

In the circumstances, the Commissioner of The Punjab Distilling Industries, Ltd. Income-tax is entitled to costs which are assessed at Rs. 250.

S. B. CAPOOR, J.—I agree.

PREM CHAND PANDIT, J.—So do I.

B.R.T.

v.
The Commissioner of
Income-Tax

Tek Chand, J.

FULL BENCH

Before Tek Chand, S. B. Capoor and Prem Chand Pandit JJ.

AMRIT LAL C. SHAH,—Applicant.

versus

RAM KUMAR, ADVOCATE,—Respondent.

Civil Miscellaneous No. 1066 of 1960.

Bar Councils Act (XXXVIII of 1926)—Section 10—Professional misconduct by lawyer—Retaining of money belonging to client by lawyer—Whether amounts to professional misconduct—Relationship between lawyer and client—Nature of and rights and obligations arising from—Onus of proof of unfair transaction between the lawyer and client—On whom lies—Principal and Agent—general agent, special agent and universal agent—Distinction between and respective powers of each.

1962

March, 7th

Held, that an Advocate practising in a Court of law enjoys a number of privileges and he has equally important obligations which he owes to his client and to others. In view of the trust and confidence which a client must necessarily repose in his Advocate a very high standard of the appreciation of his obligations is expected of him. The relationship between the counsel and the client is highly fiduciary and of a confidential character imposing upon him the duty of a high degree of fidelity and good faith. When a transaction between the litigant and his lawyer is assailed by the former, a burden is cast upon the attorney to show that he has maintained highest standard of fairness and has acted with best of faith. He has to show that the transaction was entered into without

disadvantage to the client and that it was by all standards equitable and also correct in all professional relations. The lawyer as the attorney of his client is strictly accountable. One of such obligations is that he must promptly pay over to his client the money collected for him, and failure to return the money, especially after demand has been made for it, amounts to misconduct. While the money remains with him, it has to be treated as a trust fund and he its trustee. The onus is on the attorney to prove his right to retain the money against services rendered by him and it is he who has to prove the existence of contract, express or implied, entitling him to retain the money and to convert it to his own use by way of loan or otherwise. When it is established that money belonging to his client has been withdrawn and kept by him, it is for him to explain that the retention was free from fraud, and unaccompanied with undue influence, and to such an arrangement, the client had freely consented after mature understanding of the implications. A wrongful retention of money followed by conversion is misappropriation and furnishes a ground for disbarment or suspension of the guilty lawyer unless it appears that the misappropriation or the misapplication of monies was not accompanied with an element of fraud or dishonesty and there were special circumstances which justified such a conduct on the ground of a *bona fide* dispute or in the exercise of an attorney's lien. An Advocate, who is capable of wrongfully withholding the monies of his client, forfeits his privileges and cannot be considered to be a fit and a safe person to whom the management of the business of others can be entrusted. From his lawyer a litigant is entitled to expect reasonable care and diligence and also the legal skill and knowledge which are ordinarily attributed to the members of the legal profession; but this is not all. His duties also include a conduct in conformity with *uberrima fides*, i.e., the utmost good faith, integrity, fairness and loyalty which is associated with a person occupying the position of trust and confidence like a fiduciary or a trustee. He must not have a personal interest antagonistic to that of his client and must resist the temptation of obtaining a personal advantage or profit out of this relationship. For these reasons he is held to strict accountability for the observance and discharge of the duties attached to his profession. In view of the extremely delicate nature of this relationship high standards of adherence to his obligations, the use of a client's

money for his personal advantage is sustained only where it is accompanied with fairness and honesty without any suspicion of the exercise of any undue influence. It is a rule of public policy, and also one of equity, that the burden is cast upon a lawyer to dispel the suspicion which attaches on a transaction of this nature and he has to establish that the confidence reposed in him has not been abused and he has not taken any improper advantage of his hold over his client. In such circumstances when money is collected and not turned over to his client, the Advocate is treated a trustee and not a debtor of his client. It behoves a person enjoying the rights and privileges of a counsel to equally respect the duties and obligations attaching to his office, for *noblesse oblige*—rank imposes obligations. In the words of Lord Macmillan “the client often confides to his advocate’s hands all that he holds dearest—his goods, his reputation, his happiness, and sometimes even his life. Such a trust seems to transcend the ordinary commercial relations of debtor and creditor.” The relationship of lawyer and client is a factor which cannot be lost sight of. A client is more susceptible to undue influence from his lawyer and to the latter’s dominance than any two persons who do not bear to each other a fiduciary relationship.

