition in which the order dated 02.03.2022 has been passed by the learned Single Judge which is under appeal herein, however, since the prayer in the Special Appeal is confined to set aside only that

portion of the order where allegedly aspersions have been cast and adverse remarks has been made against the appellant, the application is allowed and the leave to appeal is granted.

Order on Special Appeal

1. This case presents somewhat unusual facts before us.

2. The instant intra-court appeal seeks to challenge the order dated 02.03.2022, passed by the learned Single Judge in Writ -C No.6208 of 2021 to the extent the order allegedly casts aspersions and makes adverse remarks against the appellant who is a practicing lawyer of this Court and at the relevant point of time was an Additional Advocate General for State for Uttar Pradesh and has been representing the State in the cases brought before this Court.

3. Learned Chief Standing Counsel has raised certain preliminary objections about the maintainability of the Special Appeal. It has been contended in this regard by the learned Chief Standing Counsel that in terms of the provision contained in Chapter IX Rule 7 of the Rules of the Court, all the parties who are arrayed as either parties in the writ petition wherein the order under appeal has been passed, ought to have been arrayed as respondents in this Appeal. It has also been submitted by the learned Chief Standing Counsel that the writ petition was filed by the State of Uttar Pradesh not through the Legal Remembrancer/Principal Secretary, Department of Law but by the Department of Forest through Divisional Forest Officer, Lucknow. Thus, submission is that in the instant Special Appeal, the State has been arrayed not through the Forest Department; rather through Legal Remembrancer/Principal Secretary, Department of Law and as such description of the respondent is defective.

4. On the aforesaid grounds, learned Chief Standing Counsel has contended that the Special Appeal suffers from the vice of non-joinder of necessary parties and description of State as respondent is also defective.

5. In reply to the said objections, learned counsel for the appellant has submitted that appellant has no personal concern with the adjudication of the dispute in the writ petition and that she has only been representing the writ petitioner before the learned Single Judge and is aggrieved only by the adverse remarks made by the learned Single Judge, hence parties in the writ petition are not necessary parties. He further states that no relief is being claimed by the appellant against the parties in the writ petition, thus there is no defect in the array of parties in this Special Appeal.

6. Therefore, it has been submitted that the parties to the writ petition pending before the learned Single Judge are not necessary parties so far as the issue raised in this Special Appeal is concerned. It has also been argued that since it is believed by the appellant that on the basis of the order passed by the learned Single Judge, the appellant has been discharged from the office of Additional Advocate General of State for Uttar Pradesh by the Law Department, as such State of U.P. in this appeal has been arrayed as respondent not through Forest Department but through Legal Remembrancer/Principal Secretary, Department of Law.

7. Having considered the submissions made by the learned counsel representing the parties in respect of the preliminary objections as to the maintainability of the Special Appeal, we are unable to agree with the submissions made by the learned Chief Standing Counsel.

8. It is true that in the writ petition, the dispute is in relation to certain land between the Forest Department of the State and certain individuals. The appellant does not have any personal interest or concern with the said dispute except that she has been representing the writ petitioner before the learned Single Judge. Thus, we are of the considered opinion that the parties in the writ petition are not necessary to be impleaded in this Special Appeal considering the prayer and the nature of issue brought before us. The preliminary objection as to the maintainability of the Special Appeal, therefore, merits rejection, which is hereby rejected.

9. Learned counsel for the appellant in support of the prayer made in this special appeal has argued that the adverse remarks against the appellant in the order passed by the learned Single Judge are capable of visiting the appellant with adverse civil consequences and that the remarks are so serious that the same are capable of resulting in adverse repercussions on the professional carrier of the appellant as an Advocate, which have been made without affording any opportunity of hearing to the appellant and hence the same need to be expunged.

10. It has further been argued on behalf of the appellant that there is no recognized or prescribed procedure, in the functioning of this Court, of taking permission of the Court in case a counsel is not in a position to appear in a case to be called out during course of the day and hence in this view of the matter as well, the observations made by the learned Single Judge in the order under appeal are unwarranted. It has been submitted that on 3rd of March, 2022 when the order under appeal was passed, no substantial proceedings were to be drawn for the reason that in the writ petition the person arrayed as opposite party no.1 had died and only a request for grant of time for making an

application seeking substitution of the legal heirs of the deceased-opposite party was to be made and as such presence of the appellant, who was Additional Advocate General of the State, was not required as necessary assistance to the Court could have been provided by the learned Standing Counsel who was assisting her. It has also been stated that the circumstance in which the appellant could not appear in the case before the learned Single Judge on 02.03.2022 was occasioned because of the fact that the appellant had to leave the Court to attend some medical emergency and even otherwise also there was no occasion for the learned Single Judge to insist for her appearance in the case.

