interpretation appears to me to nullify the very object of receiving evidence on affidavits. The witnesses who are out of station or cannot be conveniently called to a Court can give evidence on affidavits. If such witnesses have to appear in the Court itself to get their affidavits attested, the object of receiving evidence on affidavits would be completely flouted. The words "having authority to receive evidence" in clause (a) of section 4 of the Oaths Act does not appear to me to be restricted to the authority of the Court to receive evidence in the particular case to which the evidence relates but refers to the jurisdiction and power of the Court to receive evidence in any case which jurisdiction or authority must be conferred on the Court either by law or by consent of the parties. If a Third Class Magistrate has by law the authority to receive evidence he is competent to administer oaths and affirmations to every one under section 4 of the Oaths Act.

In the circumstances detailed above this revision petition is allowed, the order of the Sub-Divisional Magistrate is set aside and he is directed to allow the parties opportunity to file proper affidavits or to lead other evidence in place of the defective affidavits and then to decide the proceedings under section 145 of the Code on a consideration of legal evidence alone and on excluding the affidavits sworn before Oaths Commissioners and produced by either party. At the joint request of the learned counsel for the parties it is further directed that *status quo* as today regarding the actual physical possession of the property in dispute shall be maintained by the petitioner and the contesting respondent till the final disposal of the case by the learned Sub-Divisional Magistrate.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

KAMAL DEVI,—*Petitioner.*

versus

DEEP CHAND,—*Respondent.*

Civil Revision No. 235-D of 1966.

May 20, 1966.

Administration of Justice—Duties of judicial officers—Canons of judicial ethics—Bench and Bar—Relations between the two—Importance of, stressed.

Held, that justice must be administered without emotion or passion, which is compatible with its very nature. When passion comes in at the door, justice is often seen to fly out at the window. Indignation or even strong dislike may be carried to emotional extremes but in a reasonable person occupying the seat of a judicial office, it is temperate and controlled contributing to the required judicial poise. A judicial officer must exercise his function in a way which fulfils the need for consistency, for equality for judicious detachment and for certainty. His administration must be objective and impartial and he must state explicitly the reasons for his decision. He must suppress his personal emotions and instinctive prejudices and encourage his sense of fairness. For one thing, he must not allow himself to be party to public exhibition or publicity of his close association with those who generally practise law in his Court or with those who may be interested in the causes he may have to adjudicate upon. In this country, particular care has to be taken in this respect by the judicial officers, if our judicial process is to withstand the onslaughts on its efficiency and impartiality. A judicial officer must not only be impartial but must also have the reputation of impartiality and, therefore, must be seen to be so. He must also resist the common temptation of succumbing to the infirmity of seeking publicity or popularity and public applause which may in a subtle invisible manner detract from judicial detachment and aloofness. It may be remembered that the judicial wing of our governmental set-up has no secret archives; it functions in the open under the public gaze, for, there is nothing confidential or hidden from the public. The judicial officer has to come to the case with an open mind. The Rule of Law about judicial conduct is both old and strict. A judicial officer is expected to be serene and even-handed even though his patience may be sorely tried and the time of the Court appear to be wasted. This is apparently based on the oft-quoted maxim that justice should not only be done but should also be seen to be done. No suitor may leave the Court, reasonably feeling that his case was not dealt with on his merits with an impartial mind, anxious to mete out even-handed justice according to law. If a suitor does so leave, then justice, though done, fails in the doing of it, because it is accompanied with a feeling of mistrust and absence of faith in the judicial process. Consistently with this object, the language used by judicial officers must be temperate and dignified, reflecting the working of a calm, composed and deliberative judicial mind uninfluenced by fear or favour, unjudicial prejudice or sympathy, affection or ill-will rather than the working of an undisciplined mind.