Held, that an agent in law may be either general or special. A general agent has authority to act for his principal in all matters, or in all matters concerning a particular trade or business, or of a particular nature; or to do some act in the ordinary course of his trade, profession or business as an agent, on behalf of his principal, as for example where a solicitor, factor or broker is employed as such. On the other hand a special agent has only authority to do some particular act, or represent his principal in some particular transaction, such act or transaction not being in the ordinary course of his trade, profession, or business as an agent. The distinction between general and special agents is only of importance in determining the nature and extent of the authority conferred. Moreover, every agent, whether special or general, who is authorised to act for his principal, has implied authority to do whatever is incidental to the ordinary conduct of such a trade or business, or is within the scope of that class of acts and also whatever is necessary for the proper and effective performance of his duties, but the general agent has no implied authority to

do anything that is outside the ordinary scope of his employment and duties. It will thus be found that the distinction between a general agent and a special agent is one of degree and it may often happen that a general agent may have little discretion in regard to the transactions which he is employed to perform, while a special agent may have great discretion in the single transaction which he conducts. In either case of agency what is of moment, is the extent of the consent given by the principal to the acts of the agent on his behalf. A clear-cut distinction between general and special agents is not always possible. The authority of a general agent is not limitless or unbounded and is confined either by express or implied terms or what is usual, having regard to the kind of work which the agent normally in the ordinary course of his business undertakes. A general agent for the purpose of looking after the law suits has no authority to disburse or to permit the Advocate to withdraw the funds of his principal and to allow them to be converted to his own use and to be treated as loans and repayable through services rendered or to be rendered. It has to be remembered that a "general agent" is not the same thing as a "universal agent". The latter is a rare creature and may exist notionally but not factually. An 'universal agent' is one who is authorised to do all the acts which the principal can lawfully do and can delegate. An 'universal agent' is authorised to transact all the business of his principal of every kind. Such an universal agency may potentially exist, but it must be of the rarest occurrence and it is difficult to conceive of the existence of such an agency, inasmuch as it would be to make such an agent the complete master, not merely *dux facti* (conductor of affairs) but *dominus rerum* (owner of things), the complete disposer of all the rights and property of the principal. The words "general" and "universal" are not synonymous. The word "general" means extensive and "Universal" indicates that which pertains to all without exception. If general agent were to be treated at par with every plenipotentiary in respect of his principal, the general agency will become an extremely hazardous institution from the point of view of the principal, as in that event the agent would become an absolute master and disposer of the rights and property of the principal.

Complaint of Professional misconduct submitted by Shri Amrit Lal C. Shah, against Shri Ram Kumar, Advocate of Delhi.

T. N. BHALLA, ADVOCATE, for the Applicant.

Advocate-General through N. L. Salooja, Advocate for the State.

D. S. NEHRA, ADVOCATE, for the Council.

H. R. SODHI, and U. S. SAWHNEY, ADVOCATES, for the Respondent.

JUDGMENT

TEK CHAND, J.—This case arises under section 10 of the Indian Bar Councils Act, 1926, on the complaint of one Amrit Lal C. Shah of Delhi against Shri Ram Kumar, Advocate of Delhi. Amrit Lal submitted a written complaint to this Court on 25th of January, 1958, alleging professional misconduct on the part of the respondent. It was stated in the complaint that the applicant had entrusted two cases to Shri Ram Kumar, Advocate. Suit No. 802 of 1951 was decided on 8th of May, 1952, in the Court of Small Causes, Delhi, and a sum of Rs. 580/12/- had been deposited in the Court of the Judge, Small Causes, to the credit of the applicant. There was also another suit No. 49 of 1951 which was decided on 7th of August, 1951, in the Court of Shri Sunder Lal, Commercial Sub-Judge, Delhi, in which a sum of Rs. 700 had been deposited to his credit. The respondent was required to withdraw the above two sums totalling Rs. 1,280/12/- and to remit the amount to the applicant. The respondent realised this amount some time in June, 1952, and retained it with himself. It was alleged that a notice through a lawyer was sent to the respondent on 19th of November, 1957, but no reply was received. The applicant said that the Advocate had committed criminal breach of trust and also professional misconduct and he prayed that an enquiry may be instituted and proper action taken.

In his written statement, dated 12th of June, 1959, Shri Ram Kumar admitted having withdrawn the amount and having retained it with himself. His explanation was that the applicant was an old client of his and as he was financially hard up, he requested the applicant to give him

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

a loan of Rs. 1,500. The applicant agreed and instructed him to realise the two sums and to treat them as loan. This money was to be repaid by adjustment out of fees which were then due from the applicant to the Advocate and which would become due in respect of legal work to be put in his hands in future. According to the Advocate, this sum was kept by him with the full consent and approval of the applicant. He also alleged that his own records were not traceable despite every possible search. He then said that the entire amount of Rs. 1,280/12/- which had been taken by him as a loan had been fully adjusted in the following matters :—

- (1) Suit No. 405 of 1951, *Mehar Chand v. Messrs Gupta Brothers*, in Court of Shri Y. L. Taneja, Commercial Sub-Judge, Delhi (and the connected criminal proceedings in the same matter).
- (2) Suit No. 949 of 1951, *Amrit Lal v. Union of India*, in the Court of Shri Surjit Singh Reikhy, Sub-Judge, Delhi.
- (3) Proceedings No. 422 of 2010 before the Delhi Hindustani Mercantile Association, Delhi, in *Shiv Narain Guota v. Amrit Lal C. Shah*.

