meaning "the State of Punjab or Haryana, and includes also the Union in relation to the Union Territory of Chandigarh and the transferred territory". In view of the clear language of section 82(1), it does not seem to me that the petitioner should be treated as a person allocated to the Union Territory of Chandigarh, simply because he along with thousands of others was serving in Chandigarh immediately before the appointed day. His appropriate allocation, to my mind, is in the State of Punjab. He is entitled to receive his salary and emoluments from the State of Punjab with effect from the 17th of December, 1966.

The writ petition is allowed and the State of Punjab is directed to treat the petitioner as having been allocated to that State and to pay him his dues from 17th of December, 1966. He has already received his pay for a month-and-a-half while serving Haryana Administration. The petitioner is also entitled to his costs, which are assessed at Rs. 200 which shall be paid by the State of Punjab.

B. R. T.

CIVIIL MISCELLANEOUS

Before Tek Chand, J.

BHUPINDERPAL KAUR,—*Petitoner*

versus

THE FINANCIAL COMMISSIONER, PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2002 of 1967

November 24, 1967

Constitution of India (1950)—*Article* 226—*Petition for writ stating notice of motion as required by Rule* 1-*A, Chapter IV-F*(*b*), *High Court Rules and Orders, Volume V, had been served when it was not served—Whether liable to be dismissed—Words and Phrases—Averment and affidavit—Distinction between—Members of the bar—Duties towards clients and courts stated.*

Held, that the courts are entitled to expect *uberrima fides*—Most perfect good faith, from those coming to its portals seeking relief, and they include the litigants as well as the lawyers. Conduct which is in the nature of a sharp practice or fraud upon the court is contemptuous in the extreme and is liable to be visited with grave consequences. The persons responsible for making false averments in the petition should not go unpunished and the writ petitions containing false statements should be dismissed.

Held, that an averment is as solemn a statement as an affidavit and no party or counsel can trifle with the facts as stated in either. This equally applies to a statement of facts made at the bar. The members of the legal profession occupy a very high status and this carries with it equally high responsibilities. The elevated position of the Bar is also indicated by the term *la noblesse de la robe*—the aristocracy of the gown. A corresponding expression *noblesse oblige* means that rank imposes obligations. From the members of the Bar, the Courts expect a much higher standard of conduct and caution. Members of the legal profession owe duty to their clients as well as to Court. The high avocation of a member of the Bar imposes upon him an equally high obligation of correctly informing the Court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusions. He is honour bound not to take advantage of the court; and circumstances can never exist which will justify his misrepresenting either law or facts.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direection be issued quashing the impugned orders of respondents Nos. 1 and 2.*

HIRA LAL SIBAL, SENIOR, ADVOCATE WITH S. C. SIBAL, ADVOCATE, for the Petitioner.

H. L. SARIN, SENIOR ADVOCATE WITH BHAL SINGH MALIK, ADVOCATE, for the *Respondent No. 3.*

ORDER

TEK CHAND, J.—This is a writ petition under Article 226 of the Constitution of India for issuance of a writ of *certiorari* or any other appropriate writ, direction or order, quashing the orders of the Financial Commissioner, Revenue, Punjab and the Commissioner, Jullundur Division (Annexure D and C). It is not necessary, for reasons which will appear presently, to go into the detailed examination of facts of this case.

The petitioner, Shrimati Bhupinderpal Kaur, is the widow of S. Malkiat Singh. The contesting respondent is Shrimati Mohinder Kaur, widow of S. Jagat Singh, who was the grandfather of Malkiat Singh. The dispute relates to the possession of agricultural land. The petitioner had applied to the Sub-Division Officer, Abohar, for correction of the *khasra girdawaris* and the matter was made over to the Naib-Tehsildar, Abohar. The relevant *khasra girdawaris* were corrected by the Naib-Tehsildar,—*vide*

Annexure A. On this, a revision petition was filed before the Collector by respondent No. 3 which was dismissed,—*vide* Annexure B. Shrimati Mohinder Kaur then filed a petition of revision before the Commissioner, Jullundur Division, where she contended that she had not been heard by the Naib-Tehsildar. The Commissioner made a recommendation to the Financial Commissioner, Revenue, that the order of the Naib-Tehsildar ought to be set aside and the case be remanded,—*vide* Annexure C. The Financial Commissioner, Revenue, heard the revision petition *ex parte* and passed the impugned order (Annexure B), agreeing with the recommendation of the Commissioner that material irregularities had been committed and that the matter should be re-decided after hearing the petitioner and the respondent. In the present writ petition, it was contended that the Financial Commissioner had acted without jurisdiction and that it was opposed to facts. It was prayed that the impugned order be quashed. It was also prayed that the proceedings before the Naib-Tehsildar (respondent No. 5) be stayed pending the final disposal of the writ petition.