Held, that the Bench and the Bar are two indispensable adjuncts of the Judicial administration. Both of them have to discharge their sacred and solemm duty in promoting the cause of justice concientiously and this can be done by reciprocity of co-operation on both sides. No Court in our set-up can claim to function satisfactorily in deciding controversies between suitors without assistance from the bar and, of course, the professional bar mainly functions in presenting their clients' cases before the Courts and judicial and quasi-judicial Tribunals. Mutual hostility to-

wards each other or absence of regard and co-operation between them can only injure the cause of justice for the promotion of which alone they both exist, leave alone other undesireable consequences flowing from such situation. The Courts are also expected to realise that the professional lawyer has to safeguard the interest of his client and due consideration to an recognition of this aspect by the Courts will not only enhance the reputation of our judicial Tribunals but also serve the cause of justice better. Recognising this function of the professional lawyer, the Court has, after hearing both sides, to safeguard judiciously the interests of all the contestants before it in accordance with law on the established facts, addressing its task in much the same way as the counsel, but keeping the scales of justice even.

Petition under section 115 *of the Code of Civil Procedure from the order of Shri R. K. Synghal, Sub-Judge, 1st Class, Delhi, dated* 19*th March,* 1966, *rejecting the application for the appointment of a local Commissioner.*

T. C. B. M. LAL, ADVOCATE, for the Petitioner.

H. R. DHAWAN, ADVOCATE, for the Respondent.

JUDGMENT

DUA, J.—It is unnecessary to go into the history of the litigation in the Court below. Suffice it to say that on 3rd February, 1966, the learned Subordinate Judge, Shri R. K. Synghal, passed the following order:—

> "I wrote the statements of three witnesses. The Patwari is present but the counsel for the plaintiff does not want to examine him today. First they want to get the plot measured by him and then examine him as their witness. It is directed the witness should come after measuring the plot. Case to come up for remaining evidence tomorrow".

On 4th March, 1966, an application was filed by the counsel for the plaintiff stating that in order to have the confusion removed in regard to the plots bearing Nos. 171 and 172 an application had been presented to the Revenue Assistant to depute the Girdawar and Patwari of the area to demarcate plot No 171, Khasra No. 1593/624, Block No. DS, Bholanath Nagar, Jharkhandi, village Shahdara, Delhi. It was further averred in the application that the Court had also on the previous hearing directed the Patwari to come after measuring the plot.

The Girdawar and the Patwari, according to the averments in this application, felt that demarcation of the plot would take some time and those being Girdawari days, it was not possible for them to do so. After stating these facts, it was prayed that the Court may be pleased to address the Revenue Assistant, Delhi, to direct the Girdawar and Patwari for the purpose of demarcation of the plot. This application was disposed of by the learned Subordinate Judge on 19th March, 1966. The opening portion of the order may usefully be reproduced at this stage:—

> "The plaintiff has filed an application that the Patwari be directed to measure the plot at site and then appear for evidence. But this application is 'Fazul'. This application has been given merely to prolong the case. A Commissioner cannot be appointed for this purpose. The application is, therefore, dismissed.
> * * * * *".

It appears that the plaintiff on the same day presented another application pointing out to the Court what transpired in the Court-room during the proceedings. Apparently, there was some unpleasantness between the Court and the lawyer for the plaintiff. That this was so is also clear from the order, dated 22nd March, 1966, the wording of which need not be reproduced here. The Court has by mistake put 22nd February, 1966, under this order as its date. I find from the record that after the incidents mentioned above, the plaintiff also moved an application for transfer of the case under section 24, Code of Civil Procedure, in the Court of the learned District Judge which is apparently pending there. On 22nd April, 1966, the plaintiff's counsel applied to the learned Subordinate Judge for staying the case in view of the application for transfer pending in the Court of the District Judge. The learned Subordinate Judge rejected this application by observing that prayer for stay of the case had apparently not been granted by the learned District Judge. The Court adjourned the case to 25th May, 1966, on payment of Rs. 50 by way of costs by the plaintiff, whose witnesses were not present. The case being old, the learned Subordinate Judge fixed the responsibility of service on the plaintiff and directed that the plaintiff would himself produce his witnesses. An order was further given that the witnesses should be summoned within two days.

