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RAMON SERVICES PVT. LTD.  
v.  
SUBHASH KAPOOR AND ORS.

NOVEMBER 14, 2000

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[K.T. THOMAS AND R.P. SETHI, JJ.]

*Advocates:*

C

*Lawyers Strike and Professional ethics.*

D

*Suit decreed ex-parte against defendant as advocate for the defendant failed to appear due to lawyers strike—Held, in future the advocate would also be answerable for the consequences suffered by the party if the non-appearance was solely on the ground of a strike call—It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate—Such litigant, who suffers entirely on account of his advocate's non-appearance in Court has also the remedy to sue the advocate for damages—Same Court has power to realise the cost to permit the litigant party to realise the cost from the advocate concerned without driving such party to initiate another legal action against the advocate—Further, the services rendered by the advocates to their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act, the Rules made thereunder and the Rules of procedure.*

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*Lawyers strike—Held, when an advocate opts to strike work or boycott the Court such advocate must as well be prepared to bear the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.*

G

*Abstaining from the Court by advocates—By and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants.*

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*Advocate-client relationship—Nature of—Held, legal profession is essentially a service-oriented profession—The relationship between the lawyer and his client is one of trust and confidence—With the strike by the lawyers,*

*the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act—Law is no trade and briefs of the litigants not merchandise.* A

### *Contempt*

*Contempt of Supreme Court—Committed by other Courts in India—Due to inaction under lawyers strike—Held, Courts to rise from slumber and perform their duty without fear or favour—Inaction will contribute to the erosion of ethics and values in the legal profession—The defaulting Court may also be contributory to the contempt of the Supreme Court.* B

### *Constitution of India* C

*Welfare State—Goal of—Held, lawyers are a force for the preservice and strengthening of constitutional government, as they are guardians of the modern legal system—The concept of welfare state would remain in oblivion unless social justice is dispensed with—Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system—The role of the members of the Bar has great importance in the post-independent era in the country.* D

**A suit was filed against the appellant (whose place of business was in Mumbai) by the respondent for eviction and on the day fixed for trial, there was lawyers strike in the trial court when the advocate for the appellant failed to appear and an *ex-parte* evidence was recorded. An application under Order 9 Rule 7 CPC was filed by the appellant but the said application was dismissed and suit was decreed. Thereafter, an application for setting aside *ex-parte* decree was filed and the same was also dismissed. Appeal filed before the High Court was also dismissed. Hence this appeal.** E

**Allowing the appeal, the Court**

**HELD: Per Thomas, J.:** F

**1.1. When the advocate who is engaged by a party is on strike there is no obligation on the part of the court either to wait or to adjourn the case on that account. An advocate has no right to stall the court proceedings on the ground that advocates have decided to strike or to boycott the courts or boycott any particular court. [556-G, H]** G H

A *U.P. Sales Tax Service Association v. Taxation Bar Association*, [1995] 5 SCC 716; *K John Koshy & Ors. v. Tarakeshwar Prasad Shaw*, [1998] 8 SCC 624; *Mahabir Prasad Singh v. Jacks Aviation*, [1999] 1 SCC 37 and *Kollumottil Razak v. State of Kerala*, [2000] 4 SCC 465, relied on.

B 1.2. The *ex-parte* order against the appellant due to the non-appearance of the firm of advocates is set aside on payment of a sum of Rs. 5000 as costs. However, appellant is permitted to realise half of the amount of Rs. 5000 from the firm of Advocates or from any one of its partners. Legal professionals are put to notice that in future the advocate would also be answerable for the consequences suffered by the party if the non-appearance was solely on the  
 C ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. It may further be added that the litigant, who suffers entirely on account of his advocate's non-appearance in court, he has also the remedy to sue the advocate for damages. When the court mulcts the party with cost for failure of his advocate to appear, it is made clear that the same court has power to permit the party to realise  
 D the cost from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability. But the advocate can not get absolved merely on the ground that he did not attend the court as he or his association was on strike. If any advocate claims that his  
 E right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair-play and cannons of ethics. So when an advocate opts to strike work or boycott the court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.

