With due the respect to the learned Judges who have expressed this opinion I do not find it possible to agree with it, since in my opinion it involves interpreting the word 'may' in sub-section (3) as being equal to the word 'shall' and when in the proceeding sub-section the word 'shall' is used and then in the next sub-section the word 'may' is used I do not consider there can be any doubt that the word 'may' implies a discretion, and if the Court feels that the questions of title involved are capable of decision in summary proceedings under the Act, he is permitted to say so and to leave the parties to establish their rights in a regular suit which I am informed by the learned counsel for the respondents is already pending in the present case. I thus see no reason to interfere and dismiss the revision petition, but leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

KARAM SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

C. Misc. 4175 of 1965 in Civil Writ No. 285 of 1963.

1966

January, 7th.

Legal Practitioner—Duty of, towards his client and Court pointed out—Role of lawyers in administration of justice stressed—Profession of law—Whether a trade or business.

Held that it is the duty of the counsel engaged for conducting a cause on behalf of a suitor to keep himself fully informed of the proceedings in the Court in which his case is likely to be heard on a given day and be present when his case is called. If the clerk of the counsel is, for certain reasons, not available to keep the watch and call the counsel, it would be incumbent on the counsel to take effectively suitable measures to remain in touch with the proceedings in the Court so that when the case is called, he is actually present in Court for discharging his profession duties. The counsel is also expected to inform the Court Reader and the Court peon about his case and also as to where he would for being contacted if his case is called earlier than expected. But it must be clearly understood that the Court is

under no obligation to send Court peon in search of the counsel engaged in the causes on the daily list, and it is the duty of the counsel himself to be present in Court when the case is called. It is wholly unreasonable and improper to make the Court wait for the counsel when the case is called in accordance with the rules.

Held, that the bar is, according to the traditional practice in our set-up, an integral part of the institution of law and justice. Lawyers have to, and do, play an important part in the course of this administration and lawyer has, therefore, a solemn obligation to take all reasonable care to look after his client's interest, and to represent the client's case, as if it is the lawyer's own case. A professional lawyer in this country in addition to being well versed in law—particularly in the branch of law in which he practises—respectful and dignified in his address to the Court, loyal to the Constitution and the laws of the Republic, must, conscientiously and with due care, caution and industry, conduct the proceedings in Court on behalf of his client, whose authorised agent and representative he may have the privilege to be.

Held that the profession of law is not a trade or business, for less a mere money-making trade or business; on the other hand, it is an honourable profession which occupies a peculiarly privileged and respectable place in our legal State. Without the profession of law, a State governed by the Rules of law would be deprived of a vital fulcrum to effectively uphold the sovereignty of the Rule of law and, therefore, ill-equipped to sustain itself with confidence.

Application under Order IX Rule 9 and Section 151 of the Code of Civil Procedure, praying that the above-mentioned Civil writ petition be restored and heard in accordance with law.

R. K. DASS BHANDARI, ADVOCATE, for the Petitioners.

B. S. CHAWALA, ADVOCATE, for the ADVOCATE-GENERAL, for the Respondents.

ORDER

Dua, J. DUA, J.—This is an application under Order 9, Rule 9 and section 151 Code of Civil Procedure, for setting aside dismissal in default of C.W. 285 of 1963 ordered by me on 3rd November, 1965. The petitioners' learned Counsel Shri R. K. Dass, Bhandari, was not present and no one appeared for the petitioners, whereas Shri B. S. Chawala, appearing for the Advocate-General represented the respondents.

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According to the averments in the present petition, the writ case (C.W. No. 285 of 1963) was at No. 7 on the daily list for 3rd November, 1965, and the petitioners' counsel came to the court room more than once to find out which case was being heard. The petitioners' counsel came to the Court at 1.35 p.m., and learnt from the Reader that the Civil Writ petition had been dismissed in default. The petition for restoration was apparently presented on the same day.

