Bhura Mal-Dua Dayal
Messrs Imperial Flour Mills, Ltd., Ambala City and others

Dua, J.

is no such objection to counsel raising an objection to the validity of a document which is by law rendered invalid owing to the absence of stamps. The distinction clearly is that in the one case counsel is taking an objection which is merely in the interest of the revenue authorities and does not touch the merits of the case, whereas in the other case the objection to the validity of the document strikes at the root of the matter, and is clearly relevant."

These observations may also apply to objections regarding court-fee stamps. In view of the above discussion, I would allow this revision and setting aside the order of the learned Subordinate Judge, dated 26th of November, 1956 remit the case back to the trial Court to re-admit the plaint and to proceed with the trial in accordance with law and in the light of the observation made above. In the circumstances of the case, there will be no order as to costs in this Court.

The parties have been directed to appear in the trial Court on 25th May, 1959.

B.R.T.

CIVIL MISCELLANEOUS

Before I. D. Dua, J.

MARWA,—*Petitioner*

versus

SANGHRAM,—*Respondent.*

Civil Miscellaneous No. 1770 of 1957

1959

Apr., 27th

Constitution of India (1950)—Article 227—Powers of the High Court to interfere with the orders of subordinate tribunals—Extent of—Punjab Gram Panchayat Act (IV of

1953)—Section 65—Supervisory powers under—Scope and extent of—Panchayats—Endowment of judicial functions on—Principles to be kept in view.

Held, that the Constitution of India which has sought to secure justice to the citizens as a top priority has also, for this purpose, vested in the High Courts very wide power of judicial supervision and superintendence over all Tribunals and Courts in the State. Derived as it is directly from the Constitution, which is the fountain source and parent of all laws and statutes in this Republic, this power imposes on the High Court a grave and sacred responsibility for the entire administration of justice and invests in it an unlimited and unfathomable reserve of judicial power of supervision and control over all Courts and tribunals in the State concerned, which reserve can easily be dawn upon and utilised if the interests of justice so demand. The limitation on this power is only to be found in the Constitution itself and it is self-imposed by the High Court. This Court being the custodian of all justice within its territorial limits, the Constitution has armed it with an affective weapon to be wielded to ensure that even-handed justice is meted out equitably, fairly and properly; for this purpose no external limits, fetters or restrictions have been placed on this power by the express language of the Article. It is true that this power cannot be construed to confer an unlimited and arbitrary prerogative to interfere for setting right all errors of fact and law; it is to be exercised only according to well-recognised judicial principles and with restraint and caution. It is designed to restrain the excesses by subordinate tribunals and to obviate their denial or miscarriage of justice and it is to be exercised most sparingly and only in appropriate cases. But at the same time it must be exercised when the conscience of the Court is pricked, and it may not only legilimately interfere, but is enjoined to do so to set right gross dereliction of duty by the subordinate tribunals, which has resulted in miscarriage of justice. If this Court comes to the conclusion that a subordinate judicial tribunal or Court has not given a fair deal to a suitor or a suitor has been dealt with arbitrarily or unfairly, there are no technical limitations which should stand in the way of this Court to see that justice is done. The Constitution has trusted the wisdom and good sense of the High Court by conferring on

it this power of judicial supervision and superintendence, and this by itself has been considered to be a sufficient safeguard and guarantee that the power would be used only to advance the cause of real and substantial justice. The word 'justice' in the words of Sir Alfred Denning means "what the right-minded members of the community having the right spirit within them believe to be fair".

Held, that the supervisory jurisdiction created by section 65 of the Punjab Gram Panchayat Act is couched in words of very wide amplitude and is not circumscribed by any limitations. It has been deliberately so worded in order to enable a senior judicial officer to properly canalise the proceedings of the Panches. In order to understand the precise scope of this provision, again, we must not forget the great importance given to 'Justice' by our Constitution both in the preamble and in the directive principles. These principles, though not enforceable by Courts of law, are nevertheless a part of the Constitution which is one organic whole and are thus supreme. Therefore, while interpreting or construing a statutory provision of wide import and while trying to find the legislative intent it may not be wholly out of place or unjustified to suppose or even to presume, that the law-makers were not completely unmindful or oblivious of the various directive principles contained in our Constitution. The Courts, while construing a statute, should thus consistently, with its express language, interpret it so that it implements the directive principles instead of reducing them to the level of mere theoretical ideals or illusions. Grave and apparent failure of justice, on points of fact and law, is sufficient to attract the supervisory power, and, it is obligatory on the Court to interfere when such gross and manifest failure of justice is disclosed on the record. While exercising the power under sction 65 it is thus incumbent on the Court to satisfy its own conscience by strictly and thoroughly scrutinising the record of the case.