With regard to the last-mentioned proceedings it was stated that the respondent demanded his fees for drawing up and settling the appeal, but as no payment was made to him, misunderstanding arose between them and on this false and frivolous complaint against the respondent has been made. It was also alleged that the applicant had arranged the removal of the old records of the Advocate. It may be mentioned here that beyond this bald allegation no evidence has been led in support of this suspicion. Thus the stand of Shri Ram Kumar, Advocate, is that the sum withdrawn by him was treated as a loan which had been paid by adjustments against the fees then due to him or which were to become due later on.

The enquiry was made by the District Judge, Delhi, who recorded the statements of the parties. No other witnesses were produced by either party. Certain documents were also placed upon the record which were considered by the District Judge. The following charge was then framed against the respondent :—

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

“That you—Shri Ram Kumar, Advocate, Delhi—while practising as an Advocate at Delhi during the period from 1951 to 1958 are alleged to have committed act of professional misconduct towards Amrit Lal C. Shah, Katra Khushal Rai, Chandni Chowk, Delhi, inasmuch as you committed criminal breach of trust by realising from Courts on behalf of Amrit Lal C. Shah sums of Rs. 580-12-0 and Rs. 700, respectively, in the following two cases for the conduct of which you were engaged by Amrit Lal C. Shah and did not return this amount to him in spite of his notice, dated 19th November, 1957 :—

- (1) Suit No. 802 of 1951 decided on 8th May, 1952 in the Court of Judge, Small Cause Court, Delhi.
- (2) Suit No. 49 of 1951 decided on 7th August, 1951, in the Court of Shri Sunder Lal, Commercial Sub-Judge, Delhi.”

The District Judge in his report expressed the view that the charge against the Advocate had been brought home to him.

I may refer to certain material documents to which reference has been made during the course of the arguments. Exhibit C. 1 is a letter addressed by Shri Ram Kumar to Messrs Amrit Lal C. Shah, Delhi, dated 27th of February, 1954. Referring to suit No. 802 of 1951, which was decided by the Judge, Small Causes, Delhi, on 2nd of May, 1952, (*Messrs Ramji Dass Ram Nath v. Amrit Lal*

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

C. Shah), he said that he enclosed cheque dated 4th of March, 1954, for Rs. 580/12/- drawn in the applicant's favour upon the United Commercial Bank, Limited, Delhi, being the amount of the refund realised by the Advocate from the Court in the above case. He also said that his bill relating to the expenses and his charges for the above case and matters in connection thereto would follow in due course. A cheque for Rs. 580/12/- bearing the date of 4th of March, 1954, had been enclosed. This cheque on presentation was not honoured and was returned as there were no funds to the credit of the drawer, i.e., Shri Ram Kumar.

Exhibit C. 6 is the receipt, dated 18th of June, 1952, executed by Shri Ram Kumar, Advocate, for the decree-holder, Amrit Lal, for Rs. 700 evidencing withdrawal of the amount from the Court. The withdrawal and retention have not been denied.

Amrit Lal on 19th of November, 1957 served a registered notice on Shri Ram Kumar, Advocate alleging that he was his counsel in the two cases and he had withdrawn two sums of Rs. 700 and Rs. 580/12/- which were lying with him as trust on his behalf. The notice required the Advocate to pay this amount within seven days of the notice failing which he would seek relief in the law Courts at his cost and risk. It was also stated that he had taken a sum of Rs. 806/4/9 for him at various dates as per account-books and that he had not furnished accounts. He was required to give detailed account of this amount of Rs. 806/4/9. The reply to this notice is not forthcoming. The contention of the applicant is that the Advocate never sent any reply, and the stand taken by the Advocate is that a reply was sent, but as his records are lost, he cannot produce the copy. Copies of account-books of the applicant were also produced to show that on various dates sums amounting to Rs. 806/4/9 were due from the Advocate to the applicant. They included some cash payments and also the price of the cloth supplied to him. When charge was given by the District Judge on 21st of November, 1959, Shri Ram Kumar was also required to submit his written answer within fourteen days, but this was not given.

In support of the charge Amrit Lal appeared as his own witness. He stated that he had authorised the Advocate to withdraw the two amounts from the Court on his behalf and to pay the same to him. He also stated that the respondent's cheque for Rs. 580/12/- was not cashed and the respondent made promises to pay this amount later after a short time, but he did not do so. He also stated that when he served the Advocate with notice, Exhibit C. 7, he did not receive any reply from him. This notice is dated 19th of November, 1957, and the present complaint to this Court for professional misconduct was made on 25th of January, 1958. Amrit Lal denied that the respondent ever demanded any loan from him and that he ever authorised him to appropriate the amount received in the above two cases and to treat it as a loan. He also said that no fee was due from him to the respondent on account of the legal work done by him as his counsel, and on the contrary, Shri Ram Kumar owed him Rs. 806/4/9 on account of cash payments made to him towards court-fees, etc. No account relating to this amount was given by him. These payments were supported by him on the basis of account-books, copies of which are Exhibits C. 9 to C. 17. The applicant was subjected to a lengthy cross-examination during which he admitted that Shri Ram Kumar might have done one or two other cases on his behalf in addition to the two cases in which the two sums had been withdrawn by him. He stated that Harshad Kumar (alias Harshad Lal), his employee, used to look after his cases as he used to live in Ahmedabad up to 1953, when he shifted to Delhi. He denied having given general power of attorney to Harshad Kumar. On the Court files, Harshad Kumar has been described as general attorney or mukhtar-i-am. He admitted that no fee had been paid by him to the Advocate in the case filed by Mehar Chand, but he had asked the respondent repeatedly to deduct his fee out of the amount of Rs. 806/4/9 and to return the balance to him. Harshad Kumar has not been produced, and the applicant has stated that he was no longer in his service. He admitted that he had not made any written demand on the respondent