The writ petition which is dated 11th of September, 1967, was actually filed on 12th of September, 1967. The office returned the petition raising the objections :—

> "(1) It should be stated in the petition if and when 5 days notices were served upon the respondents.
>
> (2) Writ petition has not been stamped.
>
> (3) Annexure A has not been filed. Returned to be filed within a week".

There is a note of the Advocate for the petitioner :

> "Refiled after compliance".

The date of refiling is 18th of September, 1967. At the end of the writ petition, the following note was added :

> "In accordance with Rule 1-A, Chapter 4-F(b) of the Rules and Orders of the High Court, Volume V, notices were duly served upon the respondents giving them 5 clear days for 12th September, 1967"..

The petition came up before the Motion Bench on 20th of September, 1967, and it was ordered :

> "Mr. B. S. Chawla with Mr. Bhatia submit that the order of the Financial Commissioner of 22nd July, 1967, was passed *ex parte*, Admitted. *Status quo* to be maintained *ad interim*. *Dasti*."

On 2nd January, 1959, the following was added as Rule 1-A to Chapter 4-F(b):—

> "1-A(i) All petitions under Article 226 of the Constitution of India, wherein a prayer for stay or any other *interim* relief is contained shall be made on motion after notice to the parties effected thereby.
>
> (ii) The notice referred to above shall be served personally or through registered post acknowledgement due on the parties affected not less than five clear days before the day the petition is filed and shall be accompanied by a copy of the main petition and shall also contain the time and place of moving of petition.
>
> (iii) The main petition shall contain an averment that the notice referred to in sub-rule (ii) above has been duly served.
>
> (iv) If the petition is not made on the date intimated to the opposite party or parties, it shall be incumbent on the petitioner to serve a fresh notice of his intention to move the petition in accordance with the provisions of sub-rule (i) above.
>
> (v) Where the delay caused by notice is likely to entail serious hardship, an application may be made for an *ad interim ex parte* order duly supported by an affidavit and the Court, if satisfied that the delay caused by notice would entail serious hardship may make an order *ex parte* upon such terms as to costs or otherwise and subject to such undertaking, if any as the Court may think just and proper."

Written statement was filed on 3rd of October, 1967, on behalf of respondent No. 3 Shrimati Mohinder Kaur. We are concerned at this stage with the first preliminary objection which is as follows :—

> "That the writ petition is liable to be dismissed on the short ground that the petitioner to the writ petition, without getting served on the answering respondent No. 3, the notice of motion and by making a false note in the writ petition that notice of motion had been served on the respondents, got it admitted and procured *ex parte* order, dated 20th September, 1967, from this Hon'ble Court."

On 5th of October, 1967, respondent No. 3 had filed a miscellaneous petition, dated 3rd of October, 1967 (C.M. 3384/67); praying that the *ex parte* order, dated 20th of September, 1967, passed by the admitting Bench be vacated and that the writ petition be heard at a very early date. In para 5 of this miscellaneous petition, the first ground mentioned was as under :—

> "5. That the *ex parte* order, dated 20th September, 1967, passed by this Hon'ble Court is liable to be vacated *inter alia* on the following grounds—
>
> (i) that the petitioner to the writ petition never got served on the applicant the notice of motion as required by rule 1-A, Chapter 4-F(b) of the High Court Rules and Orders, Volume V, and she got made a false note at the foot of the writ petition that the notices of motion were served on the respondents giving them 5 clear days for 12th September, 1967. It is entirely wrong to say that any notice of motion was ever got served on the applicant-respondent. This fact is fully borne from the report, dated 26th September, 1967, made by S. Gurdev Singh, Branch Post Master, Post Office Killianwali, district Ferozepore, on the application, dated 25th September, 1967, which had been given to him by the Mukhtiar-i-am of the applicant Shri Shiv Dayal Singh. The original application and the report made thereon is attached herewith and is marked as Annexure R-3;"

The other four grounds are not relevant. Annexure R-3 is the original letter of Shiv Dayal Singh and also bears the reply of the Branch Post Master and is reproduced below :—

"To

The Post Master,
Branch Post Office,
Killianwali.