11. Unfolding the events and the circumstances in which the order has been passed by the learned Single Judge on 02.03.2022, in his submission learned counsel for the appellant has stated that the writ petition was instituted by the Forest Department of State of Uttar Pradesh through Divisional Forest Officer, Lucknow against one Har Charan Kaur Gill and that the appellant was engaged to argue the writ petition as an Additional Advocate General for the State and on her argument an interim order was passed in favour of the State on 09.03.2021. It has also been stated on behalf of the appellant that the case was listed before the learned Single Judge on 02.03.2022, however, in the evening of March 1, 2022, learned counsel representing the opposite party no.1 in the writ petition informed the appellant that the said opposite party had died on 27.12.2021 and accordingly the State Counsel assisting the appellant, on the case being called out, requested the learned Single Judge to grant some time to move the application for substitution of the legal heirs of the deceased opposite party, however, the learned Single

Judge observed (as informed to the appellant by the learned State Counsel assisting her) that perhaps in the case the appellant as Additional Advocate General was appearing and therefore she be sent for to appear and argue the case. Learned counsel for the appellant further states that after getting the case passed over at about 12.30 p.m. the assisting counsel telephonically informed the appellant that the case was passed over and though he had requested for grant of time in order to enable the State to take steps for bringing an application for substituting the legal heirs of opposite party no.1, however, learned Single Judge desired presence of the appellant before the Court by stating that the case was being conducted by the appellant and enquired about her whereabouts.

12. The appellant thereafter is said to have told the learned State Counsel assisting her that for seeking time for moving application for substitution of the legal heirs of the deceased opposite party, her presence in the Court was not required. In the sequence of events as disclosed in this special appeal on behalf of the appellant, it has further been stated that the appellant also informed the learned State Counsel assisting her that she had left the premises of the Court in order to attend some medical emergency. The case is said to have been called out after lunch recess and as per the appellant, learned counsel assisting her informed the learned Single Judge that the appellant could not appear as she had gone to attend some medical emergency, however, even after this information was furnished to the Court, the order under appeal has been passed by the learned Single Judge.

13. It is also the case of the appellant that after the order under appeal dated 02.03.2022 was passed by the learned Single Judge,

State Government has passed an order on 12.04.2022 discharging her from the office of Additional Advocate General and that except the order dated 02.03.2022 passed by the learned Single Judge no other material was available with the State Government which may have resulted in passing of the order discharging the appellant from the office of Additional Advocate General.

14. Stating the aforesaid facts, it has been argued by the learned counsel for the appellant that she was not given any opportunity before passing the order under appeal which contains unwarranted and uncalled for remarks against her. Drawing our attention specially to the observations made in paragraphs 4 and 6 of the order under appeal, it has been argued by the learned counsel representing the appellant that it is not only that the said remarks/observations which adversely affect the appellant were made without giving any opportunity of hearing or even without putting the appellant to notice but also that there is no prescribed procedure which requires any counsel to seek leave of the Court in a matter which is listed during the course of the day, in case the counsel has to leave the Court premises for attending some medical emergency. It has also been submitted that the facts and circumstances of the case did not warrant the order under appeal to have been sent to the Principal Secretary, Law and the Additional Chief Secretary, Department of Forest for information and “necessary action”.

15. Emphasis of the learned counsel for the appellant is that the learned Single Judge ought not to have sent the copy of the said order to the State Government for “necessary action”. It has thus, been argued that discharge of the appellant from the office of Additional Advocate General has precipitated for no other reason but because of the fact that the order dated 02.03.2022

was sent to the State Government in the Department of Law as well for "necessary action". The submission, thus, is that the remarks/observations contained in paragraphs 4 and 6 of the order under appeal were not called for not only for the reason that the appellant was neither given any opportunity of hearing, nor was she put to any notice before recording such remarks but also for the reason that the factual background of the case were also not correctly appreciated by the learned Single Judge. The prayer thus is that the order under appeal be set aside except to the extent it fixes a date in the matter.

16. We have considered the submissions made by the learned counsel appearing for the appellant and have also perused the records available before us on this special appeal.

17. In this special appeal we have essentially been called upon to expunge the remarks contained in paragraphs 4 and 6 of the order under appeal which allegedly are adverse against and cast aspersions on the appellant.