F [559-G-H; 560-A-D]

G 1.3. In all cases where court is satisfied that the *ex-parte* order passed due to the absence of the advocate pursuant to any strike call could be set aside on terms, the court can as well permit the party to realise the costs from the advocate concerned without driving such party to initiate another legal action against the advocate. [560-E]

H 1.4. It is open to the court as an alternative course to permit the party while setting aside the *ex-parte* order or decree earlier passed in his favour to realise the cost fixed by the court for that purpose, from the counsel of the other party whose absence caused the passing of such *ex-parte* order, if the

court is satisfied that such absence was due to the counsel boycotting the court or participating in strike. [560-F] A

Per Sethi, J (Concurring)

2.1. Generally strikes are antithesis of the progress, prosperity and development. The services rendered by the advocates of their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act, the Rules made thereunder and the Rules of procedure. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service-oriented profession. The relationship between the lawyer and his client is one of trust and confidence. [561-F-G] B C

2.2. With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act. Law is no trade and briefs of the litigants are not merchandise. [561-H; 562-A] D

2.3. No leniency can be shown to the defaulting party with regard to the strike by the Advocates and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid. In appropriate cases the court itself can pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of the judicial system. In the instant case respondent has to be held entitled to the payment of costs, consequent upon the setting aside of the *ex-parte* order passed in his favour. [567-D-E] E F

*The Bar Council of Maharashtra v. M.V. Dabholkar & Ors*, [1976] 2 SCC 291; *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra Bombay and Ors.*, [1984] 2 SCC 556; *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr.*, [1993] Supp 3 SCC 256; *Common Cause, A Regd. Society v. Union of India & Ors.*, [1994] 5 SCC 557; *Hussainara Khatoon v. Home Secy. State of Bihar*, [1980] 1 SCC 81; *In Re: Sanjiv Datta, Deputy Secretary, Ministry of Information & Broadcasting, New Delhi, etc.* [1995] 3 SCC 619; *Brahma Prakash Sharma v. State of U.P.*, [1953] SCR 1169; *U.P. Sales Tax Service Association v. Taxation Bar Association*, H

A *Agra & Ors.* [1995] 5 SCC 716; *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.* [1999] 1 SCC 37 and *Lt. Col. S.J. Chaudhary v. State (Delhi Administration)*, [1984] 1 SCC 722, relied on.

B *Re: Tarini Mohan Barari*, AIR Cal. 212 (FB) and *Re: Pleader*, AIR (1924) Rang. 320 (DB), referred to.

*Federal Trade Commission v. Superior Court Trial Lawyers Association*, 493 US 411, referred to.

*Warvella's Legal Ethics*, pg. 182, referred to.

C 3. It is a matter of regret that the courts in the country have been contributory to the continuance of the strikes on account of their action of sympathising with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking advocates. Some courts might have conducted the cases even during the strike or boycott period or adjourned due to helplessness for not being in a position to decide the lis in the absence of the counsel but majority of the courts in the country have been impliedly sympathisers by not rising to the occasion by taking positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the courts in the country to rise from the slumber and perform their duties without fear or favour. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting courts may also be contributory to the contempt of this Court. [567-F-H; 568-A-B]

F 4.1. Persons belonging to the legal professions are concededly the elite of the society. They have always been in the vanguard of progress and progress of not only law but the polity as a whole. Citizenry looks at them with hope and expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by and large has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of the mankind. The lawyers, who has been acknowledged being sober, task oriented, professionally responsible stratum of the population, are further obliged to utilise their skills for socio-political modernization of the country. The lawyers are a force for the preservice and strengthening of constitutional government, as they are guardians of the modern legal system. [560-H; 561-A-B]

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4.2. After independence the concept of social justice has become a part of our legal system. The concept of welfare state would remain in oblivion unless social justice is dispensed with. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system. The prevailing ailing socio-economic-political system in the country needs treatment, which can immediately be provided by judicial incision. Such a surgery is impossible to be performed unless the Bench and the Bar make concerted effort. The role of the members of the Bar has thus assumed great importance in the post-independent era in the country. [561-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6385 of 2000.

From the Judgment and Order dated 10.09.99 of the High Court of Delhi at New Delhi in FAO 199/99.

V.K. Makhija, M.N. Krishnamani, Dr. J.P. Verghese, S.P. Sharma, Abhay Makhija, Navin Chawla and Vipin Nair for the appearing parties.

The Judgment of the Court was delivered by

**THOMAS, J.** Leave granted.

Another ticklish issue concerning legal profession has winched to the fore which, perforce, has to be decided by us in this case. Should a litigant suffer penalty for his advocate boycotting the court pursuant to a strike call made by the association of which the advocate was a member? The question arose in this case after the suit was decreed *ex-parte* by the trial court in consequence of the non-appearance of the counsel on a day fixed for hearing, on the premise of the strike call.

