

Presenting a case before NCLT & Art of Advocacy

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**Thane Chapter of WIRC of ICSI
May 21, 2023**



VIEWS EXPRESSED IN THIS PRESENTATION ARE STRICTLY PERSONAL AND NEED NOT NECESSARILY BE VIEWS OF ANY OF MY PAST OR PRESENT ORGANISATIONS, I HAVE WORKED OR AM WORKING WITH.


IN SHORT PAID OPINION MAY DIFFER

Presenting a case before NCLT

- Relevant Law
- Applicable Rules
- Customary practices of Individual Bench/ Courts



"I'm beginning to wonder if both you guys are lying."



He is no Counsel who cannot take two sides.

--CHARLES LAMB

ADVOCACY

- The profession or work of a legal advocate (/Authorized Representative)
- The Act of pleading for or actively supporting a cause or proposal.



Court Vs. Tribunal

- Harinagar Sugar Mills Ltd. vs. Shyam Sunder Jhunjhunwala

*Jt. Hidayatullah “.....By “Courts” is meant **Courts of civil judiciary** and by “tribunals”, those bodies of men who are **appointed to decide controversies arising under certain special laws.....”***

- Union of India vs. R Gandhi

*“.....The term “courts” refers to places where **justice is administered** or refers to Judges who **exercise judicial functions.....** “Tribunals” on the other hand are **special alternative institutional mechanisms**, usually brought into existence by or **under a statute to decide** disputes arising with reference to that **particular statute**, or to determine controversies arising out of any administrative law.”*



Court Vs. Tribunal



COURT	TRIBUNAL
Established by State and entrusted with judicial power of administration of justice	Established under a statute to adjudicate specified disputes arising under the said statute.
Manned by Judges	Judge as a Sole Member or combination of Judicial and Technical Member
Governed by CPC, Evidence Act	May have its own procedure (*Inherent Powers)

PLEADING

Order 6, R. 1 -C.P.C.

Pleading means either a plaint or a written statement.

R2(19) of NCLT Rules, 2016

“pleadings” means and includes application including interlocutory application, petition, appeal, revision, reply, rejoinder, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal;



"I plead guilty."

PLEADING



"I plead guilty."

Udhav Singh v. Madhava Rao Scindia

Justice Sarkaria, held: "A **pleading** has to be **read as a whole** to ascertain its import. It is **not** permissible to **cull out** a sentence or a passage and to **read it out of the context** in isolation. the pleading has to be **construed as it stands without addition or subtraction** of words, or **change** of its apparent **grammatical sense**. The **intention** of the party concerned is **to be gathered**, primarily, from the tenor and term of his **pleading taken as a whole**.

PLEADING



"I plead guilty."

To Contain

- Material Facts
 - Not Law
 - Facts, not evidence*
- Facts Probabanda Vs. Facts Probantia
- No case law
 - No immaterial facts
 - Precision and Certainty

PLEADING

Facts, not evidence *

P.Chidambaram vs. R.S.Raja Kannappan

There is distinction between **facta probanda** (the facts required to be proved, i.e. material facts) and **facta probantia** (the facts by means of which they are proved, i.e. particulars or evidence). It is settled law that pleadings must contain only **facta probanda** and not **facta probantia**. The material facts on which the party relies for his claim are called **facta probanda** and they must be stated in the pleadings. But the facts or facts by means of which **facta probanda** (material facts) are proved and which are in the nature of **facta probantia** (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.



"I plead guilty."