The learned counsel for the petitioners, who has supported the petition under Order 9, Rule 9, and section 151 of the Code with his own affidavit, has repeated in his argument, at the bar that he came to the Court room more than once and went back under the impression that his case was not likely to be called for some time. He has, however, also candidly stated that he had employed no clerk who could watch the proceedings in the Court and that had been without a clerk for a period of nearly six months, with the result that he had himself to come to Court room to see as to what was the situation in regard to hearing of cases on the board. On my enquiry he has also fairly admitted that he did not care to point out to the Court Reader or to the Court peon that he was interested in the case at No. 7 on the daily board and that he would be sitting in the Bar room so that if the case is called earlier than expected, he may be contacted in the Bar room. Indeed, the learned counsel also did not take the precaution of requesting a clerk of some other lawyer friend, who had his case in this Court to watch this case as well and oblige the petitioners' counsel.

From what little I recollect in regard to the Court work on 3rd November, 1965, I think Shri Chawla, the respondents' counsel, has rightly pointed out that the Court peon had been sent more than once in search of the counsel and it was almost as a last resort that I felt constrained to dismiss this case in default. The counsel apparently could not be contacted by the Court peon and there was no information available as to whether he was busy elsewhere in some other Court room conducting some other case or had not come to the Court at all. Indeed, before me at the bar, the learned counsel has not stated that he was busy in some other court on the relevant day and at the relevant time. In my opinion, it is the duty of a counsel engaged for conducting a cause in

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this Court on behalf of a suitor to keep himself fully informed of the proceedings in the Court in which his case is likely to be heard on a given day and be present when his case is called. In case the clerk of the counsel is for certain reasons not available to keep the watch and call the counsel, it would be incumbent on the counsel to take effectively suitable measures to remain in touch with the proceedings in the Court so that when the case is called, he is actually present in Court for discharging his professional duties. Normally speaking, in such circumstances, if the counsel cannot actually wait in the Court room itself, he should either request some other lawyer friend to make available his clerk for the purpose of watching the former's case or utilise the services of some clerk of the Bar Association to keep suitable watch over the proceedings of the Court. He may also be expected to inform the Court Reader and the Court peon about his case and also as to where he would be for being contacted if his case is called earlier than expected. By way of precaution (and in my opinion, this is the normal course) he should contact the counsel in the case immediately above his case on the daily cause list and request that counsel to be good enough to inform him as to when that case is called so that he may also get ready for his own case. Indeed, it is always desirable for him to keep in contact with the counsel in the case immediately above his. It also goes without saying that a counsel in such circumstances would be well advised to enquire from the counsel in the one or two cases immediately above his as to how long they are likely to take. Before me, nothing has been stated by the learned counsel for the petitioners as to whether he took any one or more of these precautions, and indeed it has not been disclosed as to from whom the learned counsel had made enquiries and on what basis he had formed the impression that his case was not likely to be called for some time. The Court has not even been told as to at what time he came to the Court room on the last occasion prior to the dismissal in default and which case on the cause list was going on at that time.

The bar, I must point out, is, according to the traditional practice in our set up, an integral part of the institution of Courts entrusted with the administration of law and justice. Lawyers have to, and do, play an important

part in the course of this administration. The profession of law enjoys a high and respected status and reputation in our Republic, but this status also carries with it a corresponding necessary obligation which, to an extent, partakes of fiduciary character. The client places in his lawyer full and implicit faith for representing the former and looking after and protecting his interests in the litigation in the Court. Indeed by fiction, the lawyer is understood to embody his client in his own person and the Courts traditionally address the lawyer in Court proceedings as if he is the client himself present in Court. This traditional mode of address is symptomatic of and the fiction underlying it vividly represents, the close relationship of confidence between the client and his lawyer in respect of the Court proceedings, for the conduct of which the lawyer is engaged. The lawyer has, therefore, a solemn obligation to take all reasonable care to look after his client's interest, and, from one point of view, to represent the client's case, as if it is the lawyer's own case. A professional lawyer in this country in addition to being well versed in law, particularly in the branch of law in which he practises—respectful and dignified in his address to the Court, loyal to the Constitution and the laws of the Republic, must, conscientiously and with due care, caution and industry, conduct the proceedings in Court on behalf of his client, whose authorised agent and representative he may have the privilege to be. The profession of law, it may always we borne in mind is not a trade or business, far less a mere money making trade or business, on the other hand, it is an honourable profession which occupies a peculiarly privileged and respectable place in our legal State. Without the profession of law, a state governed by the Rules of law would be deprived of a vital fulcrum to effectively uphold the sovereignty of the Rule of law and, therefore, ill-equipped to sustain itself with confidence. Incidentally, it may, without serious digression be observed that for a legal limited welfare State created by a written Constitution, lawyer is absolutely indispensable. From the start, when the Constitution is framed to the actual day-to-day administration those who are learned in law; are required to draft the constitution to advise and make the Constitution work to adjudicate upon controversies between man and man, and man and State, as also to plead in Courts for the rival contestants; and finally to advise