18. There are well recognized legal principles which are to be followed while considering a matter where consideration is to be made by a Court of law to the prayer for expunction of such remarks. Hon'ble Supreme Court in the cases of **State of U.P. vs. Mohammad Naim,** reported in **AIR 1964 SC 703** had the occasion to cull out the relevant considerations which should weigh with a court while considering such a matter. The Hon'ble Supreme Court in the said case of **Mohammad Naim (supra)** had observed as under:

> ***"It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an***

> ***opportunity of explaining or defending himself ; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. ”***
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> *(Emphasis supplied by Court)*

19. Thus, the first and foremost question to be considered in such a matter is as to whether the party whose conduct is in question had an opportunity of explaining or defending himself. The other considerations to be made are as to whether there is evidence on record justifying the remarks and as to whether remarks are necessary for decision of a case as an integral part thereof. The Hon’ble Supreme Court while culling out these considerations to be made in such a matter further goes on to say that judicial pronouncements must be judicial in nature and should not depart from sobriety, moderation and reserve.

20. The judgment in the case of **Mohammad Naim (supra)** has been referred and followed by Hon’ble Supreme Court in the case of **Neeraj Garg vs. Sarita Rani and others, reported in (2021) 9 SCC 92.** The case of **Neeraj Garg (supra)** also related to a lawyer practicing in the Hon’ble High Court of Uttarakhand and certain remarks and observations were made by the said Court against the lawyer without putting him to notice or providing opportunity of hearing.

21. In the case of **A. M. Mathur vs. Pramod Kumar Gupta and others**, reported in **(1990) 2 SCC 533**, Hon’ble Supreme Court while considering a matter where certain derogatory remarks were made by Hon’ble Madhya Pradesh High Court against a Senior Advocate and Ex. Advocate General of the State has noticed the significance of avoidance of even the

appearances of bitterness which has been held to be important in a judge and which requires a judge not to cast aspersions on the professional conduct of a person.

22. In para 10 of the case of **A. M. Mathur (supra)** the Hon'ble Supreme Court has quoted Justice Benjamin N. Cardozo, the Former Judge of U. S. Supreme Court and author of famous book titled **"The Nature of the Judicial Process"**. In this case quoting justice Felix Frankfurter and Justice Cardozo, Hon'ble Supreme Court has observed that judicial restraint and discipline are as important to the administration of justice as they are to the effectiveness of the army. Hon'ble Supreme Court has also observed in the said judgment that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication but it is a principle of the highest importance for proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless the same becomes necessary for decision of the case. We find it appropriate to extract paragraphs 10 to 14 of the judgment in the case of **A.M. Mathur (supra)** which are as under:

> ***"10. Justice Cardozo of course said:***
>
> ***"The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass judges by. We like to figure to ourselves the processes of justice as coldly objective and impersonal. The law, conceived of as a real existence, dwelling apart and alone, speaks, through the voices of priests and ministers, the words which they have no choice except to utter. That is an ideal of objective truth toward which every system of jurisprudence tends.... It has a lofty sound; it is well and finely said; but it can never be more than partly true.***
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> ***11. Justice Felix Frankfurter, put it with a different emphasis:***

"Judges are men, not disembodied spirits. Of course a judge is not free from preferences or, if you will, biases."

12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said:

"First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them, disinterestedness ... and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law."

13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a

> ***general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. ”***
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> *(Emphasis supplied by Court)*

23. Having noticed, the broad legal principles to be followed while considering the matter where the court is called upon to deal with a prayer for expunction of disparaging remarks against the person of authority, as above, when we examine the narration of the facts and circumstances made on behalf of the appellant before us which allegedly led to passing of the order under appeal by Hon’ble Single Judge, what we find is that the version of the facts as noticed in the order under appeal passed by the learned Single Judge is at variance with the one put forth before us on behalf of the appellant in this special appeal. Learned Single Judge only records that the learned State Counsel assisting the appellant put in his appearance and in the first session before lunch it was informed that the appellant would appear in the matter and that the matter may be taken up in the revised call as she was busy in some other court. Learned Single Judge further records that on being asked as to where was the appellant busy at that time, it was told by learned State Counsel assisting her that she was busy in some other Court. Further learned Single Judge records in the order that on a specific query as to which Court the appellant was arguing, the learned State Counsel assisting her did not have any answer. In this background learned Single Judge records that learned assisting Counsel had the courage to tell complete lie in the Court. Learned Single Judge thereafter records that when the case was taken up in the revised call the appellant was not present and on

being asked as to where was she busy, it was told by learned State Counsel assisting the appellant that she had left the Court as she had to attend some urgent work.

24. In the aforesaid background facts, learned Single Judge, thus, has remarked in paragraph 4 of the order under appeal that appellant did not have the courtesy to come and seek permission of the Court for leaving the Court premises despite having accepted the case when the case was kept to be taken up in the revised call. The learned Single Judge, thus, observed that the Court does not approve of the conduct of the appellant and also that of the learned State Counsel assisting her. The learned Single Judge also ordered that copy of the said order be forwarded for information and necessary action to the Principal Secretary, Law and the Additional Chief Secretary, Government of Uttar Pradesh in the Department of Forest.