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

before giving him the notice, Exhibit C. 7. He also admitted that he did not send any separate notice to him in respect of Rs. 806/4/9. In answer to the question as to why he did not send a written notice after cheque, Exhibit C. 2, had been dishonoured in 1954, and till the registered notice in 1957, he said, that the respondent used to tell him, that he was financially hard up and that he would pay the amount to him after some time. He desired the applicant to postpone the demand for money and thus to help him. The fee in the case against the Union of India pending in the Court of Shri Sunder Lal, had not been settled, and the reason for this was, that the respondent had not sent his bill. He also stated that it was Harshad Kumar who had asked the respondent to withdraw the two amounts from the Court, and I take it to mean, at the instance of the applicant. He said that he did not give any notice in writing to the respondent before the cheque, Exhibit C. 2, for Rs. 580/12/- was issued, to send him the other sum of Rs. 700 as well, but he did make verbal demands. He was living mostly in Ahmedabad from 1943 to 1953, and after 1953 he was in Delhi. During his absence Harshad Kumar used to look after his daily business. Regarding the sum of Rs. 806/4/9 he said that he orally asked the respondent to give the account of how the amount had been utilised. Out of this amount Rs. 246/12/9 were due to the applicant on account of the price of the cloth supplied to him by the applicant.

Regarding the arbitration proceedings before the Delhi Hindustani Mercantile Association, the contention of the applicant was that Rs. 50 was settled as fee and in cross-examination he said that the respondent might have put in appearance in those proceedings on 25 or 30 occasions, though the contention of the respondent was that he put in nearly sixty appearances. The applicant said that a sum of Rs. 50 was fixed as the fee in the case, and on the other hand the contention of the respondent was that a sum of Rs. 330 was to be paid to him by way of retainer and he was to receive Rs. 35 per hearing. The award given by

the Delhi Hindustani Mercantile Association against the applicant was for Rs. 1,325, though a much larger sum was claimed against him. The memorandum of appeal had been drafted by the respondent in that case. According to the applicant the respondent did not demand separate fee for the appeal, and the contention of the respondent was that he claimed a sum of Rs. 110 as his fee for conducting the appellate proceedings on his behalf. The fee of Rs. 50 which according to the applicant had been settled with the respondent had not been paid to him, as, according to him he had been asking for the account of Rs. 806/4/9. This, in brief, is the sum and substance of the statement of the applicant before the District Judge.

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate
Tek Chand, J.

Shri Ram Kumar as R. W. 1 stated that the applicant became his client in 1940, and the instructions in the cases mostly used to be given by Harshad Kumar, applicant's general attorney and employee. He had applied for a loan of Rs. 1,500 and Harshad Kumar then told him that the applicant could not give him out of his own pocket, but he added, that the applicant had agreed, that the two sums of Rs. 580/12/- and Rs. 700 could be withdrawn from the Court, retained by the Advocate and treated as a loan from the applicant; the amounts could be adjusted towards the fees then due to him and for the future fees in subsequent cases which were to be conducted. This request was made some time in 1952. The explanation given by Shri Ram Kumar about his letter, Exhibit C. 1, dated 27th of February, 1954, enclosing cheque, Exhibit C. 2, for Rs. 580/12/- was, that Harshad Kumar told him in February, 1954, that the amount of Rs. 700 which had been withdrawn from the Court related to Delhi concern of Amrit Lal of which he was the sole proprietor, while the amount of Rs. 580/12/- related to Ahmedabad concern of Amrit Lal, in which, there were other partners also. Harshad Kumar had asked him to issue a cheque for Rs. 580-12-0 in favour of Messrs Amrit Lal C. Shah as it was necessary for making adjustments between the applicant's concerns at

Amrit Lal
C. Shah

v.

Ram Kumar
Advocate

Ahmedabad and Delhi. The Advocate then stated—

Tek Chand, J.

“Harshad Lal also told me that in case the cheque was not cashed, it would not make any difference.”