Before me, the learned counsel for the plaintiff petitioner has submitted that the learned Subordinate Judge has not dealt with

the plaintiff's application under Order 26, Rule 9 and section 151, Code of Civil Procedure, in a judicial manner and has apparently rejected it arbitrarily by merely describing it as *"Fazul."*

The learned counsel for the respondent has, on the other hand, attempted to show that there was really no purpose for issuing a commission on the facts and circumstances of this case. He has sought some assistance for his submision from an order of the Court, dated 28th August, 1965 and also from the order, dated 6th September, 1965, but I am wholly unable to get any assistance from those orders for the purpose of discerning the reasons on the basis of which prayer under Order 26, Rule 9, was disallowed by the Court below.

Starting with the order, dated 3rd February, 1966, it is obvious that the learned Subordinate Judge did not find anything wrong with the prayer that the Patwari first measures the plot and then comes and gives his evidence. The reasons given by the plaintiff in the application praying for direction to the Revenue Assistant to direct the Girdawar and Patwari to demarcate this plot at the spot and praying in the alternative that some retired revenue official be appointed as Local Commissioner to take measurement with the help of the revenue official have not been adverted to by the learned Subordinate Judge. Ommission on the part of the learned Subordinate Judge to deal with those reasons gives the impression of some lapse in the proper discharge of his judicial duty and an inappropriate deviation from the normal path that judicial mind is expected to tread Merely describing the application as *'Fazul'* with the intention of prolonging the case, without assigning any rational reasons, has created a somewhat unhappy impression in this Court and I am far from satisfied with the manner of the disposal of this application by the Court below. In my opinion, the order, dated 19th March, 1966, as also the order, dated 22nd March, 1966 (though bearing the date 22nd February, 1966) and the latest order, dated 22nd April, 1966, must be quashed and a direction be issued that the application under Order 26, Rule 9, be heard and disposed of afresh after considering all the relevant facts and circumstances of the case.

I consider it my duty on the present occasion to point out that justice must be administered without emotion or passion, which is compatible with its very nature. When passion comes in at the door, justice is often seen to fly out at the window. Indignation or even strong dislike may be carried to emotional extremes but in

reasonable person occupying the seat of a judicial office, it is temperate and controlled contributing to the required judicial poise. A judicial officer must exercise his function in a way which fulfils the need for consistency, for equality for judicious detachment and for certainty. His administration must be objective and impartial and he must state explicitly the reasons for his decision. He must suppress his personal emotions and instinctive prejudices and encourage his sense of fairness. For one thing, he must not allow himself to be party to public exhibition or publicity of his close association with those, who generally practise law in his Court or with those who may be interested in the causes he may have to adjudicate upon. In this country, particular care has to be taken in this respect by the judicial officers, if our judicial process is to withstand the onslaughts on its efficiency and impartiality. A judicial officer must not only be impartial, but must also have the reputation of impartiality and, therefore, must be seen to be so. He must also resist the common temptation of succumbing to the infirmity of seeking publicity or popularity and public applause which may in a subtle invisible manner detract from judicial detachment and aloofness. It may be remembered that the judicial wing of our governmental set-up has no secret archives; it functions in the open under the public gaze, for, there is nothing confidential or hidden from the public. The judicial officer has to come to the case with an open mind. The Rule of Law about judicial conduct is both old and strict. A judicial officer is expected to be serene and even-handed even though his patience may be sorely tried and the time of the Court appears to be wasted. This is apparently based on the oft quoted maxim, that justice should not only be done, but should also be seen to be done. No suitor may leave the Court, reasonably feeling that his case was not dealt with on his merits with an impartial mind, anxious to mete out even-handed justice according to law. If a suitor does so leave, then justice, though done, fails in the doing of it, because it is accompanied with a feeling of mistrust and absence of faith in the judicial process. Consistently with this object, the language used by judicial officers must be temperate and dignified, reflecting the working of a calm, composed and deliberative judicial mind uninfluenced by fear or favour, unjudicial prejudice or sympathy, affection or ill-will, rather than the working of an undisciplined mind. With out further dilating on this matter, I feel content to draw the attention of the judicial officers to the canons of judicial ethics contained in Volume IV of the High Court Rules and Orders. These canons, if I may say so with respect, go for all judicial officers irrespective of their rank in the judicial hierarchy in this Democratic Republic. I have considered it

necessary to take pains to devote some time to this aspect because I have recently come across some unhappy lapses in this respect in some of the Courts in Delhi. Immediate attention is required to be paid to remove the causes of such lapses.

