

same opinion that only for the sake of paper and only for the sake of eye wash of the complainant this compensation have been awarded by the Court then the very purpose of amendment would be defeated. If this attitude or even this opinion has been formed by the common man/litigant public who approaches the Court, the prestige of the Courts will be lowered in the Society.

To avoid the above problems to my little mind I had one solution *i.e.* a suitable amendment has to be made in the Negotiable Instrument Act and also to Section 357 of Cr.P.C. Since the proceedings under Negotiable Instrument Act are quasi civil and criminal if any award passed by the Court, the complainant shall have a right to execute the same by executing that award by following procedure under Order 21 of Code of Civil Procedure. So that it will be very easy for the complainant to get realise

the compensation amount award under Section 357 of Cr.P.C.

In view of the proviso *i.e.* under Section 357(5) of Cr.P.C. which reads as follows :

“At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

So with the above proviso the accused will get advantage of appropriation if any suit is filed against him basing on the cheque which is a subject-matter of calendar case instituted under Negotiable Instruments Act.

With this I conclude that the above suitable amendment is very much needed otherwise awarding of compensation is futile exercise by the Courts.

“Justice is not only to be done but it must seem to have been done.”

A NOTE ON JUDICIAL REFORMS

By

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In yester years an eminent Judge *Diwan J.*, came on transfer from Gujarat and adorned the bench of the High Court of Andhra Pradesh. He carved a niche among the members of the Bar for his sweet manners and bonhomie. At the time of his farewell he made some observations which often ring in my ears. He referred to his senior and mentor former Chief Justice of Bombay High Court and great Jurist *M.C. Chagla* and his exhortations to him about the performance on the Bench. While recalling his advice *Diwan J.*, said that the advocates

standing at the Bar are in no way less important and they are respectful persons in society and they should be given due regard by the Judge, sitting on the Bench. This is not to say that other judicial officers lack these qualities. By and large, our judiciary is known, not only for integrity and transparency, but also sobriety and dignity. It is trite to say that the Bench and Bar are two components endeavouring for the common goal *viz* dispensation of justice. They are priests before the altar Goddess of justice.

People still believe that the officer on the Bench delivering justice is a representative of God and he is doing divine job. It is no easy job to be a judicial officer. He has to discharge onerous duties unlike other officers in the Government. He is entrusted with arduous duties, which require certain calibre, legal acumen, hardwork, patience and perseverance. He deals with men and matters; life and liberty of individuals, valuable property rights; contractual obligations *etc.* His judgments and decrees have got far reaching consequences and impact on the parties before him. Some one who got good impression about Judges and Lawyers observed that a doctor can save one life while the lawyer can save the entire family. Another disgruntled man who got bitter experience in Courts and results made a converse remark too. In all other cases, it is enough if an officer works in his office. He can forget everything at the end of the day and can happily go home, but not so with a judicial officer. The day starts with the stenographer to take dictation. Thereafter he has to attend to Court and sit on the bench from 10.30 a.m., till evening (save lunch time) either recording evidence, hearing arguments and other submissions not to speak of tedious call work. At times his patience will be on test with lengthy and prosaic arguments. Perhaps for this reason Sri C.P. Ramaswamy Ayer declined the offer of judgeship of Madras High Court and observed that it is better to speak something and walkout instead of hearing from others.

For a sincere and conscious officer no time is left to spend with his family or attend to social life. The judicial officer is expected to keep aloof from public gaze. He should not move with people or maintain interaction with others. In this connection I recall an experience encountered by Gagendraghatkar, J., an eminent scholar and jurist. He attended to a dinner in a star hotel. He received wonderful hospitality and service from the hotel staff to his great

delight. Lo! a few days later he had to decide a labour dispute between the same hotel staff and the management. He felt embarrassed when he found the staff paraded before him. He took a vow never to attend to such parties. He narrated this incident in his autobiography.

The recording of evidence is another important arduous Job for a Trial Judge. He has to record the evidence in silence without opening his mind. He has to keep his emotions down when untruth is given by the witnesses. There are some habitual parties and witnesses who speak anything but truth. It is the painful job of the judicial officer to record it and get down with heavy heart at the end of the day, as one judicial officer once lamented. This happens in case of arguments at bar. At times some untenable and absurd propositions will be placed before him. Without expressing approval or otherwise he has to note them. He has to remove the chaff and pick up the grain for arriving at judgment. Thus the job is not a bed of roses, at the same it cannot be said it is of thorns if the officer takes it in proper strides and develop judicial temper. The judicial officer, sitting on bench and conducting Court enjoys powers and authority. At the same time he has to act with dignity and decorum. He should command respect, but not demand it. Some decades back Koka Subbarao, the former Chief Justice of India came to Kakinada and appeared in a mofusil Court. It is said that the Judge had the saddistic pleasure of inconveniencing Subbarao, J. He used to plan for return journey by Madras Mail. But the Judge used to keep the case pending till evening which eventually made the advocate to miss the train. Later Subbarao, J., became Judge of Madras High Court. It is now the turn of the judicial officer to visit him to pay respects, but Subbarao, J., naturally refused to entertain or see him.