PETITION

R 2(17)

NCLT Rules, 2016



“petition” means a **petition** or an **application** or an **appeal** or a **complaint** in pursuance of which any **proceeding** is **commenced** before the Tribunal;

AFFIDAVIT

- Sworn or affirmed before Advocate/ Notary

AFFIDAVIT

I

Date _____ County: _____

Purpose: _____

PERSONALLY came and appeared before me, the undersigned Notary, the within named _____, who is a resident of _____ County, State of _____, and makes this his/her statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his/her knowledge:

(Insert Statement)

DATED this ____ day of _____, 20__

Signature of Affiant

SWORN to subscribed before me, this ____ day _____, 20__

NOTARY PUBLIC

My Commission Expires:

AUTHORISED REPRESENTATIVE

- A person authorised in writing by a party
- To present his case
- U/Se 432 of CoA



Se 432 of CoA-

- A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more **chartered accountants or company secretaries or cost accountants or legal practitioners** or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

Application/Interlocutory Application
R 2(5) & (15)
NCLT Rules, 2016

“application” means **any application**, interlocutory application or proceedings filed under the provisions of the Act, including any transferred application or transferred petition as defined under sub-rule (29)



“interlocutory application” means an **application** in any appeal or original petition on **proceeding already instituted** in the Tribunal, **but not being a proceeding for execution** of the order or direction of Tribunal;

Interim Relief/Ad Interim Relief

Rajendraprasad R. Singh vs The Municipal Corpn. Of Gr. Bombay

*“.... even after the reply is filed by the defendants the court may grant **ad-interim** order of injunction **if it does not have time to hear the matter** and feels that **it is necessary to grant injunction pending hearing to protect the plaintiff** pending hearing of the application. The Court further observed that thus, **ad interim order of injunction may be ex parte** or may be passed even in the presence of the defendants.*

*There is **no qualitative difference** between an interim and ad interim order except about the period for which they operate and the stage at which they are passed. If so the **order refusing an ad interim injunction is as much appealable as an order refusing an interim injunction.**”*