Appellant-company was in occupation of a building as tenant at Barakhamba Road, New Delhi. A suit was filed against the appellant for eviction from the building and other consequential reliefs which was resisted by the appellant by raising various contentions. Issues in the suit were framed by the court and the case was posted to 26.8.1998 for trial. None of the advocates belonging to the firm of lawyers which was engaged by the appellant did not appear in the court on the day because the advocates were on a strike called by the advocates association concerned. As nobody for the

A appellant was present the court set the defendant *ex-parte* and evidence of the plaintiff was recorded. Appellant whose place of business was in Mumbai, on coming to know of the developments, applied under Order 9 Rule 7 of the Code of Civil Procedure (for short the "Code"). But the application was dismissed and eventually the suit was decreed on 13.11.1998. Thereafter, B appellant filed an application to set aside the *ex-parte* decree. The said application was dismissed by the trial court, for which the following reasoning, *inter alia*, has been stated:

C "It is settled law that strike or boycott by the advocates is no ground for adjournment. Hon'ble Supreme Court in *Mahabir Prasad Singh v. Jacks Aviation*, (1998) RLR-SC-644 has held that all courts have to do judicial business during court hours. It is the solemn duty of every lawyer to attend the court. The defendant and the counsel very well know that the case was fixed on 26.8.98 for plaintiff's evidence. Counsel for the defendant (at least 8 counsel had been engaged by the defendant) and the defendant deliberately did not appear on 26.8.98. D There is no *bona fide* or reasonable ground put forward by the defendant or their counsel for non-appearance. They were knowing the consequences of non-appearance. I therefore, find no ground in allowing the application under order IX Rule 16 CPC. The application is hereby dismissed with costs."

E Appellant thereafter approached the High Court with an appeal against the aforesaid order. The High Court concurred with the reasoning of the trial court and dismissed the appeal. Learned single judge while dismissing the appeal stated thus:

F "In my considered opinion, the proposition of law as laid down in the decision of the Supreme Court in *Mahabir Prasad Singh's* case [1999] 1 SCC 37 squarely applied to the facts of the present case. There was negligence and total lack of *bona fide* on the part of the defendants and therefore, they are not entitled to any relief in the present appeal. The appeal stands dismissed as without any merit leaving the parties G to bear their own costs."

We have no doubt that the legal position adumbrated by the Additional District Judge as well as the High Court cannot be taken exception to. When the advocate who was engaged by a party was on strike there is no obligation on the part of the court either to wait or to adjourn the case on that account.

H Time and again this court has said that an advocate has no right to stall the

court proceedings on the ground that advocates have decided to strike or to boycott the courts or even boycott any particular court. Vide *U.P. Sales Tax Service Association v. Taxation Bar Association, Agra & Ors.*, [1995] 5 SCC 716; *K. John Koshy & Ors. v. Dr. Tarakeshwar Prasad Shaw*, [1998] 8 SCC 624; *Mahabir Prasad Singh v. Jacks Aviation*, [1999] 1 SCC 37 and *Koluttumottil Razak v. State of Kerala*, [2000] 4 SCC 465.

Now the party says that his absence may be viewed from a broader angle particularly on account of the following background. Appellant company is situated at Mumbai and the court in which the suit was filed is situated in Delhi. On 24.8.1998 the counsel for the appellant transmitted a message to the appellant that none of the advocates would attend the court due to the strike call on 26.8.1998. Appellant says that it was not possible to make arrangements for appearing in court on the succeeding day at such a short note and from such a long distance. He would have thought that the courts could not function when the advocates were on strike though he later realised that it was a wrong assumption. He made out a case for setting aside the *ex-parte* order, at least on some terms because his non-appearance was attributable entirely to the firm of advocates whom he engaged (M/s. B.C. Das Gupta & Co.)

In view of the aforesaid stand of the appellant we passed the following order on 8.5.2000.

“We tentatively propose to set aside the *ex-parte* judgment on some terms, like payment of costs to the other side, because petitioner's counsel was absent in the trial court when the case was called as he was participating in the lawyer's strike. But it is difficult for us to mulct the petitioner with the cost portion as he is innocent. Hence we issue notice to M/s. Das Gupta & Co. lawyers of Delhi, to show cause why the petitioner shall not be permitted to realise the said cost amount from the said advocates”.

