THE HIGH COURT OF MADHYA PRADESH
MP No.1887/2017
Nandu @ Gandharva Singh Vs. Ratiram Yadav and others

Gwalior, Dated :09/01/2019

Shri Gaurav Mishra, Advocate for petitioner.

Shri Pratip Visoriya, Advocate for respondent no.1.

This petition under Article 227 of the Constitution of India has been filed against the order dated 6/12/2017 passed by the Civil Judge, Class-I, Bhander, District Datia in Civil Suit No.29A/2014.

Before considering the facts of the case, this Court feels it appropriate to consider certain incidents, which have taken place in the Court at the time of argument of this case.

In the first half of the day when the case was called, the associate counsel of the counsel for respondent no.1 prayed for time to argue the matter. Since this petition is pending from 2017 and the further proceedings of the civil suit have been stayed, therefore, this Court refused to adjourn the matter and at the request of the counsel for respondent no.1, the matter was passed over. At 2:30 PM when the case was taken up, Shri Pratip Visoriya, counsel for respondent no.1, appeared and started his arguments by saying that "*in the first half of the day his junior had prayed for adjournment and since this Court has refused to adjourn the matter, therefore, under compulsion he has come to argue the matter*". The submission made by the

counsel for respondent no.1 was not to the good taste, however, this Court ignored the said submission and requested the counsel for the respondent no.1 to proceed further with his arguments. During arguments, on two occasions again Shri Pratip Visoriya, counsel for respondent no.1, submitted that as he was not ready with the arguments, but since this Court has refused to adjourn the matter, therefore, under compulsion he is arguing the matter. It was further submitted by Shri Pratip Visoriya, counsel for respondent no.1, that old matters are pending and, therefore, the old matters should be decided first and this matter is of the year 2017 and only because there is stay of the further proceedings in the civil suit, therefore, this matter cannot be treated as an old matter. When it was clarified by this Court that the cases are being taken up as per the serial numbers of the cause-list and the case has not been taken up out of turn, even then he stated that relatively new matter should not be decided first, even if they are listed in the cause-list. As the submissions made by Shri Pratip Visoriya, counsel for respondent no.1, were beyond tolerance, therefore, this Court requested Shri Pratip Visoriya, counsel for respondent no.1, to publicly take the responsibility of seeking adjournment by passing a resolution in the Bar Association to the effect that

unless and until both the lawyers agree for arguing the matter, the Court should not hear the matter, then he fairly conceded that he is not ready to take the responsibility of delay. Under these circumstances, Shri Pratip Visoriya, counsel for respondent no.1, was informed that he had filed his Vakalatnama on 20/2/2018 and today we are in the month of January, 2019, that means near about more than eleven months have passed, but still if he has failed to prepare the case, then only he is at fault. It is submitted by Shri Pratip Visoriya, counsel for respondent no.1, that since his party (respondent no.1) is a rustic villager, therefore, he is not in a position to obtain the certified copy of the order of the trial court, therefore, he could not prepare the case. The submission made by the counsel for respondent no.1 cannot be accepted for the simple reason that if respondent no.1 is a rustic villager being an illiterate person, then the counsel for respondent no.1 could have given him in writing the details of the documents, which he wants to go through before preparation of the case and respondent no.1 could have informed his local counsel for obtaining the copies of the said documents. For the lapses on the part of the counsel for respondent no.1 or respondent no.1 himself, this Court cannot keep the matter pending

unnecessarily and specifically when the counsel for respondent no.1 is not ready to take the responsibility of delay in decision of the petition, then the counsel for respondent no.1 has no authority either legally or morally to make prayer for adjournment.

The Supreme Court in the case of **N.G. Dastane Vs. Shrikant S. Shinde** reported in **(2001) 6 SCC 135** has held as under :

> **"17.** In *Black's Law Dictionary* "misconduct" is defined as:
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> "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."
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> **18.** The expression "professional misconduct" was attempted to be defined by Darling, J., in *A Solicitor, ex p, Law Society, in re* in the following terms:
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> "If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."
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> **19.** In *R.D. Saxena* v. *Balram Prasad Sharma* this Court has quoted the above definition rendered by Darling, J., which was subsequently approved by the Privy Council in *George Frier Grahame* v. *Attorney-General* and then observed thus: (SCC p. 275, para 19)

"*19*. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression 'misconduct, professional or otherwise'. The word 'misconduct' is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct."

20. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct.

21. In *State of U.P.* v. *Shambhu Nath Singh* this Court has deprecated the practice of courts adjourning cases without examination of witnesses when such witnesses are in attendance. We reminded the courts thus:

"We make it abundantly clear that if a witness is present in court he must be

examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

22. When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee.

23. In *Bar Council of Maharashtra* v. *M.V. Dabholkar* a four-Judge Bench of this Court had held that the requirement of "reason to believe" cannot be converted into a formalised procedural roadblock, it being essentially a

barrier against frivolous enquiries.

24. In our opinion, the State Bar Council has abdicated its duties when it was found that there was no prima facie case for the Disciplinary Committee to take up. The Bar Council of India also went woefully wrong in holding that there was no case for revision at all. In our considered view the appellant-complainant has made out a very strong prima facie case for the Disciplinary Committee of the State Bar Council to proceed with. We, therefore, set aside the order of the State Bar Council as well as that of the Bar Council of India and we hold that the complaint of the appellant would stand referred to the Disciplinary Committee of the State Bar Council."

The Supreme Court in the case of **Noor Mohammed v. Jethanand,** reported in **(2013) 5 SCC 202** has held as under :

"**15.** We may note with profit that the Court in *Kailash case* had further opined that the procedure is directory but emphasis was laid on the concept of desirability and for the aforesaid purpose, reference was made to *Topline Shoes Ltd.* v. *Corporation Bank*. Analysing the purpose behind it, the three-Judge-Bench, referring to *Topline Shoes Ltd.*, observed thus: (*Kailash case*, SCC p. 497, para 36)

"*36.* The Court further held that the provision is more by way of procedure to achieve the object of speedy disposal of such disputes. The strong terms in which the provision is couched are an expression of 'desirability' but do not create any kind of substantive right in favour of the complainant by reason of delay so as to debar the respondent from placing his version in defence in any circumstances whatsoever."

16. In *Shiv Cotex* v. *Tirgun Auto Plast (P) Ltd.* this Court was dealing with a judgment

passed by the High Court in a second appeal wherein the High Court had not formulated any substantial question of law and further allowed the second appeal preferred by the plaintiff solely on the ground that the stakes were high and the plaintiff should have been non-suited on the basis of no evidence. This Court took note of the fact that after issues were framed and the matter was fixed for production of the evidence of the plaintiff on three occasions, the plaintiff chose not to adduce the evidence. The question posed by the Court was to the following effect: (SCC p. 682, para 14)

"*14.* … Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?"

Thereafter, the Court proceeded to answer thus: (*Shiv Cotex case*, SCC pp. 682-83, paras 15-16)

"*15.* It is sad, but true, that the litigants seek —and the courts grant—adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

16. No litigant has a right to abuse the

procedure provided in CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system."

After so stating, the Bench observed as follows: (*Shiv Cotex case*, SCC p. 683, para 17)

"*17.* … A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit—whether the plaintiff or the defendant—must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they do not, they do so at their own peril."

17. In *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, after referring to a passage from *Mahabir Prasad Singh* v. *Jacks Aviation (P) Ltd.*, the Court cautioned thus: (*Ramon Services case*, SCC p. 126, para 15)

"*15.* … Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability."

Be it noted, though the said passage was

stated in the context of strike by the lawyers, yet it has its accent on non-appearance by a counsel in the court.

18. In this context, we may refer to the pronouncement in *Pandurang Dattatraya Khandekar* v. *Bar Council of Maharashtra*, wherein the Court observed that: (SCC p. 563, para 9)

"*9.* … An advocate stands in a loco parentis towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need."

19. In *Lt. Col. S.J. Chaudhary* v. *State (Delhi Admn.)*, a three-Judge Bench, while dealing with the role of an advocate in a criminal trial, has observed as follows: (SCC pp. 723-24, para 3)

"*3.* We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his advocate is finding it difficult to attend the court from day to day. It is the duty of every advocate, who accepts the brief in a criminal case to attend the trial from day to day. We cannot over-stress the duty of the advocate to attend to the trial from day to day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend."