Dear Sir,

It has been suggested by Shri Bhagat Singh Chawla, Advocate, Chandigarh, that two registered acknowledgement due envelops were despatched from Chandigarh or some other Post Office to your Post Office addressed in the name of Shrimati Mohinder Kaur, widow of S. Jagat Singh and Shrimati Darshan Kaur, daughter of S. Jagat Singh, Killianwali.

Kindly let me know if any or both were received by your Post Office in the month of August and September, 1967.

If they have been received by your Post Office kindly inform the date of these, kindly also inform if they have been delivered or otherwise.

Yours faithfully,

(Shiv Dayal Singh), son of S. Bishan Singh, Killianwali,
(District Ferozepore).

Dated 25th September, 1967.

In answer to your application, dated 25th September, 1967, no Registered Acknowledgment due envelops addressed to Mohinder Kaur, widow of Shri Jagat Singh and Darshan Kaur, daughter of Shri Jagat Singh, of Killianwali were received by this Post Office from any where during the months of August and September, 1967. So the question of delivery does not arise. This is to be verified after going through the register of the Post Office.

(Sd.) GURDEV SINGH,
B.P.M. 26th September, 1967.

On 6th of October, 1967, the Civil Miscellaneous application was heard by me and notice was issued to the counsel for the petitioner for 11th of October, 1967. On 11th of October, 1967, Shri N. S. Bhatia, Advocate, appeared on behalf of Bhupinderpal Kaur and respondent No. 3 was represented by Shri H. L. Sarin and Shri B. S. Malik, Advocate. On that day, Shri N. S. Bhatia had stated that he had no instructions in respect of matters stated in paras 5(i), (iii) and (iv) and wanted adjournment for a week when he would be in a position to make a proper reply to the civil miscellaneous application. It was ordered by me that the reply to the civil miscellaneous petition be filed within a week supported by an affidavit. It was also ordered that the documents in proof of the notice through registered post acknowledgment due having been served upon the respondents as mentioned in the note given below the main writ petition be also filed in this Court. At the request of the counsel, the main writ petition and the connected writ petition (C.W. 2003 of 1967) were ordered to be fixed for hearing for October 24, 1967.

The replication, dated 16th/17th of October, 1967, was filed on 19th of October, 1967. In reply to the preliminary objections, all that was stated was that paras 1 and 2 of the preliminary objections were denied because the petitioner was in cultivating possession of the land. In the replication, there is no mention whatsoever to the specific allegation in the first preliminary objection that notice of motion was not served on the answering respondent No. 3 and that a false note in the writ petition was made to the effect that the notice of motion had been served on the respondent.

This case came up before me on 27th and 30th October, 1967. Shri Bhagat Singh Chawla, Advocate, has not appeared at all at any stage before this Court and Shri N. S. Bhatia, did not appear on 27th or 30th of October, 1967. The case was now represented by Shri H. L. Sibal and Shri S. C. Sibal. An undated power of attorney signed by Shri S. C. Sibal has been filed. It bears the stamp of 17th October, 1967. The opportunity sought by Mr. Bhatia was not availed of. No reply was given to the Civil Miscellaneous application and no documents were furnished in proof of the notice through registered post said to have been served upon respondent No. 3.

A statement at the bar was made by Mr. H. L. Sibal on 30th of October, 1967, during the course of arguments to the effect that he had asked his client for an explanation and she told him that she

knew nothing about notices having been served upon the respondents giving them five clear days' notice. Beyond this statement, no affidavit has been filed on behalf of the petitioner showing if any notice was sent and served upon the respondents. So far as the petitioner is concerned, it admits of no doubt that she was no party to having sent any registered notice as claimed in the counsel's note.