Held, that while considering the question of endowing the power of judicial functions on the Panchayats it must not be forgotten that in the preamble of the Constitution, social, economic and political justice is the first item in the list of various blessings which have been secured to the citizens of this Republic. Even in the directive principles Article 38 suggests that the State shall strive to promote

the welfare of the people by effectively securing and protecting a social order in which justice shall inform all institutions of the national life. It is not out of place here also to take notice of Articles 44 and 50. The former contemplates a uniform civil code throughout the country and the latter visualises separation of judiciary from the executive in the public services. The Panchayat Act confers executive, administrative and judicial powers on the elected Panchayats. As to how far this is consistent with the directive principles contained in the Constitution also deserves consideration at the hands of the authorities concerned. Of course, these directive principles are not enforceable by Courts but, it can hardly be doubted, that they are meant to be kept in view when enacting laws, unless they are intended to remain mere idle words. If, therefore, the conferment of judicial power on the Panchayats, as they exist today, does not ensure or guarantee real justice to the citizens, then it is a matter for serious consideration as to whether or not either the judicial power be taken away from the Panchayats like the one in question or the method of appointment of the Panchayats be materially modified so as to effectively assure substantial and real justice to the citizens.

Petition under Article 227 of the Constitution of India, and section 115. Civil Procedure Code, praying that the order of Shri B. L. Malhotra, Senior Sub-Judge, Gurgaon, dated 12th June, 1957, affirming that of the Gram Panchayat, Baghanke, Tehsil Nuh (granting the plaintiff. Sanghram, a decree for Rs. 195 as principal and Rs. 4-12-0 as interest, on 25th January, 1956), be set aside and the plaintiff's suit be dismissed.

P. C. PANDIT, for Petitioner.

Y. P. GANDHI, for Respondent

ORDER

Dua, J.

Dua, J.—The history of this case discloses a sad commentary on the way the Panchayat in question has dealt with the trial of a judicial matter. It is an instructive instance which should set the authorities concerned thinking as to how far it is desirable to invest the Panchayat Courts as at present

Marwa
v.
Sanghram

Dua, J.

constituted with power of decision of civil disputes of the citizens of this Republic.

By an order dated 25th of January, 1956, the Court of the Panchayat of Baghanke, Tehsil Nuh, district Gurgoan, Sanghram, son of Sampat plaintiff was granted a decree for Rs. 195 as principal and Rs. 4/12/- as costs, in all Rs. 199/12/-, against Marwa, son of Manghani, caste Ahir, resident of Baghanke, defendant. This decree was passed *ex parte* and the judgment which is written in Urdu is signed by three persons, by Kuria and Kallu Ram in Hindi and by Kishan Lal in Urdu. The English translation suggests that Kuria Sarpanch signed at two places but from the original proceedings there is nothing to show that Kuria is a Sarpanch, and he has also signed only at one place and not at two. The proceedings, according to the order, were *ex parte* because Marwa defendant had refused to accept service. It appears that on 11th of April, 1956, when this decree was sought to be executed, by attachment and sale of the defendant's property, which was ordered to be issued on 17th of April, 1956, the defendant came to know of it and he filed a revision, under section 65 of the Punjab Gram Panchayat Act No. IV of 1953, with the learned Senior Subordinate Judge who considered the judgment of the Panchayat to be just and equitable and rejected the revision with costs.