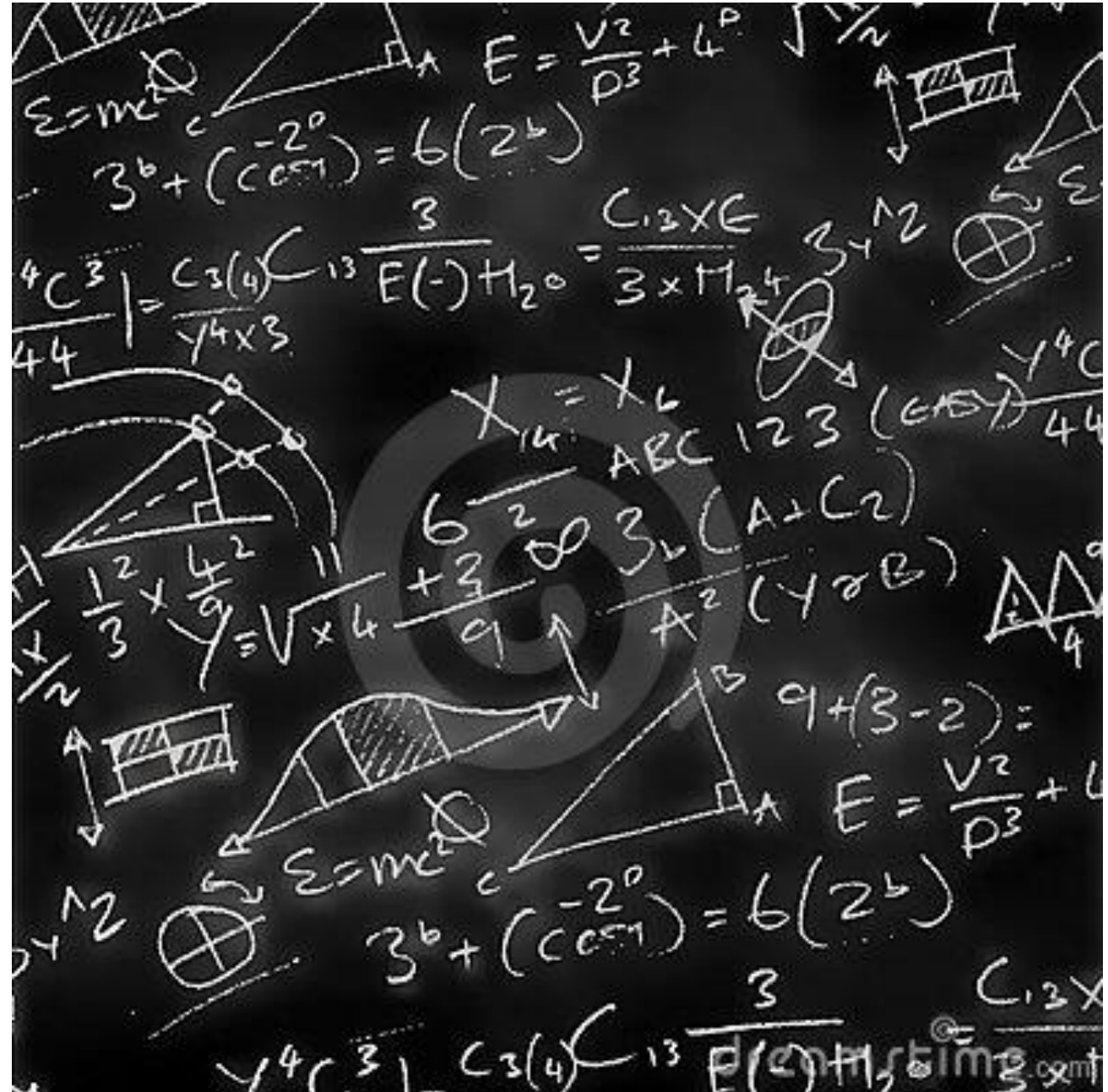


CAUSE LIST

- Daily Cause List
- Monthly Cause List
- Carry forward of CL/Adjournment



MENTIONING THE MATTER/ FIRST HEARING



REPLY



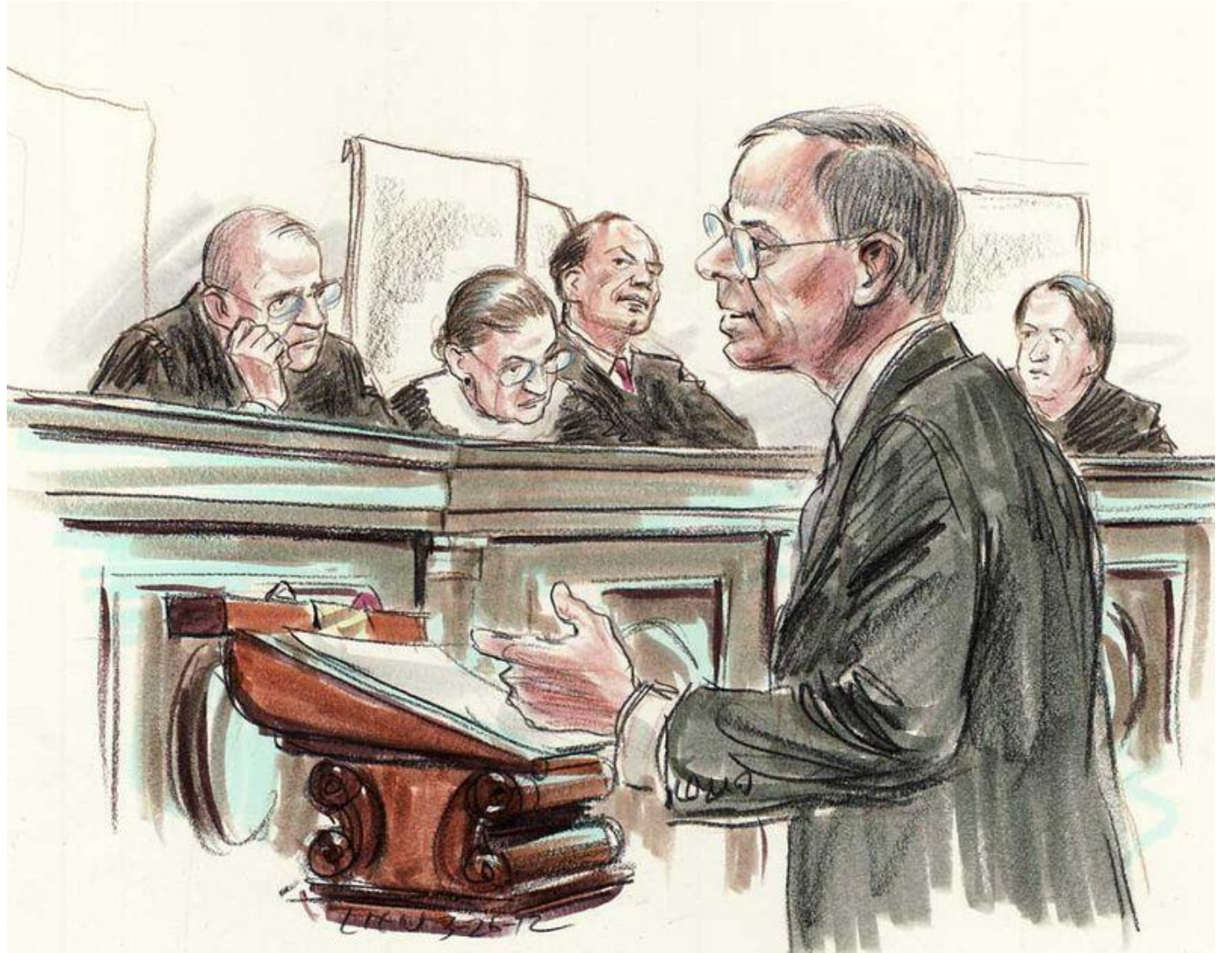
REJOINDER



SUR - REJOINDER



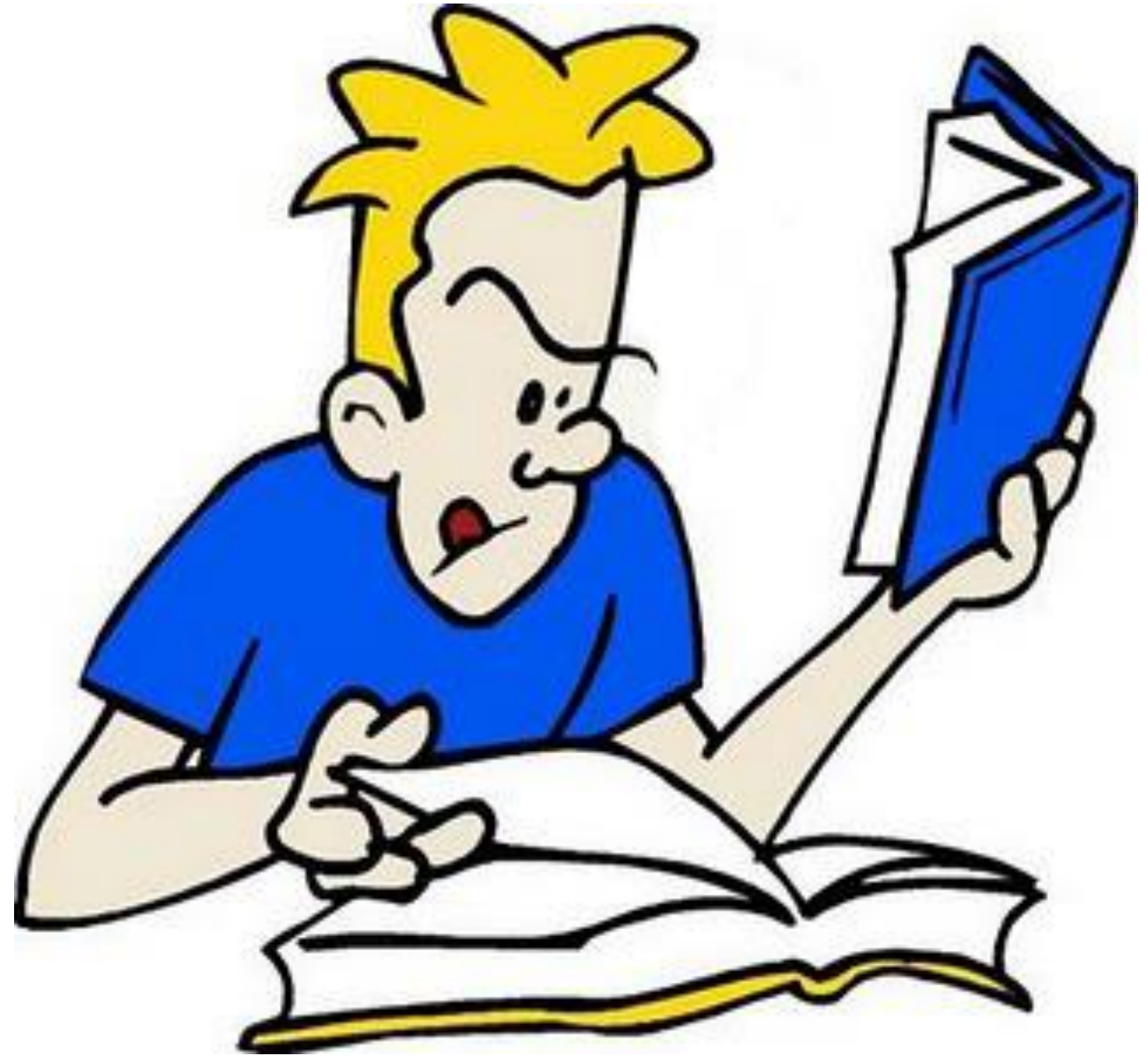
FINAL HEARING



REVIEW



REVISION



PRONOUNCEMENT OF ORDER

- Order – What follows hearing
- Judgment – what follows a trial



ORDER

- Operative portion of the Order –last para
- Format of Order



INHERENT POWERS OF TRIBUNAL



- Rules not to restrict powers of T/AT
- May issue necessary directions to meet ends of justice or to prevent abuses of the process of the T/AT

INHERENT POWERS OF TRIBUNAL



- * Manoharlal Chopra V. Seth Hiralal
Every court is constituted for the purpose of administering justice between the parties and, therefore, must be deemed to possess, as a necessary corollary, all such powers as may be necessary to do the right and to undo the wrong in the course of administration of justice.
- * Indian Bank Vs. Satyam Fibres (India) Pvt Ltd,
Pushpa Katoch Vs. Manu Maharani Hotels Pvt Ltd.
Recall a judgment obtained by fraud
- * Gangabai Vs. Ratankumar
Every court has inherent power to correct own mistakes.

INHERENT POWERS OF TRIBUNAL



- Enlargement of Time
- Payment of Court Fees
- Transfer of Business
- Power to exempt
From compliance with any rules.
- Power of Adjournment
- Delegation of Powers