20. In *Mahabir Prasad Singh*, the Bench, laying emphasis on the obligation of a lawyer in his duty towards the Court and the duty of the Court to the Bar, has ruled as under: (SCC p. 44, paras 17-18)

"*17.* … 'A lawyer is under obligation to do nothing that shall detract from the dignity of the court of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.'

18. Of course, it is not a unilateral affair.

There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court."

21. While recapitulating the duties of a lawyer towards the court and society, being a member of the legal profession, this Court in *O.P. Sharma* v. *High Court of P&H* has observed that: (SCC p. 92, para 17)

"*17.* The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law."

The Bench emphasised on the role of eminent lawyers in the framing of the Constitution. The emphasis was also laid on the concept that lawyers are the officers of the court in the administration of justice.

22. In *R.K. Garg* v. *State of H.P.*, Chandrachud, C.J., speaking for the Court pertaining to the relationship between the Bench and the Bar, opined thus: (SCC p. 170, para 9)

"*9.* … the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is

unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive."

23. We have referred to the aforesaid judgments solely for the purpose that this Court, in different contexts, had dealt with the malady of adjournment and expressed its agony and anguish. Whatever may be the nature of litigation, speedy and appropriate delineation is fundamental to judicial duty. Commenting on the delay in the justice-delivery system, although in respect of the criminal trial, Krishna Iyer, J. had stated thus: (*Babu Singh case*, SCC p. 581, para 4)

"*4.* … Our justice system, even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial', whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

24. In criminal jurisprudence, speedy trial has become an indivisible component of Article 21 of the Constitution and it has been held by this Court that it is the constitutional obligation on the part of the State to provide the infrastructure for speedy trial [see *Hussainara Khatoon (3)* v. *State of Bihar* and *Hussainara Khatoon (4)* v. *State of Bihar*].

25. In *Diwan Naubat Rai* v. *State (Delhi Admn.)*, it has been opined that the right to speedy trial encompasses all stages of trial, namely, investigation, enquiry, trial, appeal and revision.

26. In *Surinder Singh* v. *State of Punjab*, it has been reiterated that speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution of India. Thus, it has been put at the zenith and that makes the responsibility of everyone Everestine which has to be performed with Olympian calmness.

27. The anguish expressed in the past and the role ascribed to the Judges, the lawyers and the litigants is a matter of perpetual concern and the same has to be reflected upon every moment. An attitude of indifference can neither be appreciated nor tolerated. Therefore, the serviceability of the institution gains significance. That is the command of the Majesty of Law and none should make any maladroit effort to create a concavity in the same. Procrastination, whether at the individual or institutional level, is a systemic disorder. Its corrosive effect and impact is like a disorderly state of the physical frame of a man suffering from an incurable and fast progressive malignancy. Delay either by the functionaries of the court or the members of the Bar significantly exhibits indolence and one can aphoristically say, borrowing a line from Southwell "creeping snails have the weakest force". Slightly more than five decades back, talking about the responsibility of the lawyers, Nizer Louis had put thus:

"I consider it a lawyer's task to bring calm and confidence to the distressed client. Almost everyone who comes to a law office is emotionally affected by a problem. It is only a matter of degree and of the client's inner resources to withstand the pressure."

A few lines from the illustrious Justice Frankfurter is fruitful to recapitulate:

"I think a person who throughout his life is nothing but a practising lawyer fulfils a very great and essential function in the life of society. Think of the responsibilities on the one hand, and the satisfaction on the other, to be a

lawyer in the true sense."

28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.

29. In this context, it is apt to refer to a passage from *Ramdeo Chauhan* v. *State of Assam*: (SCC p. 739, para 22)

"*22.* … The judicial system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses, particularly at the stage of special leave petition. The law insists on finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of

justice. Any effort which weakens the system and shakens the faith of the common man in the justice dispensation system has to be discouraged."

30. In *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, emphasising on the duty of the court to maintain public confidence in the administration of justice, this Court has poignantly held as follows: (SCC p. 184, para 35)

"*35.* … Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it."

31. Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the "élan vital" of our system.