Felling aggrieved by the decisions of the learned Senior Subordinate Judge and the Panchayat, Marwa defendant has approached this Court by means of a petition under Article 227 of the Constitution and section 115 of the Code of Civil Procedure. The grounds, on which the impugned orders have been assailed, are tdat there was no quoram of the Panches at the hearing of the case; that the signatures of the members of the Panchayat had been forged on the order which was the

result of partisanship of the Sarpanch who was interested in the plaintiff (the affidavit of Shri Lila Ram, Shri Kallu and Shri Partap Singh, Panches, has been attached with this petition in support of this assertion); that the petitioner had no notice of the claim of the plaintiff-respondent before the Panchayat and that the whole case was rushed through by the Sarpanch, at the back of the petitioner, who was deliberately kept in the dark about the suit; that the proceedings before the Panchayat offend against all principles of law and justice; that the claim in suit was inherently false and improbble and was made up as a result of collusion and enmity of the Sarpanch and that there was no case made out, on the record, for passing the impugned decree against the defendant-petitioner as no order of the Panchayat purporting to impose fine against the petitioner's wife had been produced. This imposition of fine was, it may be stated, the sole basis on which the plaintiff's claim was based, he having allegedly given a loan to the defendant's wife for paying the fine imposed on her by the Panchayat. The order of the learned Senior Subordinate Judge is assailed on the ground that he had failed to scrutinise the proceedings which were wholly illegal and irregular. With this petition is also attached one affidavit by Lila Ram, Kallu and Partap Singh, Panches, affirming that they were not present when the case of Maru Ram (Marwa) and Sanghram was argued and that they had not signed the order. Marwa defendant-petitioner's affidavit also contains the same affirmation viz., that Kullu, Panch was neither present at the time of arguments nor had he signed the order It is also asserted that the Sarpanch did not care even to inform Lila Ram, Partap Singh and Kallu, Panches, about this case. I further find, on the record, an affidavit, dated 13th of February, 1958 made by Marwa defendant-petitioner in which he has stated

Marwa
v.
Sanghram
———
Dua, J.

that the learned Senior Subordinate Judge, Gurgaon has, incorrectly mentioned in his order, dated 12th of June, 1957 that he had heard the counsel for the parties. The petitioner has stated that at the time of hearing he had requested the Senior Subordinate Judge to permit him to bring his counsel, Shri Dharam Vir Kansal, who was then appearing in the Court of the S. D. O., Gurgaon, but the Court refused this request. It is further stated in the affidavit that he had brought to the notice of the learned Senior Subordinate Judge that the entire proceedings of the Panchayat were fictitious and collusive and that the petitioner had neither been summoned nor had he been given any notice of the hearing by the Panches. He has expressly asserted in the affidavit that he never refused to appear. This affidavit also supports the ground, taken in the revision petition, that Kallu Panch was neither present at the time of arguments nor had he signed the order and that the Sarpanch had not even informed Lila Ram, Partap Singh and Kallu, Panches, about the case. There is on the record still another affidavit, dated 4th of August, 1958, sworn by Shri Dharam Vir Kansal, Pleader, who was one of the counsel for Marwa petitioner in the Court of the Senior Subordinate Judge, affirming and declaring that when the case in the Court of the Senior Subordinate Judge was called for arguments, he was busy arguing another revenue case in the Court of the Assistant Collector, 1st Grade, Rewari at Gurgaon (in camp) and that Marwa defendant went to him twice during the arguments in the Court of the Collector but he (Mr. Kansal) replied to the petitioner to request the Court of the Senior Subordinate Judge to wait for him. It further declares that when he (Mr. Kansal) got free from the Court of the Assistant Collector, the learned Senior Subordinate Judge had closed the case and had given a date for orders.

Marwa
v.
Sanghram

Dua, J.

On the basis of this affidavit, Mr. P. C. Pandit, the learned advocate for the defendant-petitioner before me, has contended that his client has not had a proper hearing before the learned Senior Subordinate Judge and that the learned Judge has erroneously mentioned in his order that he had heard the counsel for the parties. This point, however, does not find place in the grounds of revision filed in this Court on 30th of September, 1957. I am also of the view, that there is no sufficient material before me to conclude that the learned Senior Subordinate Judge has wrongly stated in his order that he had heard the counsel for the parties. From the original record, I find that the revision petition in the Court of the Senior Subordinate Judge was filed on 15th of May, 1956, through Shri Vijay Pal Singh and Shri Dharam Vir Kansal, Pleaders. The power of attorney in favour of these two Pleaders dated 15th of May, 1956 is also on the record. An application dated 15th of May, 1956 for stay of execution of the decree is also signed by these two Pleaders. On 16th of May, 1956, Shri Dharam Vir counsel was present and notices were ordered to to be issued for 25th of June, 1956. The records were also summoned but it appears that the necessary copies had not been filed with the appeal which were ordered to be produced by the next date of hearing. On 13th of June, 1956, the intermediary date, it was observed that service had been effected but the records of the Panchayat had not been received in the Court nor had copies been filed by them. On 25th of June, 1956, the file had still not arrived and the case was adjourned to 27th of July, 1956. On 27th of July, 1956, both the parties were present but curiously enough the records of the Panchayat had still not arrived and the Court passed an order that the records must arrive by 16th of August, 1956, otherwise necessary steps accord-