QUESTION OF FACT

- Point of fact
- Reference to facts
- Circumstances
- Factual situations



QUESTION OF LAW

- Point of Law
- Legal Principles
- Interpretation of Statutes



RESOURCE MATERIALS

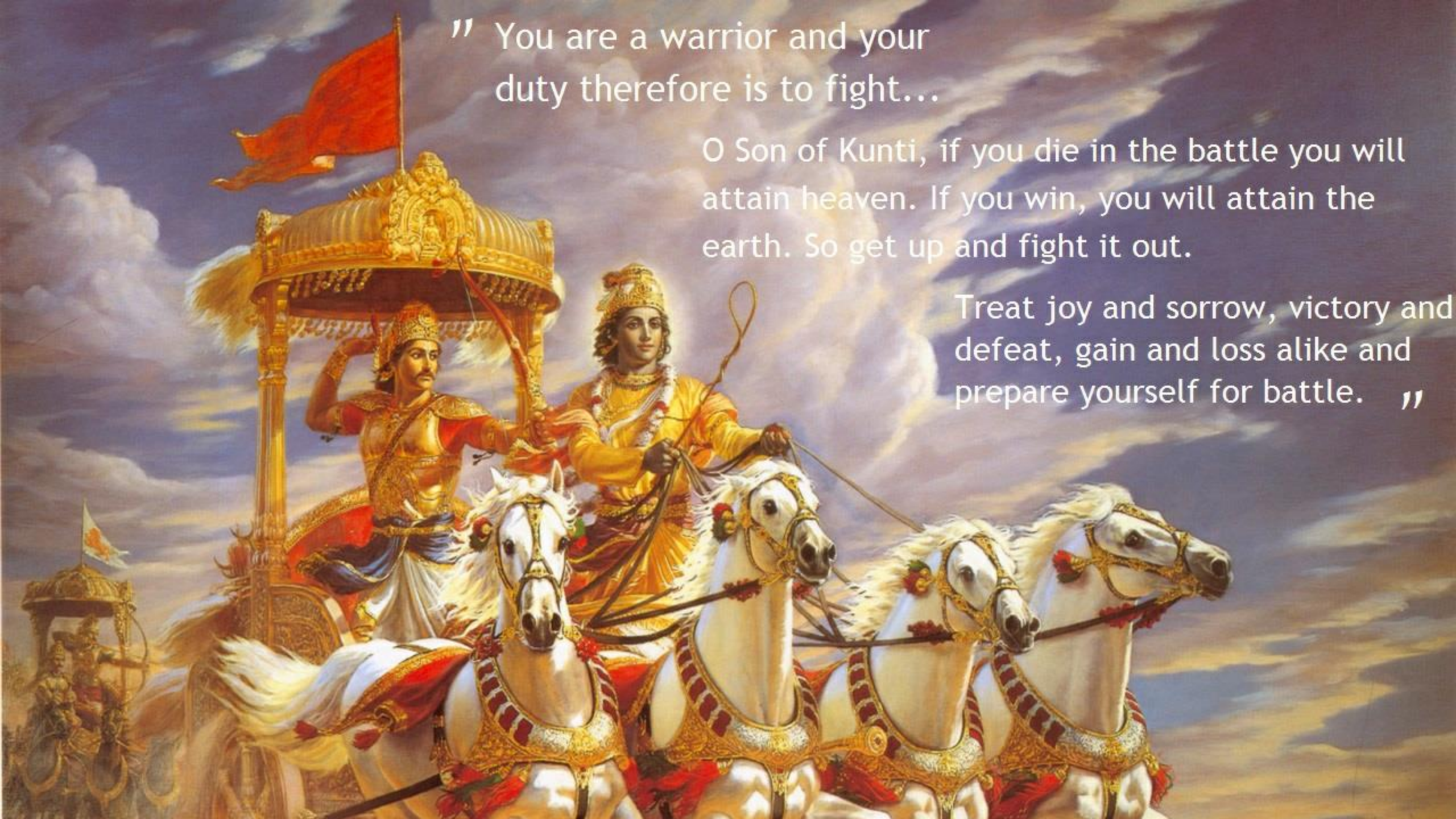


- Judgments
- Books
- Websites
 - http://ibbi.gov.in/webfront/allorder_tab.php
 - <http://nclt.gov.in/>
 - <http://nclat.nic.in/>
 - <http://claonline.in>
 - <http://ejurix.com/>
- Legal Journals
- Articles

” You are a warrior and your duty therefore is to fight...

O Son of Kunti, if you die in the battle you will attain heaven. If you win, you will attain the earth. So get up and fight it out.

Treat joy and sorrow, victory and defeat, gain and loss alike and prepare yourself for battle. ”



हृतो वा प्राप्स्यसि स्वर्गं जित्रा वा भोक्ष्यसे महीम् ।
तस्माद्दुत्तिष्ठ कौन्तेय युद्धाय कृतनिश्चयः ॥ २-३७ ॥



“Don’t believe everything you read on the Internet just because there’s a picture with a quote next to it.”

Contact Co-ordinates

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THANK YOU