Shri H. L. Sibal, also stated at the bar that he contacted the counsel, Shri Bhagat Singh Chawla, Advocate, who had signed the writ petition and the note and that he had refused to disclose the circumstances and declined to discuss the matter with him. No affidavit has been filed to show the truth of the assertion made in the note to the effect that notices were duly served upon the respondents giving them five clear days. No evidence is forthcoming in the form of copies of the notices or the postal receipt in token of registration or the acknowledgment card showing the service on the respondents. The original application and the reply of the Branch Post Master shows that no registered acknowledgment due envelops addressed to Mohinder Kaur, widow of S. Jagat Singh and Darshan Kaur, daughter of S. Jagat Singh, of Killianwali were received by the Branch Post Office, Killianwali, during the months of August and September, 1967. Therefore, the question of delivery does not arise. This fact was clearly mentioned in paragraph 5(i) in the civil miscellaneous 3384 of 1967, which had been filed on behalf of respondent No. 3. Another fact which may be taken note of is that on 3rd of October, 1967, when the written statement had been filed, it was clearly indicated in the preliminary objection that the notice of motion had been obtained by making a false note to the effect that the notices had been served on the respondents and thus *ex-parte* order, dated 20th of September, 1967, was obtained from this court. Again, on 11th of October, 1967, when the miscellaneous application (C.M. 3384/67) was heard before me and Shri N. S. Bhatia, Advocate, had appeared for Shrimati Bhupinderpal Kaur, these matters were brought to the notice of the counsel, who pleaded that he had no instructions and wanted adjournment for a week to enable him to make a proper reply. It cannot be said that adequate opportunity was not given to the petitioner and to her counsel to prove the correctness of the note and compliance with rule 1-A to Chapter 4-F(b) of the Rules and Orders of High Court, Volume V.

In the replication, no attempt has been made to explain how the requirements of above rule 1-A were satisfied. All that is said is that paras 1 and 2 of the preliminary objections are denied. No reply

has been filed to the miscellaneous application. These circumstances leave no room for doubt that the averment made in the note as to serving notices upon the respondents after giving five clear days' notice was entirely false.

The contention raised by Mr. H. L. Sarin, on behalf of respondent Mohinder Kaur is that a fraud has been perpetrated on this Court with the object of getting stay order pending the final disposal of the writ petition in respect of proceedings before Naib-Tehsildar (respondent No. 5). The admitting Bench had ordered the maintenance of *status quo ad interim*, which would not have been done if the note had not been there. As to the effect on the writ petition of the alleged fraud on the Court, Shri Sarin has cited several decisions. It was held in *K. Marappa Gounder, K. M. S. Bus Service* v. *The Central Road Traffic Board, Madras and others* (1), that it was a well settled proposition of law that it was the duty of a person invoking the special jurisdiction of a Court to make a full and true disclosure of all relevant facts. He should not suppress any facts and must be perfectly frank and open with the Court. If he makes a statement which is false or conceals something which is relevant from the Court, the Court will refuse to go into the matter. If the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fully state the facts, but either suppressed the material facts or stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. The reason for the adoption of this rule is to provide an essential safeguard against the abuse of the process of the Court. Where there is such a conduct as has been referred to above which is calculated to deceive the Court into granting the order of rule nisi, the petition should on that short ground be dismissed. It is not enough to say that had those facts been placed before the Court, the Court might first have issued the rule nisi pending a final adjudication. If the facts are relevant, it is the duty of the applicant to have placed them before the Court leaving it to the Court to decide whether it was a case where the rule nisi that was asked, should issue. When this has not been done, the High Court should decline to interfere in the exercise of its jurisdiction under Article 226 of the Constitution.

(1) (1956) 1 M.L.J. 324.

It was observed by Malik C.J. in *Asiatic Engineering Co.* v. *Achhru Ram and others* (2), that a person obtaining an *ex-parte* order or a rule nisi by means of petition for the exercise of the extraordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts for their own protection should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining *ex-parte* orders by suppression, misrepresentafion or mis-statement of facts. For these reasons, the Court found the petitioner disentitled from asking for a writ of prohibition which was refused.