Marwa
v.
Sanghram
———
Dua, J.

ing to law, would be taken. Notice of this date was also ordered to go to the Sarpanch of the Panchayat. As stated above, two counsel had been engaged by the defendant-petitioner in the revision filed before the Senior Subordinate Judge. There is no material placed on the record showing that he—Vijay Pal Singh, the second counsel—was not available and did not appear at the time of hearing in the Court of the Senior Subordinate Judge. The affidavit produced by Shri Dharam Vir Kansal is worded in well-guarded language and he says nothing as to whether or not the other counsel was also busy elsewhere and not available. The learned Senior Subordinate Judge after hearing the arguments on 12th of June, 1957, expressly metioned that the orders would be announced on that very day and indeed we find that after the announcement of the orders on the same day Shri Kansal affixed his signatures underneath the record of proceedings in Urdu. The contents of the orders of Courts with respect to what happens in the course of hearing are of great probative value and truth must be presumed to attach to them. The affidavit of the type sworn by Shri Kansal does not dislodge the presumption of correctness which usually attaches to the contents of the proceedings and orders of Courts. The petitioner's affidavit is hardly of much value in the circumstances of the present case. The omission of this plea from the grounds of revision filed in this Court is an additional factor which strengthens the presumption of correctness of the assertion contained in the order of the learned Senior Subordinate Judge. I have, therefore, no difficulty in holding that the counsel for the parties must be held to have been duly heard by the learned Senior Subordinate Judge as stated by him.

On the other points, however, I find that the original record of the procedings before the Pan-

Marwa
v.
Sanghram
———
Dua, J.

chayat throws most serious doubts not only on their legality, regularity and even propriety, but also on the judicial and unbiased approach of the Panches. The proceedings, as will be shown later, do not inspire confidence and do not appear to me to represent a faithful record of what may have actually transpired before the Panches from time to time. The plaint, written in Urdu dated 29th of September, 1955, is signed by Sanghram in Hindi. At the bottom are three signatures of Kuria and Kallu Ram in Hindi and Kishan Lal in Urdu. These signatures give an impression that the persons concerned are hardly conversant in the art of writing and perhaps they only know how to scribe their names and that also with some difficulty and in a laboured way. This impression has been confirmed by a reference to the entire record on which their names occur at different places. Kuria Ram has not been able even correctly to write his whole name and Kallu Ram's signatures at various places obviously differ materially from one another. After the receipt of the plaint, I find at page 6 of the record of proceedings dated 29th of September, 1955, an order to the effect that notice be sent to defendant Marwa. Below his order I find three signatures, Kishan Lal in Urdu and Kuria Ram and Kalu Ram in Hindi. Kallu Ram's signatures here are materially different from his signatures appearing at the bottom of the plaint. This difference is glaring and apparent. On the same page immediately below the proceedings for the 29th of September, 1955, there are proceedings, dated 7th of October, 1955 where it is stated that the petition had come up before the Panchayat and Marwa (this Marwa appears to me to be a chaukidar whose father's name is Jhuman) had made a statement that "when he went to his house, he refused";

Marwa
v.
Sanghram
———
Dua, J.