A reply affidavit has been filed on behalf of the said firm of advocates. It is admitted in the affidavit that the firm was engaged by the appellant in the said suit. The deponent tried to explain their non-appearance on two factual premises. First is that when the firm came to know that Delhi Bar Association resolved to boycott the court of Additional District Judge, Delhi, appellant was informed of it and expressed the inability of the advocates to appear before the said court on 26.8.1998. Second is that *in spite of* such communication a member of the lawyers' firm made an attempt to reach the

A court concerned, but he did not succeed as he was prevented by the other striking lawyers. The following is the statement made by the firm of advocates regarding their absence in the court:

B “That on 26.8.1998, a member of our firm visited the court of the aforesaid learned ADJ. However the office bearers and members of Delhi Bar Association did not allow any counsel to appear before the court of aforesaid learned ADJ. Therefore we could not appear in the aforesaid matter on 26.8.1998 and the aforesaid learned ADJ was pleased to pass the following order”.

C About the second facet of the explanation offered by the lawyers' firm there is no direct information from the particular person who is said to have tried to enter the court or as to who were the persons who prevented him from entering the court. Even the name of the advocate member of the firm who tried to enter the court hall has not been mentioned. Be that as it may, if the firm of advocates thinks that they really wanted to attend the court but were physically prevented by somebody else from doing so it is open to the D counsel concerned to resort to such steps as against those persons.

E But the fact remains that appellant was set *ex-parte* due to the absence of the appellant and his counsel in the court when the case was taken up for hearing. In the special circumstances of this case we are inclined to set aside the *ex-parte* order dated 26.8.1998, on some terms.

Appellant shall pay a sum of Rs. 5000 as costs to the respondent/ plaintiff within one month from today and on such payment (or deposit with the trial court) the *ex-parte* order dated 26.8.1998 would stand set aside.

F Now comes the question of syphoning the said burden on to the advocate. Should the advocate be mulcted with that amount as he is primarily instrumental for setting his client *ex-parte*. Shri M.N. Krishnamani, learned senior counsel, after disowning the liability of the counsel, adopted the alternative plea on that score like this: Till 10.9.1998, when the apex Court pronounced in unmistakable terms while deciding *Mahabir Prasad Singh's* G case (*supra*) that boycott of the court by the advocate is unquestionably illegal, the legal fraternity took it for granted that the courts would not proceed with the cases during strike periods. The following can be extracted from the written submission made by the senior counsel:

H “The courts were sympathising with the Bar and would agree for not dismissing cases for default and to take up the matter of disposal

only if both the parties in person agree for an adjudication. This practice of the court unofficially co-operating with the strike and agreeing or adjourning the cases lulled the lawyers into a *bona fide* belief that even if he did not appear, the court would not do any harm to the case. It was in this belief and in this legitimate expectation which emanated on the basis of the convention and the practice for over 3 to 4 decades, the lawyers either participated in the strike and several of them were really physically prevented from entering the courts. Most of the lawyers participated passively rather than actively in strikes.”

Shri Krishnamani, however, made the present position as unambiguously clear in the following words.

“Today, if a lawyer participates, in a Bar Association's boycott of a particular court that is *ex-facie* bad in view of the clear declaration of law by this Hon'ble Court. Now, even if there is a boycott call, a lawyer can boldly ignore the same in view of the ruling of this Hon'ble Court in [1999] 1 SCC 37.”

Though we appreciate the stand of the senior counsel that an advocate would hereinafter venture to ignore the boycott call, I am unable to agree with the learned senior counsel that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a counsel. Nor do we concede to the contention that this court declared the legal position only when *Mahabir Prasad Singh* (supra) was decided that strikes or boycotts are illegal. We have cited supra the earlier decisions rendered by this Court in tune with the same stand.

Therefore, we permit the appellant to realise half of the said amount of Rs. 5000 from the firm of advocates M/s. B.C. Das Gupta & Co. or from any one of its partners. Initially we thought that the appellant could be permitted to realise the whole amount from the said firm of advocates. However, we are inclined to save the firm from bearing the costs partially since the Supreme Court is adopting such a measure for the first time and the counsel would not have been conscious of such a consequence befalling them. Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause

- A the party alone to suffer for the self imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's non-appearance in court, he has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court
- B mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability. But the advocate can not get absolved merely on the ground that he did not attend the court as
- C he or his association was on a strike. If any advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair-play and canons of ethics. So when he opts to strike work or boycott the court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his
- D cause would be safe in the hands of that advocate.

E In all cases where court is satisfied that the *ex-parte* order (passed due to the absence to the advocate pursuant to any strike call) could be set aside on terms the court can as well permit the party to realise the costs from the advocate concerned without driving such party to initiate another legal action against the advocate.