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changes in law in the ever-changing social conditions and in human progress in thought and action. In this Republic, lawyers had also the lion's share in this Country's long years of struggle to secure freedom from the most organised, deep rooted and powerful foreign yoke and to frame our Republican Constitution. In the instant case, however, I am only concerned with the professional bar. A professional lawyer is, in view of what I have stated above, expected to have a properly equipped establishment which is generally considered necessary by the traditional unwritten rules of the bar for the proper and effective discharge of his professional obligations towards the clients and of his duty towards the Courts as its accredited officer befitting the high sense of responsibility associated with this honourable profession. The practising lawyer is thus duty-bound to take every reasonable and practical precaution to ensure, *inter alia;* that his client's case in Court does not suffer by default in appearance. It must clearly be understood that this Court is under no obligation to send Court peon in search of the Counsel engaged in the causes on the daily list, and it is the duty of the counsel himself to be present in court when the case is called. It is wholly unreasonable and improper to make the court wait for the counsel when the case is called in accordance with the rules. Lapses in this respect must have serious repercussions on the profession of law, on the administration of law and justice and ultimately on our democratic way of life, apart from the discredit they bring to delinquent lawyer himself. It may appropriately be pointed out here that the working standard of knowledge of law, ability, industry, integrity; sense of patriotism and of watchfulness of his client's interest; on the part of the practising lawyer; largely reflects the quality of the rule of law which governs a democratic set up like ours.

The learned counsel for the petitioners has, however, expressed genuine regret for his absence from the Court on 3rd November, 1965, when the case was called and has stated that he would be more careful in future. Realising that by declining to restore the writ petition in question, this Court would virtually be penalising the suitors by refusing them a hearing on the merits; and hoping that this decision would serve to impress on all concerned the

desirability of taking proper care in being present in Court when their cases are called, I am inclined in the present case to set aside the dismissal in default and restore C.W. No. 285 of 1963, to the pending list of cases. This writ petition would be set down for hearing on 14th January, 1966. I should also like to make it clear that legal position having once again been clarified; in future; this Court would expect proper adherence to the law laid down herein. In the circumstances of the case, I do not impose any terms, and indeed, learned counsel for the respondents has also not insisted on costs.

R.S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

THE MUNICIPAL COMMITTEE, KHARAR AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1721 of 1965.

1966

January, 13th.

Punjab Municipal Act (III of 1911)—S. 238—Reasons for superseding a municipal committee—Whether must be stated in the notification—Enquiry into allegations against the municipal committee before passing the order of supersession—Whether necessary to be made—Principles of natural justice—Whether to be observed in holding such enquiry—Constitution of India (1950)—Art. 226—Order superseding a municipal committee—Whether amenable to scrutiny by High Court.

Held, that the mere copying of the words of the section into the notification, issued under section 238(1) of the Punjab Municipal Act, 1911, superseding a municipal committee, amounts only to notifying the conclusions of the Government and is no substitute whatever for the statutory requirement of notifying the reasons leading the Government to take the action for superseding the municipal committee. The reasons and the conclusion arrived at on account of a consideration of those reasons are two distinct matters. A statutory safeguard against abuse of the powers conferred on the State Government under section 238 of the Act has been provided by making it necessary for the Government to state the reasons for coming to the requisite conclusion in the notification itself. This requirement is also a very reasonable curb on a possible arbitrary order which might otherwise be passed by the State Government which may, in its zeal, sometimes outstep the real jurisdiction conferred