He could not recall to his mind the nature of the adjustment to be made. I may say that this explanation for issuing a cheque of Rs. 580-12-0, which, was not intended to be honoured, does not commend itself to me. I do not see any reason why he should have knowingly sent a spurious cheque at the instance of Harshad Kumar which he and Harshad Kumar fully knew would not be honoured. The cheque was dated 4th of March, 1954 and was enclosed in a letter, dated 27th of February, 1954 and within five days of the receipt of the letter the bogus nature of the cheque had been discovered. It is not brought on the record as to what purpose such a cheque might have served and why Harshad Kumar wanted him to send such a cheque. Harshad Kumar has not been produced and the respondent has not chosen to call him as his witness which it was his duty to do, if he wanted him to support his version. If it was an innocent ruse resorted to at the instance of Harshad Kumar, its purpose does not appear to me to be clear. It is a serious risk to be run by any person in the position of the respondent to lend himself as an instrument to deceive the partners of the applicant and to lull them into a false sense of security, by issuing a cheque which *ab initio* was meant to be a scrap of paper. The only understandable explanation is that the sham cheque was issued to delay matters. The important thing, however, is that there is no indication whatsoever in the letter, Exhibit C. 1, that a part of the money which was retained as a loan was being returned. There is no reason why Ram Kumar could not mention the fact of the loan in that letter. If the story of the loan is genuine,

then it should have figured in that letter or at least in some correspondence.

Regarding adjustment, the stand taken by Shri Ram Kumar has been that major portion of Rs. 1,280/12/- was adjusted against the fee due to him in the case filed by Shiv Narain Gupta before the Delhi Hindustani Mercantile Association. About these proceedings the significant fact is that they had been instituted against the applicant some time in 1954. In 1952, the taking of such proceedings against the applicant could not have been anticipated and, therefore, the applicant could not have agreed to the adjustment of this amount against a case the institution of which could not have been foreseen by him in 1952. In his cross-examination Shri Ram Kumar admitted having made no mention of the loan in his letter, Exhibit C. 1, or of the fact that the cheque was being issued with a view to make adjustments between the applicant's two concerns at Delhi and Ahmedabad. He even went to the length of saying that he did not mention about the adjustment, because the cheque was issued and letter was written according to the wishes of Harshad Kumar. He admitted not having received any writing from Harshad Kumar that he could treat the two sums withdrawn by him as loan from the applicant.

He also stated, that he had not preserved his case diaries and that he did not keep any account of his professional income and that the details of expenses in connection with the suits of the applicant used to be orally given by his clerk to Harshad Kumar. He had kept no account which could show, as to how much amount was received by him from the applicant, towards his fee and other expenses. He also admitted not having mentioned Harshad Kumar in the written statement submitted by him in the High Court, and the reason given by him was that Harshad Kumar had no personal dealings with him. He also said that he was assessed to income-tax but did not submit any returns of income and that he had been invariably assessed on an estimated income as he never kept any accounts.

Amrit Lal
C. Shah

v.

Ram Kumar
Advocate

—
Tek Chand, J.

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

The first argument raised on behalf of the respondent by his counsel, Shri Sodhi, is, that the amount of Rs. 1,280-12-0 had been withdrawn by the respondent and he had retained the amount and had treated it as a loan with the consent of the applicant and the repayment was agreed to be by adjustment of the fees which were in arrears and the fees to which he would be entitled when engaged in subsequent litigations. This contention is not evidenced by any writing, formal or informal. The applicant remained at Ahmedabad up to 1953 and during the course of his statement, Shri Ram Kumar had to admit, that it was not with the applicant's permission but with that of Harshad Kumar who allowed him the use of the moneys on behalf of his employer. One thing now admits of no doubt that there was no such agreement directly arrived at as between the applicant and the respondent. Harshad Kumar, who might have lent countenance to the version of Shri Ram Kumar, has not been produced and there is no letter or any other document forthcoming in support of the version put forward by the Advocate. If there had been any such agreement, it ought to have been mentioned in his letter, Exhibit C. 1. Moreover, such an agreement is inconsistent with the sending of cheque by the Advocate. According to him, not only he was entitled to retain the money as loan, but it was not to be returned to him in specie but only in the form of professional services rendered and to be rendered. It is reasonable to assume that the letter, Exhibit C. 1, and the cheque were sent to the applicant because the latter must have demanded the money. If the condition of the agreement was adjustment of the loan against the services rendered or to be performed, the Advocate was not expected to send the cheque. The story of sending the false cheque, and of writing the letter, Exhibit C. 1, at the bidding of Harshad Kumar is too naive to be readily accepted. It is straining the credulity of this Court to a breaking point, that the Advocate volunteered to remit a bogus cheque at the bidding of Harshad Kumar in order to oblige the applicant. What exact purpose it would have served has been left vague. If the