F We may also observe that it is open to the court as an alternative course to permit the party (while setting aside the *ex-parte* order or decree earlier passed in his favour) to realise the cost fixed by the court for that purpose, from the counsel of the other party whose absence caused the passing of such *ex-parte* order, if the court is satisfied that such absence was due to that counsel boycotting the court or participating in a strike.

We therefore, dispose of this appeal with the above direction.

G **SETHI, J.** I agree both with the reasonings and the conclusions arrived at by Thomas, J. in his lucid judgment. However, the matter being important having far reaching effects on the institution of the judiciary, and for my views with respect to the role of the Courts during strikes by Advocates, I have opted to pen down my own observations in addition.

H Persons belonging to the legal profession are concededly the elite of

the society. They have always been in the vanguard of progress and development of not only law but the Polity as a whole. Citizenary looks at them with hope and expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of the mankind. The lawyers, who have been acknowledged being sober, task oriented, professionally responsible stratum of the population, are further obliged to utilise their skills for socio-political modernization of the country. The lawyers are a force for the preservance and strengthening of constitutional government as they are guardians of the modern legal system.

After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare state would remain in oblivion unless social justice is dispensed with. Dispensation of social justice and achieving the goals set forth in the constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system. The prevailing ailing socio- economic-political system in the country needs treatment which can immediately be provided by judicial incision. Such a surgery is impossible to be performed unless the Bench and the Bar make concerted effort. The role of the members of the Bar has thus assumed great importance in the post independent era in the country.

Generally strikes are antithesis of the progress, prosperity and development. Strikes by the professionals including the Advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the Advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence.

With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the

A Advocates Act. Law is no trade and briefs of the litigants not merchandise. This Court in *The Bar Council of Maharashtra v. M.V. Dabholkar & Ors.*, [1976] 2 SCC 291 placed on record its expectations from the Bar and observed:

B “We wish to put beyond cavil the new call to the lawyer in the economic order. In the days ahead, legal aid to the poor and the weak, public interest litigation and other rule-of-law responsibilities will demand a whole new range of responses from the Bar or organised social groups with lawyer members. Indeed, the hope of democracy is the dynamism of the new frontiersmen of the law in this developing area and what we have observed against solicitation and alleged profit-making vices are distant from such free service to the community in the rural sector as part of the profession’s trust with the People of India.”

C In *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra Bombay & Ors.*, [1984] 2 SCC 556 it was observed that, “An advocate stands in a *loco parentis* towards the litigants. Therefore, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel’s paramount duty is to the client. The client is entitled to receive disinterested, sincere and honest treatment”. It would be against professional etiquette of a lawyer to deprive his client of his services in the court on account of strike. No advocate can take it for granted that he will appear in the court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings.

D This Court in *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr.*, [1993] Supp. 3 SCC 256 while deprecating the decreasing trend of service element and increasing trend of commercialisation of legal profession, pointed out that it was for the members of the Bar to act and take positive steps to remove such an impression before it is too late. By striking work, the lawyers fail in their contractual and professional duty to conduct the cases for which they are engaged and paid. In *Common Cause, A Regd. Society v. Union of India & Ors.*, [1994] 5 SCC 557 it was observed, “Since litigants have a fundamental right to speedy justice as observed in *Hussainara Khatoon v. Home Secy., State of Bihar*, [1980] 1 SCC 81 it is essential that cases must proceed when they appear on board and should not ordinarily be adjourned on account of the absence of the lawyers unless there are cogent reasons to do so. If cases get adjourned time and

again due to cessation of work by lawyers it will in the end result in erosion of faith in the justice delivery system which will harm the image and dignity of the Court as well”:- A

Noting casual and indifferent attitude of some of the lawyers and expecting improvement in quality of service this Court in *In Re: Sanjiv v. Datta, Deputy Secretary, Ministry of Information & Broadcasting, New Delhi, etc.*, [1995] 3 SCC 619 held: B

“Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant-public and to the courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence, when the matters are called out, the filing of incomplete and inaccurate pleadings - many time even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system. C D E

The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held F G H

A in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.”