therefore, it was unanimously resolved that once more notice may be sent. It is significant that there is no mention as to whose house did Marwa chaukidar go to and who had refused. Beneath this order also there are three signatures and Kallu Ram's signatures here again appear to me to be a similar to those at the bottom of the proceedings for the 29th of September, 1955 and materially different from those which appear at the bottom of the plaint. Immediately after this order, surprisingly enough, I find the proceedings, dated 30th of December, 1955 which say that the petition was placed before the Panchayat and Marwa (this Marwa again appears to be the chaukidar) stated that "he had again refused to take notice". It is noteworthy that the Panchayat in its orders never fixed any date for the hearing of the case. The summonses which are at pages 7 to 13 of the record (these summonses also bear the page number 9 to 15 in red ink) show that summons had been issued on 29th of September, 1955 for 7th of December, 1955. In the record of proceedings at page 6 it is most significant that there are no proceedings for 7th of December, 1955 for which the summons purport to have gone but which according to Marwa chaukidar were refused by the defendant. Marwa chaukidar appears to have informed the Panches about the defendant's refusal on 30th of December, 1955. At page 15 of the record there is an undated chit bearing the signatures of Sanghram plaintiff by which a request is made to Sarpanch Sahib for adjournment. The chit says 'today dated 7th of December, 1955, I have an important work. Therefore, I cannot be present and the case may kindly be adjourned to the next date'. At page 18 of the record I find (page 17 being absolutely blank) some proceedings purporting to be proceedings of the 7th of December, 1955. At

the top of the page after giving the date it proceeds "papers produced before the Panchayat, today the plaintiff for some special reason cannot be present. Therefore, his report is produced and it is, therefore, ordered that the plaintiff should bring his one or two witnesses before the Panchayat on 25th of January, 1956". '25th seems to be an overwriting on 23rd. Even a naked eye can see that the digit '3' has been over-written with '5'. At the bottom of these proceedings covering four lines, first there appear the signatures of Kuria Ram and below it are the signatures of Kallu Ram, to the left of which is written Kishan Lal in black ink with a line above his name and lower down again there is for the second time the name of Kishan Lal in blue ink. After leaving a blank space covering about one-third of the page, at right-hand bottom corner again the name of Kallu Ram appears. These signatures of Kallu Ram at this page appear to tally a little bit with his signatures on the plaint but they are very much different from those which appear at the bottom of the proceedings dated 29th of September, 1955, 7th of October, 1955 and 30th of December, 1955. The subject-matter at page 18 considered as a whole gives to me an impression that some of the signatures particularly of Kallu Ram and Kishan Lal appear to have been obtained on blank paper. This impression is strengthened by the fact that these proceedings should, in the normal course, have found place after the proceedings of 7th of October, 1955 and immediately above the proceedings, dated 30th of December, 1955, and also by the apparent difference in the inks used. Kishan Lal appears to have signed a second time and the ink of these signatures apears to resemble the ink in which the overwritten digit '5' has been written

Marwa
v.
Sanghram

Dua, J.

in the date 25th January, 1956. Then come the proceedings, dated 25th of January, 1956, which contain the statements of two witnesses on behalf of the plaintiff, namely, Bhup Singh and Manga Singh and the final order. The statements of these two witnesses and the final order seem to me to be in the handwriting of the same person who appears to have written out the plaint and the reports at the back of the two summonses which bear pages 10 and 14 of the record. The statement of Manga Singh as recorded supplies some intrinsic evidence suggesting that it was not recorded contemporaneously as if it was a statement of a witness taken down during the course of his examination. It may be observed that the story as stated by Bhup Singh witness is that when Sanghram brought a sum of Rs. 195 for giving a loan to the defendant Marwa, Sanghram handed it over to Manga Singh when Manga Singh said that this amount may be actually delivered into the hands of Marwa defendant himself. Manga Singh's statement as recorded makes an interesting reading. This statement reads thus: "Sanghram Singh first gave this money into the hands of Manga Singh and Manga Singh said that this money may be delivered into the hands of Marwa when Marwa said that this money may be given over to the Panchayat" On reading this statement my spontaneous reaction has been that this statement was not recorded as the statement of a witness deposing contemporaneously with the records of his statement. The finding of the Panchayat is that Marwa defendant's wife had committed a theft in the house of Lila, son of Prabhu, resident of this very village; she was caught at the spot and the Panchayat of the village was convened against the defendant; the Panchayat imposed a penalty of Rs. 195 in the presenece of Marwa who took a

Marwa
v.
Sanghram
Dua, J.

loan of Rs. 195 in cash from Sanghram in the presence of the Panchayat promising to return the amount within four days. At the instance of the Panchayat Sanghram gave the money to Marwa for this purpose and later Marwa refused point-blank to pay back this loan. It is of some importance to observe that no order of the Panchayat imposing the fine is forthcoming nor is there any receipt of the loan advanced by Sanghram and even the plaintiff's own statement, as his own witness, has not been recorded or taken by the Panchayat.