story put forth by the Advocate is to be believed, then after allowing the adjustment of Rs. 1,280-12-0 there was still due to the Advocate almost a like sum by way of fee on account of professional services rendered in the arbitration proceedings before the Delhi Hindustani Mercantile Association as according to him Rs. 330 was settled as retainer and he was entitled to receive Rs. 35 per hearing and he had attended over sixty hearings. According to him, he had not been paid any fee in four other cases. It is surprising that an Advocate, who on his own admission was in impecunious circumstances, and whose cheque for a comparatively paltry amount of Rs. 580-12-0, could not be retired but was returned, would have kept silent and would not have demanded the payment of the balance of his fee from the applicant. This plea is falsified by the respondent's own statement that major portion of the amount of Rs. 1,280-12-0 was adjusted by the fee due to him in the case filed by Shiv Narain Gupta against the applicant before the Delhi Hindustani Mercantile Association. Mr. Sodhi wanted us to hold that the long silence on the part of the applicant in not making further efforts to realise the amount, was indicative of the agreement, as pleaded by the Advocate and from this, we should infer that the relationship between the two was that of lender and borrower. The applicant denies having kept quiet and has stated that he had been making oral demands and the respondent used to tell him that he was financially hard up and had been promising to pay the amount after some time. To my mind this conduct of Amrit Lal applicant, shows that he in view of his helpless predicament, was being patient in the hope that the financial stresses of his lawyer might become relieved and that the latter in near future might make good his promise. It was only after verbal assurances of the Advocate remained unredeemed that the applicant served the registered notice of demand in 1957. I cannot draw any inference in favour of the agreement from the applicant's conduct in not taking legal action against his Advocate for recovery of the money retained by him. The relationship of lawyer and client is

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate
Tek Chand, J.

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

unequal and the personal ascendency of lawyer over client is a factor which cannot be lost sight of. A client is more susceptible to undue influence from his lawyer and to the latter's dominance than any two persons who do not bear to each other a fiduciary relationship. I agree with the report of the District Judge that the agreement as alleged by the respondent stands unsubstantiated and there is not an iota of proof in support of it and that if, in fact, there had been such an agreement, the lawyer would have had in his possession irrefutable documentary proof.

I may also briefly refer to the contention of Mr. Sodhi that Harshad Kumar as the applicant's general attorney could permit Shri Ram Kumar the use of his employer's funds by way of a loan. In the first place I do not believe that Harshad Kumar had permitted Shri Ram Kumar to retain the money withdrawn from the Court and to convert it to his own use treating it as a loan. I have already commented on the fact that Harshad Kumar has not been produced to support this story. Assuming Harshad Kumar did permit Shri Ram Kumar to use the funds as alleged by him, he as the general attorney of Amrit Lal could not have done so and Shri Ram Kumar should have known this. The terms of the general power of attorney are not known as it has not been placed on the record. There is only a description of Harshad Kumar as the general attorney. An agent in law may be either general or special. It is true that a general agent has authority to act for his principal in all matters, or in all matters concerning a particular trade or business, or of a particular nature; or to do some act in the ordinary course of his trade, profession or business as an agent, on behalf of his principal, as for example where a solicitor, factor or broker is employed as such. On the other hand a special agent has only authority to do some particular act, or represent his principal in some particular transaction, such act or transaction not being in the ordinary course of his trade, profession, or business as an agent. (*Vide* Bowstead on Agency, Twelfth Edition, page

2.) The distinction between general and special agents is only of importance in determining the nature and extent of the authority conferred. Moreover, every agent, whether special or general who is authorised to act for his principal, has implied authority to do whatever is incidental to the ordinary conduct of such a trade or business, or is within the scope of that class of acts and also whatever is necessary for the proper and effective performance of his duties, but the general agent has no implied authority to do anything that is outside the ordinary scope of his employment and duties. (*Vide* Bowstead on Agency, Twelfth Edition, page 56.) It will thus be found that the distinction between a general agent and a special agent is one of degree and it may often happen that a general agent may have little discretion in regard to the transactions which he is employed to perform, while a special agent may have great discretion in the single transaction which he conducts. In either case of agency what is of moment, is the extent of the consent given by the principal to the acts of the agent on his behalf. A clear-cut distinction between general and special agents is not always possible. The authority of a general agent is not limitless or unbounded and is confined either by express or implied terms or what is usual, having regard to the kind of work which the agent normally in the ordinary course of his business undertakes. The terms of the general agency of Harshad Kumar are not known. Assuming he was a general agent of Amrit Lal for the purpose of looking after the law suits, it cannot be implied that he had also the authority to disburse or to permit the Advocate to withdraw the funds of his principal and to allow them to be converted to his own use and to be treated as loans and repayable through services rendered or to be rendered. It has to be remembered that a "general agent" is not the same thing as a "universal agent". The latter is a rare creature and may exist notionally but not factually. A 'universal agent' is one who is authorised to do all the acts which the principal can lawfully do and can delegate. A 'universal agent' is authorised to transact all the business of his principal of every kind. Such a universal

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate
Tek Chand, J.

agency may potentially exist, but it must be of the rarest occurrence and according to Mr. Justice Story it is difficult to conceive of the existence of such an agency, inasmuch as it would be to make such an agent the complete master, not merely *dux facti* (conductor of affairs) but *dominus rerum* (owner of things), the complete disposer of all the rights and property of the principal. The words "general" and "universal" are not synonymous. The word "general" means extensive and "Universal" indicates that which pertains to all without exception. If general agent were to be treated at par with every plenipotentiary in respect of his principal, the general agency will become an extremely hazardous institution from the point of view of the principal, as in that event the agent would become an absolute master and disposer of the rights and property of the principal. It is only on such a wide assumption that the transaction attributed to Harshad Kumar could be justified by Shri Ram Kumar. To equate Harshad Kumar, the agent, with Amrit Lal, the principal, is irrational and insensate.