On the facts and circumstances of this case, I also consider it more consonant with the cause of justice that the matter of apointment of a Local Commissioner be dealt with and disposed of afresh by some other Court. I have been constrained to adopt this course because of the unhappy incidents in the Court below which gave rise to unpleasant feelings between the Presiding Officer of the Court and the counsel. Without apportioning or even attempting to apportion blame, I consider it necessary to point out that the Bench and the Bar are two indispensable adjuncts of the judicial administration. Both of them have to discharge their sacred and solemn duty in promoting the cause of justice conscientiously and this can be done by reciprocity of co-operation on both sides. No Court in our set-up can claim to function satisfactorily in deciding controversies between suitors without assistance from the bar and of course, the professional bar mainly functions in presenting their clients' cases before the Courts and judicial and quasi-judicial Tribunals. Mutual hostility towards each other or absence of regard and co-operation between them can only injure the cause of justice for the promotion of which alone they both exist, leave alone other undesirable consequences flowing from such situation. I had an occasion to say something about the duty of a practising lawyer in *Dr. Hardit Singh* v. *Bhagat Jaswant Singh* (1), which it is unnecessary to repeat on the present occasion. The Courts, I may add, are also expected to realise that the professional lawyer has to safeguard the interest of his client and due consideration to and recognition of this aspect by the Courts will not only enhance the reputation of our judicial Tribunals but also serve the cause of justice better. Recognising this function of the professional lawyer, the Court has, after hearing both sides, to safeguard judiciously the interests of all the contestants before it in accordance with law on the established facts, addressing its task in much the same way as the counsel, but keeping the scales of justice even.

For the foregoing reasons, I allow this revision and setting aside the orders, dated 22nd March, 1966 (erroneously, dated as 22nd February, 1966), 19th March, 1966 and 22nd April, 1966, I remit the

(1) 1964 P. L. R. 331

case to the Court of Miss Santosh Mehta, Subordinate Judge 1st Class, Delhi, for disposal of the application under Order 26, Rule 9, Code of Civil Procedure, and for further proceedings in the suit in accordance with law in the light of the observations made above. Parties are directed to appear in the transferee Court on 30th May, 1966, when a very short date would be given for disposing of the application under Order 26, Rule 9. Thereafter the suit should be proceeded with due despatch and promptitude. There would be no order as to costs in this Court.

R.S.

LETTERS PATENT APPEAL

Before Gurdev Singh and S. K. Kapur, JJ.

CHARANJI LAL,—*Appellant*

versus

LAJJA RAM AND OTHERS,—*Respondents*

L.P.A. No. 29-D of 1962.

May 26, 1966.

Bombay Co-operative Societies Act (VII of 1925) as applied to Delhi—Ss. 56 and 64-A—Order passed by Tribunal on appeal under section 58—Whether revisable by the State Government under S. 64-A.

Held, that there is no indication in the Bombay Co-operative Societies Act as applicable to Delhi State that the Tribunal constituted under the Act is an "Officer" subordinate to the State Government. On the other hand, the indication is that wherever an order is made revisable by the Tribunal either in appeal or in revision the subject-matter is taken away from the jurisdiction of the State Government under section 64-A. If the Legislature intended to confer a power of revision on the State Government against the orders of the Tribunal, it would have expressly so provided in section 64-A and would not have in that event used the word "officer". The Tribunal constituted under section 63-A may consist of non-official members. The Tribunal so constituted cannot, in the absence of any express provision in the Act, be termed as "officer" subordinate to the State Government. Hence an order passed by the Tribunal on appeal under section 56 of the Act is not revisable by the State Government.

Letters Patent Appeal under clause 10 of the Letters Patent of this Hon'ble Court against the judgment of the Hon'ble Mr. Justice Harbans Singh, dated 22nd February, 1962, in civil Writ No. 91-D of 1958.