When the revision was filed in the Court of the Senior Subordinate Judge, it appears to me that the learned Judge did not scrutinise the record with the care and attention it deserved. I also find, in the order of the learned Senior Subordinate Judge, an observation that "as the money was not ready with him (meaning the defendant), his close relation, the respondent (meaning the plaintiff), came forward to his help". I have not been able to find any proper material on the record establishing or justifying the finding that Sanghram is a close relation of Marwa.

On these facts the question arises as to whether or not it is competent for this Court to go into the record and see if in the interests of justice interference under Article 227 of the Constitution or under section 115 of the Code of Civil Procedure is called for. That article 227 applies is clear from Narain Singh Hira Singh and another v. The State (1); the scope of this article has also been considered in Partap Singh Kairon v. Gurmej Singh (2), and Waryam Singh and another v. Amarnath and another (3). The existing Panchayat Act was brought on the statute book in

(1) A.I.R. 1958 Punjab 372
(2) A.I.R. 1958 Punjab 409
(3) A.I.R. 1954 S.C. 215

Marwa
v.
Sanghram

Dua, J.

1953, after the enforcement of the Constitution. It is true that even before the Constitution and indeed before India became free, there had been placed on the statute book the Punjab Village Panchayat Act XI of 1939 as also an earlier Act on the same subject in 1921, but the Constitution having included the organisation of village Panchayats in its directive principles, the various State Legislatures are now pursuing this matter, apparently under the inspiration of the provisions of the Constitution. While considering the question of endowing the power of judicial functions on the Panchayats we must not forget that in the preamble of our Constitution, social, economic and political justice is the first item in the list of various blessings which have been secured to the citizens of this Republic. Even in the directive principles Article 38 suggests that the State shall strive to promote the welfare of the people by effectively securing and protecting a social order in which justice shall inform all institutions of the national life. It is not out of place here also to take notice of Articles 44 and 50. The former contemplates a uniform civil code throughout the country and the latter visualises separation of judiciary from the executive in the public services. The Panchayat Act confers executive, administrative and judicial powers on the elected Panchayats. As to how far this is consistent with the directive principles contained in the Constitution also deserves consideration at the hands of the authorities concerned. Of course, these directive principles are not enforceable by Courts but, it can hardly be doubted, that they are meant to be kept in view when enacting laws, unless they are intended to remain mere idle words. If, therefore, the conferment of judicial power on the Panchayats, as they exist today, does not ensure or guarantee real justice to the citizens, then it is a

matter for serious consideration as to whether or not either the judicial power be taken away from the Panchayats like the one in question or the method of appointment of the Panchayats be materially modified so as to effectively assure substantial and real justice to the citizens. The Constitution which has sought to secure justice to the citizens as a top priority has also, for this purpose, vested in the High Courts very wide power of judicial supervision and superintendence over all Tribunals and Courts in the State. Derived as it is directly from the constitution, which is the fountain source and parent of all laws and statutes in this Republic, this power imposes on the High Court a grave and sacred responsibility for the entire administration of justice and invests in it an unlimited and unfathomable reserve of judicial power of supervision and control over all Courts and tribunals in the State concerned, which reserve can easily be drawn upon and utilised if the interests of justice so demand. The limitation on this power is only to be found in the Constitution itself and it is self-imposed by the High Court. This Court being the custodian of all justice within its territorial limits, the Constitution has armed it with an effective weapon to be wielded to ensure that even-handed justice is meted out equitably, fairly and properly for this purpose no external limits, fetters or restrictions have been placed on this power by the express language of the Article. It is true that this power cannot be construed to confer an unlimited and arbitrary prerogative to interfere for setting right all errors of facts and law; it is to be exercised only according to well-recognised judicial principles and with restraint and caution. It is designed to restrain the excesses by subordinate tribunals and to obviate their denial or miscarriage of justice and