32. Coming to the proceedings before the High Court from the date of presentation of the second appeal till the date of admission, the manner in which it has progressed is not only perplexing but also shocking. We are inclined to think that the Court should not have shown indulgence of such magnitude by adjourning the matter when the counsel for the appellant was not present. It is difficult to envision why the Court directed fresh notice to the appellant when there was nothing suggestive for passing of such an order. The matter should have been dealt with taking a recourse to the provisions

in the Code of Civil Procedure. It is also astonishing that the lawyers sought adjournments in a routine manner and the court also acceded to such prayers. When the matter stood dismissed, though an application for restoration was filed, yet it was listed after a long lapse of time. Adding to the misery, the official concerned took his own time to put the file in order. From the Registrar General's communication it is perceptible that some disciplinary action has been initiated against the erring official. That is another matter and we do not intend to say anything in that regard. But the fact that cannot be brushed aside is that there is enormous delay in dealing with the case. Had timely effort been made and due concern bestowed, it could have been avoided. There may be cases where delay may be unavoidable. We do not intend to give illustrations, for facts in the said cases shall speak for themselves.

33. In the case at hand, as we perceive, the learned counsel sought adjournment after adjournment in a non-chalant manner and the same were granted in a routine fashion. It is the duty of the counsel as the officer of the court to assist the court in a properly prepared manner and not to seek unnecessary adjournments. Getting an adjournment is neither an art nor science. It has never been appreciated by the courts. All who are involved in the justice-dispensation system, which includes the Judges, the lawyers, the judicial officers who work in courts, the law officers of the State, the Registry and the litigants, have to show dedicated diligence so that a controversy is put to rest. Shifting the blame is not the cure. Acceptance of responsibility and dealing with it like a captain in the frontier is the necessity of the time. It is worthy to state that diligence brings satisfaction. There has to be strong resolve in the mind to carry out the responsibility with devotion. A time has come when all concerned are required to abandon

> idleness and arouse oneself and see to it that the syndrome of delay does not erode the concept of dispensation of expeditious justice which is the constitutional command. Sagacious acceptance of the deviation and necessitous steps taken for the redressal of the same would be a bright lamp which would gradually become a laser beam. This is the expectation of the collective, and the said expectation has to become a reality. Expectations are not to remain at the stage of hope. They have to be metamorphosed to actuality. Long back, Francis Bacon, in his aphoristic style, had said, "Hope is good breakfast, but it is bad supper."** We say no more on this score.
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> **34.** Though we have dwelled upon the issue, yet we refrain from issuing any directions, for the High Court as a constitutional court has to carry the burden and live up to the requisite expectations of the litigants. It is also expected from the lawyers' community to see that delay is avoided. A concerted effort is bound to give results. Therefore, we request the learned Chief Justice of the High Court of Rajasthan as well as the other learned Chief Justices to conceive and adopt a mechanism, regard being had to the priority of cases, to avoid such inordinate delays in matters which can really be dealt with in an expeditious manner. Putting a step forward is a step towards the destination. A sensible individual inspiration and a committed collective endeavour would indubitably help in this regard. Neither less, nor more."

As already observed by the Supreme Court, that adjournments are growing like a cancer, which is eroding the system. A time has come, where the Bar has to raise its standard and must fulfill the expectations of the litigating parties,

for early disposal of the cases. *Justice delayed justice denied.* The Bar must not try to create hurdles in the justice dispensation system, by unnecessarily seeking adjournments and above all, must not try to pinch the Court, by saying that since, the adjournment has been refused, therefore, under compulsion, they are arguing the matters. Once, the lawyer has accepted the brief, then it is his bounden duty towards the institution. They have a duty towards their client, they have a duty to prepare the case and present the case properly without suppressing any fact, so that they can effectively assist the Court. Seeking adjournments for no reason does amount to professional misconduct and the Bar Councils must also rise to the occasion either by issuing necessary instructions to the Advocates on its roll or by taking disciplinary action against the Advocate, if any complaint with regard to seeking unnecessary adjournments by the Advocate is made. The Advocates are not the mouth piece of their clients for the purposes of delaying the Court proceedings, nor they should avoid hearing but being the officers of the Court, they have sacrosanct duty towards the Court. Once, the case is listed in the Cause list, then any Advocate cannot refuse to argue the matter on the ground that older matters are also pending, therefore, the comparatively

new matter should be adjourned, and should not be heard unless and until it becomes old. The lawyers must not forget, that by seeking unnecessary adjournments, they are frustrating the legitimate right of one of the litigating party and thus by adopting dilatory tactics, they are creating a situation, where the litigating party may lose its faith in the judiciary. It is the duty of the Courts to decide the matters as early as possible, and if the lawyers refuse to co-operate with the Courts, then a time has come, where the Court would be left with no other option but to decide the matters on its own, by going through the record, and this situation would never help the litigating party and the lawyers must understand that when they have been engaged by their clients with a hope and belief, that their Counsel would place their case before the Court, in a most effective manner, then after having accepted the brief, it is the duty of the lawyer to live upto the expectation of his client, so that the faith and belief of the client on his lawyer may continue. It is also high time, when the Bar must either accept its responsibility for unnecessarily seeking adjournments, or must teach their members, that having joined the noble profession, it is the duty of every lawyer to devote full time to prepare the cases.