In *Brahma Prakash Sharma v. State of U.P.*, [1953] SCR 1169 a Constitution Bench of this Court held that a resolution passed by the Bar Association expressing want of confidence in the judicial officers amounted to scandalising the court to undermine its authority which amounted to contempt of court. In *Tarini Mohan Barari, Re:* AIR (1923) Cal. 212 the Full Bench of the High Court held that pleaders deliberately abstaining from attending the court and taking part in a concerted movement to boycott the court, was a course of conduct held not justified. The pleaders had duties and obligations to their clients in respect of matters entrusted to them which were pending in the courts. They had duty and obligation to cooperate with the court in the orderly administration of justice. Boycotting the court was held to be high handed and unjustified. In *Pleader, Re:* AIR (1924) Rang 320 a Division Bench of the High Court held that a pleader abstaining from appearing in the court without obtaining his client's consent and leaving him undefended, amounted to unprofessional conduct. In *U.P. Sales Tax Service Association v. Taxation Bar Association, Agra & Ors.*, [1995] 5 SCC 716 this Court observed:

H “It has been a frequent spectacle in the recent past to witness that advocates strike work and boycott the courts at the slightest provocation overlooking the harm caused to the judicial system in

general and the litigant public in particular and to themselves in the estimate of the general public. An advocate is an officer of the court and enjoys a special status in the society. The workers in furtherance of collective bargaining organise strike as per the provisions of the Industrial Disputes Act as a last resort to compel the management to concede their legitimate demands.

It is not necessary to go into the question whether the advocates, like workmen, have any right at all to go on strike or boycott court. In *Federal Trade Commission v. Superior Court Trial Lawyers' Assn.* 493 US 411 the attorneys who regularly accepted court appointments to represent indigent defendants in minor felony and misdemeanour cases before the District of Columbia Superior Court sought an increase in the statutorily fixed fees they were paid for the work they had done. When their lobbying efforts to get increase in the fees failed, all the attorneys, as a group, agreed among themselves that they would not accept any new cases after a certain date, if the District of Columbia had not passed legislation providing for an increase in their fees. The Trial Lawyers' Association to which the attorneys belonged supported and publicised their agreement. When they are not accepting the briefs which affected the District's criminal justice system, the Federal Trade Commission (FTC) filed a complaint against the Trial Lawyers' Association complaining that they had entered into a conspiracy to fix prices and go in for a boycott which was an unfair method of competition violating Section 5 of the Federal Trade Commission Act (15 USCS 45). The administrative law judge rejected various defences of the Association and recommended that the complaint to browbeat the boycott be dismissed. The Court of Appeals for the District of Columbia reserved the FTC order holding that the attorneys are protected by Federal Constitution's First Amendment etc. On certiorari, majority of USA Supreme Court speaking through Stevens, J. held that the lawyers had no protection of the First Amendment (free speech) and the action of the group of attorneys to boycott the courts constituted restraint of trade within the meaning of Section 1 of Shreman Act against unfair method of competition. Though the object was enactment of a favourable legislation, the boycott was the means by which the attorneys sought to obtain favourable legislation. The Federal Constitution's First Amendment does not protect them."

A which one of us (Thomas, J.) was a party observed:

B “Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately this case reflects apathy on the part of the High Court in affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open court.”

C It was further held:

D “If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.”

E F A three-Judge Bench of this Court has reminded members of the legal profession in *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.)*, [1984] 1 SCC 722 that it is the duty of every advocate who accepts a brief to attend the trial and such duty cannot be overstressed. It was further reminded that ‘having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend’.

G H “A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay differential respect to the Judge, and scrupulously observe the decorum

of the courtroom.”

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(Warvelle’s Legal Ethics, at p.182)

Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the *sine qua non* for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court.”

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In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid. In appropriate cases the court itself can pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. In the instant case respondent has to be held entitled to the payment of costs, consequent upon the setting aside of the *ex-parte* order passed in his favour.

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Though a matter of regret, yet it is a fact, that the courts in the country have been contributory to the continuance of the strikes on account of their action of sympathising with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking advocates. I find myself in agreement with the submission of Sh. M.N. Krishnamani, Senior Advocate that the courts were sympathising with the Bar by not agreeing to dismiss the cases for default of appearance of the striking advocates. I have my reservations with the observations of Thomas, J. that the courts had not been sympathising with the Bar during the strikes or boycotts. Some courts might have conducted the cases even during the strike or boycott periods or adjourned due to helplessness for not being in a position to decide the *lis* in the absence of the counsel but majority of the courts in the country have been impliedly sympathisers by not rising to the

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**A** occasion by taking positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the courts in the country to rise from the slumber and perform their duties without fear or favour particularly after the judgment of this Court in *Mahabir Singh's* case (supra). Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting courts may also be contributory to the contempt of this Court.

**B**

R.K.S.

Appeal disposed of.