Marwa
v.
Sanghram
———
Dua, J.

it is to be exercised most sparingly and only in appropriate cases. But at the same time it must be exercised when the conscience of the Court is pricked, and it may not only legitimately interfere but is enjoined to do so to set right gross dereliction of duty by the subordinate tribunals, which has resulted in miscarriage of justice. If this Court comes to the conclusion that a subordinate judicial tribunal or Court has not given a fair deal to a suitor or a suitor has been dealt with arbitrarily or unfairly, there are no technical limitations which should stand in the way of this Court to see that justice is done. The Constitution has trusted the wisdom and good sense of this Court by conferring on it this power of judicial supervision and superintendence, and this by itself has been considered to be a sufficient safeguard and guarantee that the power would be used only to advance the cause of real and substantial justice. The word 'justice' in the words of Sir Alfred Denning means "what the right-minded members of the community having the right spirit within them believe to be fair".

By reference to the record of this case, when the suit came up before the Panchayat, no date of hearing was fixed by it and the only order passed was that notice may be issued to Marwa. All the Panches thus could not be fixed with the knowledge of the next date. The summons do, however, contain the next date of hearing to be the 7th of December, 1955 but they were not brought to the notice of all the Panches and the provisions of rule 33 of the Punjab Village Panchayat Rules which deal with the service of summons were completely ignored. Rule 33(4) is in the following terms:—

"33(4)(a) Where practicable, the summons shall be served personally on the person

Marwa
v.
Sanghram
Dua, J.

summoned; one copy shall be delivered to him, and the second copy shall be signed or thumb-marked by him, in token of receipt and shall be returned to the Panchayat.

(b) If the person summoned cannot, by the exercise of due diligence, be found, the summons may be delivered to, and a receipt obtained from, some adult member of his family living with him or if even this course is not possible, one copy of the summons shall be affixed to a conspicuous part of the house in which the person summoned ordinarly resides; and thereupon, the summons shall be deemed to have been duly served."

Clause (c) has nothing to do with the service of notice and, therefore, does not concern us. It is true that section 63 of the Gram Panchayat Act empowers the Panchayat to proceed *ex parte* if it is satisfied that the defendant is intentionally evading service but this does not in any way dispense with the mode of service as provided by rule 33. On 7th of October, 1955, which was not the date fixed in the case, another order seems to have been passed deciding to issue notice to Marwa once again. No notices appear to have been issued afresh. I, however, find another set of notices dated 29th of September, 1955, on the record at the back of one of which there is a report in Urdu that the addressee had refused to accept service. This report is dated 2nd of December, 1955. It is obvious that no fresh notices were issued in pursuance of the order dated 7th of October, 1955. As stated above, after the proceedings dated 7th of October, 1955 on the order sheet at page 6 there

Marwa
v.
Sanghram
Dua, J.

appear the proceedings dated 30th of December, 1955 which are in the following words :—

> "Application placed before the Panchayat. Marwa (presumably meaning Marwa chaukidar) has stated that he (presumably referring to the defendant) has refused to take notice a second time."

Page 18 of the record, as already noticed, contains the proceedings dated 7th of December, 1955. This state of the proceedings and of the record is bound to raise the suspicion of any fair-minded judicial tribunal. At page 19 of the record we find a statement purporting to be made by Bhup Singh witness and at the back of this page is the statement purporting to have been made by Manga Singh. None of these two witnesses made their statement on solemn affirmation or oath as has been laid down in rule 31 of the Punjab Village Panchayat Rules. No reference was made to the original criminal procedings when Marwa's wife is alleged to have been fined by the Panchayat nor was a copy of any such order placed on the record; even the plaintiff has not appeared as a witness and has not made a statement in support of his case. On this record it is hardly possible for any judicial tribunal in this Republic consistently with the principles of justice, equity and good conscience to pass a decree. It has to be borne in mind that by section 66 of the Punjab Gram Panchayat Act the Panchayats are enjoined to act according to the aforesaid principles of justice, equity and good conscience. The Panchayat in question has, in my opinion, failed correctly to function within the letter and spirit of the law creating it and interference appears to be called for.

Marwa
v.
Sanghram

Dua, J.