Under the hope and belief, that the lawyers would live upto

the expectations of the litigants as well as of the Court, this Court, at this stage is not inclined to take any action in the matter.

The present petition has been filed against the order dated 6/12/2017, by which the application filed by the petitioner under Section 151 of CPC seeking leave of the Court to send the disputed thumb impression to the handwriting expert in rebuttal to the handwriting expert's report submitted by respondent no.1/plaintiff.

It is the case of plaintiffs/respondents no.1 and 2 that the plaintiff no.1/respondent no.1 is an illiterate person having poor eye vision and since the respondent no.1 was in need of certain money, therefore, he prayed for grant of certain loan and by taking advantage of the illiteracy and poor eye vision of respondent no.1, the petitioner has fraudulently got a registered sale deed executed in his favour, whereas respondent no.1 has not got the consideration amount, as mentioned in the sale deed. It is further submitted that one more agreement was executed by the petitioner on 3/9/2012 to the effect that respondent no.1 has repaid the entire loan amount and nothing is outstanding against respondent no.1, therefore, the petitioner would not proceed further for mutation of his name on the basis

of the sale deed and all the documents would be treated as null and void.

This contention made by respondent nos.1 and 2 in the plaint was denied by the petitioner. After the evidence of the parties were over, the respondent no.1 filed an application for sending the agreement to a handwriting expert for comparison of the thumb impression. The said application was allowed by the trial court and the report of the handwriting expert was placed on record. It appears that petitioner by filing the application under Order XXVI Rule 10 read with Section 151 of CPC filed his objection to the report and prayed that the report of the handwriting expert submitted by the respondent no.1 be rejected. Apart from that, one more application was filed by the petitioner under Section 151 of CPC seeking permission of this Court to file a report by a handwriting expert in rebuttal of the report of the handwriting expert filed by the respondent no.1. The trial court by order dated 6/12/2017 has rejected the application filed by the petitioner.

Challenging the order passed by the trial court, it is submitted by the counsel for the petitioner that when one of the parties have produced the report of the handwriting expert, then the opportunity should be provided to the other party to produce

the report of the handwriting expert in rebuttal. To buttress his contentions the counsel for the petitioner has relied upon the judgment passed by the Division Bench of this Court in the case of **Usha Sharma (Smt.) Vs. Maharaj Kishan Raina & Another** reported in **2010 (I) MPJR SN 22**.

Per contra, it is submitted by the counsel for the respondent no.1/plaintiff that the trial court did not commit any mistake in rejecting the application filed by the petitioner, as the said application has been filed with the solitary intention to delay the proceedings.

Heard learned counsel for the parties.

It is undisputed fact that the application filed by the respondent no.1 for getting thumb impression on the agreement examined from the handwriting expert was allowed by the trial court and accordingly, the report of the handwriting expert has been placed on record. Under these circumstances, this Court is of the considered opinion that the trial court cannot take away the right of the petitioner\defendant to produce the report of the handwriting expert in rebuttal of the report of the handwriting expert filed by the respondent no.1/plaintiff. Thus, in the light of the judgment passed by the Division Bench of this Court in the case of **Usha Sharma (supra),** this Court is of the considered

opinion that the order dated 6/12/2017, so far as it relates to rejection of application under Section 151 of CPC, is hereby set aside. Accordingly, the application filed by the petitioner under Section 151 of CPC for producing his report of the handwriting expert in rebuttal of the report of the handwriting expert filed by the respondent no.1/plaintiff is allowed. The trial court is directed to proceed further in accordance with law. The interim order dated 19/1/2018 is hereby recalled.

The petition is, accordingly, **allowed**.

(G.S. Ahluwalia)
Arun* **Judge**