25. Thus, the facts and events as narrated on behalf of the appellant which we have recorded in this order are in departure with the facts and events which we find recorded in the order under appeal passed by the learned Single Judge.

26. This Court is a Court of record and thus records of the Court, which will necessarily include an order passed by the Court, has to be accorded utmost sanctity. The statement of facts as to what transpired at the time of hearing recorded in the judgment or order of a Court are to be treated to be conclusive of the facts so stated and no one can be permitted to contradict such statements by affidavit or other evidence.

27. Hon'ble Suprerme Court in the case of **State of Maharashtra vs. Ramdas Shrinivas Nayak and another,** reported in **(1982) 2 SCC 463** has noted the aforesaid legal position and has enunciated the principle that the Court cannot

launch an enquiry as to what transpired in the Court and further that matters of judicial record are unquestionable. Paragraphs 4 and 8 of the judgment in the case of **Ramdas Shrinivas Nayak (supra)** are relevant to be noted which are extracted herein below:

> ***"4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course***

a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

8. So the Judges' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else."

28. Referring to the judgment in the case of **Ramdas Shrinivas Nayak (supra),** Hon'ble Supreme Court in yet another case that is, in the case of **Roop Kumar vs. Mohan Thedani, reported in (2003) 6 SCC 595** has reiterated the aforesaid legal position. Paragraph 11 of the said judgment is also relevant to be extracted which is as under:

"11. It would be logical to first deal with the plea relating to absence of forum of appeal. It is to be noted that the parties agreed before the High Court that instead of remanding the matter to the trial court, it should consider materials on record and render a verdict. After having done so, it is not open to the appellant to turn around or take a plea that no concession was given. This is clearly a case of sitting on the fence, and is not to be encouraged. If really there was no concession, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak. In a recent decision Bhavnagar University v. Palitana Sugar Mill (P) Ltd. the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no

such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary."

29. In the case of **Commissioner of Customs, Mumbai vs. Bureau Veritas and others,** reported in **(2005) 3 SCC 265,** Hon'ble Supreme Court again referred to the judgment in the case of **Ramdas Shrinivas Nayak (supra)** and observed that the statements of facts as to what transpired at the time of hearing recorded in the judgment of the Court are conclusive of the facts so stated and that no one can contradict such statements by affidavit. Paragraph 14 of the said judgment is extracted herein below:

"14. After having agreed on some point as recorded, it is not open to the appellant to turn around or take a plea that the position is different. If really there was no agreement, the only course open to the appellant was to move the Tribunal in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak. In a recent decision Bhavnagar University v. Palitana Sugar Mill (P) Ltd. the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary."

30. It is not that in a situation where a party thinks that the happenings in Court have wrongly been recorded in a judgment or order, then the party is remedy-less. As held by Hon'ble Supreme Court in the cases of **Ramdas Shrinivas Nayak**

(supra) and Roop Kumar (supra), in such an event the party concerned must move the judge/court calling the attention of that very judge who is said to have recorded the facts relating to his/her conduct. The principle that "judge's record is conclusive" has a purpose and is necessary to be followed for maintaining the sanctity of the records of the Court, specially the Court which is a Court of record.

31. In view of the law laid down by Hon'ble Supreme Court in the aforementioned cases **Ramdas Shrinivas Nayak (supra) and Roop Kumar (supra)**, the appropriate course available to the appellant is to approach the learned Single Judge who has passed the order under appeal and to call his attention that the facts, circumstances and events which led the learned Single Judge to make the alleged offending observations are not correct and that such observations have thus been made in error.

32. From the records available before us what is indisputably clear is that before recording the alleged offending remarks in the order under appeal the appellant was neither put to notice nor was she given any opportunity of hearing. It is also indisputable that certain remarks contained in the order under appeal passed by the learned Single Judge are adverse and stigmatic and thus visit the appellant with adverse civil consequences.

33. For the discussions made and reasons given above, we are of the opinion that instead of approaching the forum of special appeal, the appellant ought to have moved appropriate application before the learned Single Judge apprising him of the facts and circumstances as narrated before us in this special appeal and seek redressal of her grievances.

34. The special appeal is, thus, **disposed of** permitting the appellant to approach the learned Single Judge calling his

attention to the facts narrated on her behalf in this special appeal and seek remedy concerning her grievances relating to the aspersions cast and adverse remarks made against her, as stated in this special appeal.

35 We request the learned Single Judge that in case any such application with appropriate prayer is made by the appellant, the same shall be considered and decided with expedition.

36. In the facts of the case there will be no order as to costs.

Order Date :- 24.05.2022
Sanjay/akhilesh

Digitally signed by SANJAY PRATAP SINGH
Date: 2022.05.24 17:15:10 IST
Reason:
Location: High Court of Judicature at Allahabad, Lucknow Bench