On the matter being taken to the learned Senior Subordinate Judge under section 65 of the Gram Panchayat Act the case seems to have been considered as a matter of routine and the learned Judge does not appear to have realised his responsibility in exercising the supervisory power over judicial orders of the untrained, and perhaps not even very literate, tribunals, like the Panchayat in question. The supervisory jurisdiction created by section 65 of the Act is couched in words of very wide amplitude and is not circumscribed by any limitations. (In my opinion, it has been deliberately so worded in order to enable a senior judicial officer to properly canalise the proceedings of the Panches). In order to understand the precise scope of this provision, again, we must not forget the great importance given to 'Justice' by our Constitution both in the preamble and in the directive principles. These principles though not enforceable by Courts of law are nevertheless a part of the Constitution which is one organic whole and are thus supreme. Therefore, while interpreting or construing a statutory provision of wide import and while trying to find the legislative intent it may not be wholly out of place or unjustified to suppose or even to presume, that the law-makers were not completely unmindful or oblivious of the various directive principles contained in our Constitution. The Courts, while construing a statute, should thus consistently, with its express language, interpret it so that it implements the directive principles instead of reducing them to the level of mere theoretical ideals or illusions. Grave and apparent failure of justice, on points of facts and law, is sufficient to attract the supervisory power, and, in my opinion, it is obligatory on the Court to interfere when such gross and manifest failure of justice is disclosed on the record. While exercising the power

Marwa
v.
Sanghram
———
Dua, J.

under section 65 it is thus incumbent on the Court to satisfy its own conscience by strictly and thoroughly scrutinising the record of the case. Had the learned Senior Subordinate Judge himself scrutinised the record with a little greater care than he actually bestowed on this case, there is no doubt that he would have come to the conclusion that his interference was called for.

The question now arises as to what order should this Court pass in the circumstances of this case. I am conscious of the allegation made by the defendant against the impartiality of the Sarpanch. The proceedings do, in my opinion, go, to a fair extent, to lend some support to the suggestion made by the defendant. It must never be forgotten that according to our legal system justice must not only be done but it must also manifestly and undoubtedly appear or be seen to be done. Only then can the citizens of this Republic feel that the preamble of our Constitution does not contain mere empty words but they are intended to be fully effective and operative. To achieve this end there must not only be the will and honest desire and zeal to administer justice but there should also be persons trained to do so, seeking to be fair. The impugned order of the Panchayat in question as also that of the learned Senior Subordinate Judge, must in the interests of justice, be quashed and the case sent back for fresh trial in accordance with law and in the light of the observations made above after giving proper opportunity to the defendant to defend the suit. As regards the apprehension which the defendant professes to entertain that he may not get a fair deal at the hands of the same Panchayat, for which there appears to be a fairly reasonable ground, there is ample provision in the Gram Panchayat Act for the transfer of cases from one competent Panchayat to another competent Panchayat, and even

Marwa
v.
Sanghram

Dua, J.

for the transfer of cases from a Panchayat to a Court subordinate to the District Judge. Sections 54, 74 and 75 confer these powers. It is, therefore, open to the defendant—if so advised—to apply for transfer of the case, and I have no doubt that if such an application is filed, the authority concerned would give due consideration to the prayer and pass necessary orders thereon. The parties are, however, directed to appear before the Senior Subordinate Judge on the 25th May, 1959 when they would be directed either to appear before the Panchayat in question on a date to be fixed, or if the defendant has applied for transfer of the case; then to proceed in accordance with the order passed on the said application and in the light of the observations made above.

The costs so far incurred by the parties would be borne by them.

B. R. T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

THE EAST PUNJAB PROVINCE (STATE OF PUNJAB),—*Defendant-Appellant*

versus

M/S MODERN CULTIVATORS, LADWA,—*Plaintiffs-Respondents.*

Regular First Appeal No. 45 of 1950

May, 1st 1958

Tort—Negligence—Burden of proof—On whom lies—Principle of res ipsa loquitur—When applicable—Limitation Act (IX of 1908)—Article 2 or 36—Which governs suit to recover damages to crops caused by breach in the canal due to negligence of canal authorities.

Held, that the ordinary rule is that it is for the plaintiff to prove negligence and not for the defendant to disprove it. This rule may, in some cases, cause considerable