In *Zikar, son of Yusuf*, v. *The Government of Madhya Pradesh* (3), an affidavit made in support of an application under Article 226 of the Constitution of India was found to be not candid and it did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, it was held that the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. A caution was given that though the power was inherent in the Court, but it was one which should only be used in cases which bring conviction to the mind of the Court that it had been deceived. The Bench felt that after the result of the examination of facts, it was left with no doubt that the Court had been deceived. Consequently, it refused to hear anything further from the applicant and rejected the application.

In *Deptylal, Lessee, Coronation Talkies, Ootacamund* v. *Collector of Nilgiris* (4), following the rule in K. *Masappa Gounder, K.M.S. Bus Service* v. *The Central Traffic Board, Madras and others* (1), it was observed that a person invoking the special jurisdiction of the High Court was bound to make a full and true disclosure of all relevant facts.

The High Court of Allahabad in *Mst. Saghir Kubra* v. *The U.P. State and others* (5), observed that a petitioner, who did not come out with true facts before the High Court, but suppressed the truth and made a wrong statement was not entitled to its assistance under

(2) A.I.R. 1951 All. 746 (F.B.).
(3) A.I.R. 1951 Nag. 16.
(4) A.I.R. 1959 Mad. 460.
(5) 1959 All. L.J. 159.

Article 226. In view of such conduct of the petitioner, the petition was rejected on that ground alone.

Falshaw C. J. in *S. Raghbir Singh* v. *The District Magistrate, Delhi and others* (6), expressed the view that mis-statement and suppression of material facts in the petition itself was a good ground for rejecting a writ petition.

In *Mishri Debi Agarwal* v. *Asstt. Collector of Central Excise and others* (7) in a suit filed by the petitioner, there was a significant omission to make any reference to the *ex parte* application made in that suit for interim order for appointment of a receiver and also for an injunction, but the court had declined to make any interim order. It was the duty of the petitioner to disclose that her application had been refused. This material fact was withheld from Court in her subsequent application. It was held that the Court must insist on full disclosure of facts and events which have already taken place, by a petitioner, who comes and asks for a rule *nisi* and for *ex parte* interim orders for relief.

Reference may also be made to a recent decision of the Supreme Court in *Rajabhai Abdul Rehman Munshi* v. *Vasudev Dhanjibhai Mody* (8), wherein Shah J., observed:

> "We cannot over-emphasize the fact that the jurisdiction of this Court is discretionary. This Court is not bound to grant special leave merely because it is asked for. A party, who approaches the Court knowing or having reason to believe that if the true facts were brought to its notice, this Court would not grant special leave, withholds that information and persuades this Court to grant leave to appeal is guilty of conduct forfeiting all claims to the exercise of discretion in his favour. It is his duty to state facts which may reasonably have a bearing on the exercise of the discretionary powers of this Court. Any attempt to withhold material information would result in revocation of the order, obtained from this Court."

In view of the importance of the rule, I consider it appropriate to notice some of the decisions of the Courts in England. The leading authority is the decision of the King's Bench Division, which was

(6) 1963 P.L.R. 1009.
(7) 71 Calcutta Weekly Notes 385.
(8) C.A. 692 of 1962 decided on May 1, 1963 (S.C.).

affirmed by the Court of Appeal in *ex parte Princess Edmond De Polignac; The King* v. *The General Commissioners* (9). The facts of this case are that Princess Edmond De Polignac was a French subject. The Income-Tax Commissioner had made an additional assessment upon her in respect of profits arising from foreign possessions. She obtained a rule *nisi* directed to the Commissioners calling upon them to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding upon the assessment upon the ground that she was not a subject of the King of England nor resident within the United Kingdom and had not been in that country except for temporary purposes, nor with any view of intent of establishing her residence therein. In her affidavit, she stated that she had spent about twenty days in England at her brother's house in company with other guests of her brother. Actually, it was found that it was a false statement and the purchase-money for the house and furniture amounting to £ 4,000 was paid by her out of her own money. The house-hold expenses were also borne by her. On coming to know of this misrepresentation on the part of the Princess, the Divisional Court of the King's Bench without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal also upheld the decision of the Divisional Court. Viscount Reading C.J. sitting in the King's Bench Division observed:

> "Where an *ex parte* application has been made to this Court for a rule *nisi* or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived ....."