The next argument of Shri Sodhi is that even in the absence of proof of consent on the part of Amrit Lal, the principal, or Harshad Kumar, the general agent, to allow the Advocate the use of the money by way of loan, the latter had his lien over the money collected against what was due to him on account of his remuneration for the professional services rendered. Assuming that the Advocate had the attorney's lien over the money collected by him in 1952, it was against fees in two cases involving recoveries of Rs. 700 in one case and a little less in the other case. Assuming the statement of Shri Ram Kumar to be well-founded that he had not been paid his fees in those cases, his lien could not extend to the entire amount of Rs. 1,280-12-0. In June, 1952, when this money was withdrawn, there were no other cases pending in which the lien could possibly exceed the amount retained. Moreover there is no indication at all that the Advocate ever claimed the retention of the amount in exercise of his so-called attorney's lien. It is not even proved on the record

as to what was the amount of the fees settled and unpaid. No accounts have been rendered by him and no bill of fees or expenses incurred has been sent by him. He cannot, therefore, justify his conduct under a claim of exercise of attorney's lien on his part.

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

It next remains to consider whether Shri Ram Kumar is guilty of professional misconduct. An Advocate practising in a Court of law enjoys a number of privileges and he has equally important obligations which he owes to his client and to others. In view of the trust and confidence which a client must necessarily repose in his Advocate a very high standard of the appreciation of his obligations is expected of him. The relationship between the counsel and the client is highly fiduciary and of a confidential character imposing upon him the duty of a high degree of fidelity and good faith. When a transaction between the litigant and his lawyer is assailed by the former, a burden is cast upon the attorney to show that he has maintained highest standard of fairness and has acted with best of faith. He has to show that the transaction was entered into without disadvantage to the client and that it was by all standards equitable and also correct in all professional relations. The lawyer as the attorney of his client is strictly accountable. One of such obligations is that he must promptly pay over to his client the money collected for him, and failure to return the money, especially after demand has been made for it, amounts to misconduct. While the money remains with him, it has to be treated as a trust fund and he its trustee. The onus is on the attorney to prove his right to retain the money against services rendered by him and it is he who has to prove the existence of contract, express or implied, entitling him to retain the money and to convert it to his own use by way of loan or otherwise. When it is established that money belonging to his client has been withdrawn and kept by him, it is for him to explain that the retention was free from fraud, and unaccompanied with undue influence, and to such an arrangement, the client had freely consented after mature

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

understanding of the implications. A wrongful retention of money followed by conversion is misappropriation and furnishes a ground for disbarment or suspension of the guilty lawyer unless it appears that the misappropriation or the misapplication of moneys was not accompanied with an element of fraud or dishonesty and there were special circumstances which justified such a conduct on the ground of a bona fide dispute or in the exercise of an attorney's lien. In this case the misconduct is established not only on the basis of preponderance of evidence but beyond reasonable doubt. An Advocate, who is capable of wrongfully withholding the moneys of his client as has been done in the circumstances of this case, forfeits his privileges and cannot be considered to be a fit and a safe person to whom the management of the business of others can be entrusted. From his lawyer a litigant is entitled to expect reasonable care and diligence and also the legal skill and knowledge which are ordinarily attributed to the members of the legal profession; but this is not all. His duties also include a conduct in conformity with *uberrima fides*, i.e., the utmost good faith, integrity, fairness and loyalty which is associated with a person occupying the position of trust and confidence like a fiduciary or a trustee. He must not have a personal interest antagonistic to that of his client and must resist the temptation of obtaining a personal advantage or profit out of this relationship. For these reasons he is held to strict accountability for the observance and discharge of the duties attached to his profession. In view of the extremely delicate nature of this relationship high standards of adherence to his obligations are expected of a lawyer and a transaction involving the use of a client's money for his personal advantage is sustained only where it is accompanied with fairness and honesty without any suspicion of the exercise of any undue influence. It is a rule of public policy, and also one of equity, that the burden is cast upon a lawyer to dispel the suspicion which attaches on a transaction of this nature and he has to establish that the confidence reposed in him has not been abused and he has not taken any improper advantage of

his hold over his client. In such circumstances when money is collected and not turned over to his client, the Advocate is treated a trustee and not a debtor of his client. Before using the trust fund for his own purposes, Shri Ram Kumar should have written to his client and obtained his permission to do so which he did not do. It behoves a person enjoying the rights and privileges of a counsel to equally respect the duties and obligations attaching to his office, for *noblesse oblige*—rank imposes obligations. In the words of Lord Macmillan “the client often confides to his advocate’s hands all that he holds dearest—his goods, his reputation, his happiness, and sometime even his life. Such a trust seems to transcend the ordinary commercial relations of debtor and creditor”. (*Vide The Ethics of Advocacy* reprinted in *Jurisprudence in Action*, page 317.) One of the canons of ethics adopted by the American Bar Association as a general guide is—

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

“Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client’s knowledge and consent should not be commingled with his private property or be used by him.”