The result is that the Court was deceived by the affidavit filed in support of the application for the *nisi*, and I have come to the conclusion that this is one of those cases in which this Court ought without further discussion of the merits to refuse to make absolute a

(9) L.R. (1917) 1 K.B.D. 486.

rule obtained in the way I have stated. The rule *nisi* must, therefore, be discharged.

Low, J., who entirely agreed with Viscount Reading, C.J., said:

> "The statement made in the affidavit on which the rule nisi was granted were very far from being honest and candid. That being so, it seems to me that this Court, having been exposed to an attempt to mislead and deceive it, has no alternative, but to discharge the rule."

The Princess appealed to the Court of Appeal which was dismissed. Lord Cozens-Hardy M. R. after stating the facts, remarked:

> "It is a case in which it seems to me there was plainly a suppression of what was material, and we cannot be too strict in regard to that which to the best of my belief has been a long established rule of the Court in applications of this nature and has been recognized as the rule."

After citing the authorities, he observed:

> "Then it is said that that rule may be true in cases of injunctions where there is an immediate order granted, which order can be discharged, but that it has no reference at all to a case like a rule *nisi* for a writ of prohibition, which is nothing more than a notice to the other side that they may attend and explain the matters to the Court. To so hold would, I think, be to narrow the general rule, which is certainly not limited to cases where an injunction has been granted. It has been applied by this Court, and certainly by the Courts below to an application for leave to serve a writ out of the jurisdiction .....".

There are many cases in which the same principle would apply. Then it is said "That is so unfair; you are depriving us of our right to a prohibition on the ground of concealment or mis-statement in the affidavit." The answer is that the prerogative writ is not a matter of course. The applicant must come in the manner prescribed and must be perfectly frank and open with the Court.

Scrutton, L.J., said:

> "it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that

when an applicant comes to the Court to obtain relief on an *ex parte* statement, he should make a full and fair disclosure of all the material facts-facts, not law. He must not mis-state the law if he can help it—the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement. This rule applies in various classes of procedure. One of the commonest cases in an *ex parte* injunction obtained either in the Chancery or the King's Bench Division.

Reference may also be made to *Dalglish* v. *Jarvie* (10), which laid down:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward."

Lord Langdale in his judgment said:

"It is quite clear that every fact must be stated, or, even if there is evidence enough to sustain the injunction, it will be dissolved."

Baron Rolfe agreeing with Lord Langdale said at page 243:

"I have nothing to add to what Lord Langdale has said upon the general merits of the case; but upon one point it seems to me proper to add this much, namely, that the application for a special injunction is very much governed by the same principles which govern insurances, matters which are said to require the utmost degree of good faith, 'uberrima fides.'"

Another important decision is *Republic of Peru* v. *Dreyfus Brothers & Co.* (11) in which Kay, J. stated the law thus:

(10) 2 Mac. & G. 231, 238.

(11) 55 L.T. 802 (803).

> "I have always maintained, and I think it most important to maintain most strictly, the rule that, in *ex parte* applications to this Court, the utmost good faith must be observed. If there is an important mis-statement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons, who are suitors in this Court the importance of dealing in good faith with the Court when *ex parte* applications are made."

The importance of the necessity of making full and fair disclosure in all *ex parte* applications was stressed by Farwell L. J. in the case of *The Hagen* (12).

It is not necessary to further multiply the authorities as the principle is well settled by the Courts in India and in the United Kingdom and no decision was cited on behalf of the petitioner with a view to indicate a contrary view having been taken, or, in order to show that the principle affirmed in these cases was not applicable to the facts and circumstances of the instant case.

Rule 1-A(iii) requires:

> "The main petition shall contain an averment that the notice referred to in sub-rule (ii) above has been duly served."