The Courts in England insist that it is a lawyer’s duty to preserve a record of his dealings with his client and any agreement between them should be in writing (*Vide Gresley v. Mousley* (1), and *Ex p. Swinbanks, Re Shanks* (2). In *Stockton v. Ford* (3), Nelson, J., said—

“There are few of the business relations of life involving a higher trust and confidence than that of attorney and client, or, generally speaking, one more honorably or faithfully discharged; few more anxiously guarded by the law, or governed by sterner principles of morality and justice; and it is the duty of the

(1) 45 E.R. 31
(2) (1879) 11 Ch. D. 525
(3) 52 U.S. 232 (247)

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

court to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence thus reposed shall not be used to the detriment or prejudice of the rights of the party bestowing it."

In his Commentaries on Equity Jurisprudence (Third English Edition) Justice Story observed—

"The situation of a legal adviser puts it in his power to avail himself, not only of the necessities of his client, but of his good nature, liberality, and credulity to obtain undue advantages, bargains, and gratuities. * * * * There are cases in which it has been asserted that, while the relation of client and solicitors subsists in its full vigour, the latter shall derive no benefit to himself from the contracts, or bounty, or other negotiations of the former; * * * * the principle being that the legal adviser must establish that a gift was the free uninfluenced act of the client."

(Vide para 310, page 129).

Lord Westbury in *Tyrrell v. Bank of London* (4), said—

"There is no relation known to society of the duties of which it is more incumbent upon a court of justice strictly to require a faithful and honorable observance than the relation between solicitor and client."

Again, to borrow the words of Lord Macmillan—

"If no profession is nobler in its right exercise, so no profession can be baser in its abuse. And hence the advocate is bound by a host of unwritten obligations, which

are designed to maintain the integrity of his professional conduct. The code of honour of the Bar is at once its most cherished possession and the most valued safeguard of the public. In the discharge of his office the advocate has a duty to his client, a duty to his opponent, a duty to the Court, a duty to the State, and a duty to himself. * * * Transgression of the honourable obligations which these duties impose upon the advocate is not like making a mere mistake in business. It involves infringement of his moral duty. It is a matter of conscience." (*Vide The Ethics of Advocacy* reprinted in *Jurisprudence in Action*, p. 319).

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate
—
Tek Chand, J.

So far as the Courts in India are concerned, there are a number of judicial injunctions to the above effect. For the guiding principles I may turn to the observations of the Supreme Court in *In re. 'M', an Advocate* (5), in which a similar argument was raised on behalf of the lawyer. It was observed—

“The question that next arises for consideration is whether on these facts Shri ‘M’ is guilty of professional misconduct. It is urged before us that an Agent has a lien on the moneys of his client coming into his hands for the reasonable fee that may be due to him if—as may be assumed for the purposes of this case—the fee was not settled originally. It is urged that in this case Shri ‘M’ has done nothing more than exercising that lien and appropriating the amount which legitimately came into his hands towards what he considered as reasonable fee due to himself leaving the settlement of any further fee that may be due to him to the good sense and the good will of the client on the termination of the case.

Amrit Lal
C. Shah
v.
Ram Kumar
Advocate

Tek Chand, J.

It is urged that on this view his action is bona fide. It is pointed out that while, it may be, that such conduct is not consistent with the highest professional standards it cannot be treated as amounting to professional misconduct. It is urged that it is not every conduct which may be considered unjustifiable or improper that amounts to professional misconduct if in fact the agent or advocate honestly believed that he was justified in adopting the course he did, so long as such a course is not, in terms, prohibited by any positive rules framed by competent authority to regulate the conduct of agents and advocates in such matters. We are unable to accept this contention. As has been laid down by this Court in *the matter of 'G', a Senior Advocate of the Supreme Court* (6), the Court, in dealing with cases of professional misconduct is 'not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character.....he (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters he is liable to disciplinary action'."

I am satisfied that Shri Ram Kumar in the discharge of his duties towards his client has grievously erred and has betrayed the confidence that was reposed in him by the client. He withdrew

funds and converted them to his own use without the consent of his client. He sent a fictitious cheque and despite demand, did not return the money. In this Court he pleaded the exercise of attorney's lien which he could not substantiate. He maintained no accounts whatsoever and came out with a defence that cannot be believed. An order of disbarment may impose an excessive hardship. I am, therefore, of the view that for his professional misconduct he should be suspended from practice for a period of six months.

**Amrit Lal
C. Shah**
v.
Ram Kumar
Advocate

Tek Chand, J.

S. B. CAPOOR, J.—I agree.

Capoor, J.

PREM CHAND PANDIT, J.—So do I.

Pandit, J.

B.R.T.