The counsel for the petitioner did not attempt to draw—nor could he in all logic do so, a distinction between an averment which is a positive statement of facts, and an affidavit which is a sworn, or an affirmed statement reduced to writing. Averment is as solemn a statement as an affidavit and no party or counsel can trifle with the facts as stated in either. This equally applies to a statement of facts made at the bar. The members of the legal profession occupy a very high status and this carries with it equally high responsibilities. The elevated position of the bar is also indicated by the term *lax noblesse de la robe*—the aristocracy of the gown. A corresponding expression *noblesse oblige* means that rank imposes obligations. From the members of the bar, the Courts expect a much higher standard of conduct and caution. Members of the legal profession owe duty to their clients and also to the Court. Judge Sharswood in his famous lectures delivered in 1854 *inter alia* observed:

(12) 1908 P. 189(201)=98 L.T.R. 891 (895).

"It need hardly be added that a practitioner ought to be particularly cautious, in all his dealings with the Court, to use no deceit, imposition, or evasion—to make no statements of facts which he does not know or believe to be true—to distinguish carefully what lies in his own knowledge from what he has merely derived from his instructions—to present no paper books intentionally garbled."

(*Vide* Bouvier page 1087).

L. C.J. Cockburn in 1864 referring to an Advocate observed:

"It is his duty to strive to accomplish the interests of his clients *per fas*, but *not per nefas*". (Legal Ethics by Orkin page 75).

In other words, through right, but not through wrong.

Justice Anglin writing on "Relation of Bench and Bar" said:

"It is impossible to exaggerate the importance of being absolutely fair with the Court. Candour and frankness should characterise the conduct of the barrister at every stage of his case. The court has the right to rely on him to assist it in ascertaining the truth. *Veritas est justitiae mater.* (Truth is mother of justice.). He should be most careful to state with strict accuracy the contents of a paper, the evidence of a witness, the admissions or arguments of his opponent."

The high avocation of a member of the bar imposes upon him an equally high obligation of correctly informing the Court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusions. (*Vide* legal Ethics by Henry S. Drinker). He is honour bound, not to take advantage of the court; and circumstances can never exist which will justify his misrepresenting either law or facts.

Every opportunity was given to the petitioner and to her Advocate, who had signed the averment in the writ petition to explain the circumstances which led to the making of a false averment under rule 1-A(iii) of volume V of High Court Rules and Orders. On no less than three occasions, the petitioner and her

lawyers had an opportunity to disclose the true facts: first when the objection was raised in the form of preliminary objections in the written statement of respondent No. 3 that no such notice was given; secondly when the same matter was mentioned by the respondent in civil miscellaneous application (C.M. 2384/67) and thirdly, when this Court had given directions by its order, dated 11th October, 1967. Final opportunity could have been availed of at the time of the hearing of the arguments on October 27 and 30, 1967. Neither any affidavit of the advocate nor of his client was filed, nor did the former make any statement at the bar. On the facts and circumstances of this case, no other conclusion is possible than that the averment, that "in accordance with rule I-A, Chapter 4-F(b) of the Rules and Orders of the High Court, Volume V, notices were duly served upon the respondents giving them 5 clear days" is not true, and that no such notice was sent to or received.

I find no extenuating or mitigating circumstance in this case. Courts are entitled to expect *uberrima fides*—most perfect good faith, from those coming to its portals seeking relief, and they include the litigants as well as the lawyers. Conduct which is in the nature of a sharp practice or fraud upon the Court is contemptuous in the extreme, and is liable to be visited with grave consequences. I have given the matter anxious consideration. I am taking a lenient view in the expectation, that making of false averments would not be repeated, and if it recurs, the persons responsible shall not go unpunished. I hope this warning will suffice. I will, therefore, content myself by striking down the writ petition. All orders made by the Naib-Tehsildar, Abohar, respondent No. 5, or changes or corrections made in the *khasra girdawaris* subsequent to the filing of the writ petition are quashed.

In the result, the writ petition is dismissed with costs.

R. N. M.

LETTERS PATENT APPEAL

Before Mehar Singh, C. J. and R. S. Narula, JJ.

THE LAKSHMIJI SUGAR MILLS COMPANY PRIVATE LIMITED,—

Appellant

versus

THE NATIONAL INDUSTRIAL CORPORATION LIMITED,—

Respondent

L.P.A. No. 282 of 1965

November 28, 1967

Companies Act—(I of 1956)—Ss. 433 (e) and 434 (1)(a)—Winding up of a company under—When to be ordered—Company—When considered to be un-