A Judge is master in his Court. The advocates and parties act with respect and

reverence to keep up the dignity of the Court. Judicial decorum is *sine quo non* both for bench and the bar. Advocates seldom like to join issue with the Judge for obvious reasons and for fear of consequences on the case and the interests of the litigant. Some advocates even believe that it is better to lose a case than a Judge, as quarrel or negative impression will harm his long time interests. But this docility is unacceptable and inconsistent with professional independence and integrity. An advocate is expected to fight out his case and desist any derogatory remarks from the bench. He should not pocket an insult or affront to his professional dignity. He should remember that he belongs to a noble profession. At the same time he should desist indignity with decency and softness. In a reported case, a criminal Court passed an order under Section 145 of the Criminal Procedure Code. The aggrieved party approached the civil Court and obtained an injunction order. When this fact was brought to the notice of the Magistrate he enraged and called the advocate and the party by names in strong language. The advocates silently pocketed and took the matter to High Court by contempt proceeding. The High Court held that the judicial officer can also commit contempt of his own Court. Thus, if a judicial officer loses balance and temper he is answerable. It is trite to say that all powers are more in the nature of duties to serve the altar justice.

In the recent times the judicial officers are shedding their seclusion and ivory towers and mixing with the people thanks to the emergence of Lok Adalats. They are exhorting the people to use Lok Adalats to work out their rights in inexpensive and expeditious way. The Courts also should gear up their machinery and infuse more efficiency and expediency in the disposal of cases. It is to be remembered that due to default of judiciary, the politicians, goondas, nexalities and antisocial elements are taking

upon themselves the task of private settlements and making unjust enrichment. It is the duty of every right thinking person to save and preserve this great institution which is the protector of society. Unfortunately it is collapsing under its own weight. It is said to hear from a former chief justice of India that there is corruption of 20% among judicial officers. Another Judge was not prepared to subscribe to this percentage.

Recently the former Chief Justice of India and Chairman of the National Human Rights Commission *A.S. Anand* expressed concern over large scale acquittals in criminal cases. When people see persons accused of heinous and ghastly offences getting acquittal, they believe that Courts are either too liberal or procriminal or not functioning the way they ought to function. He also expressed concern over the disposal of cases resulted in the citizen getting tempted to take the law into his own hands and take recourse to extra-judicial methods to settle scores and seek redress of his grievance. One of the challenges before the judiciary was its failure to deliver justice expeditiously. One case which is filed for partition four decades back is still pending. The man who filed the suit was young and energetic when he filed the suit, became old growing along with the age of the suit and ultimately died without ever seeing the fruits of the decree. Some officers, though far and few, are not sensitive and feel offended when some attempt is made for early disposal. Several years back one judicial officer, who never believed in doing work used to adjourn matters. One day one advocate vehemently opposed in granting adjournment. The officer who was visibly unhappy chided the advocate and advised to look to new cases instead of wasting time on old cases. On another occasion, the same officer, when insisted to take up a particular case was placed in a piquant situation. When all other options failed he got down from the bench saying that he

was unwell. We can take the horse to the river, but we cannot make it drink. It becomes hard task to convenience the party in such situations. Want of integrity is not the only creterion. His conduct, Courtesy to the bar, parties, witnesses, number of hours he works on the bench have to be assessed. A vigilant bar is better Judge. The advocates are the judges of judges as observed by *Krishna Ayyer, J.* But they have own their limitations. All the same it is not possible to establish a case against an erring Judge. Only after crossing endurance level the bar will adopt a resolution, that too for transfer of the Judge. But the transfer is not an answer and such officer is liability where ever he is posted. The disciplinary action and the resultant punishment is time consuming with uncertain results.

Inspite of some short comings and human frailities which are marginals, the justice delivery system is still enjoying respect and public confidence. At the same time this image has to be kept. It is the duty and responsibility of every associated with this institution to

keep its prestine glory and insulate it suitably. The judicial reforms are of dire necessity in the present context of things. As part of such reforms the honourable High Court should create a high powered Vigilence Cell to watch and monitor over the performance and conduct of the officer. The officers of the wing should make surprise visits to mofusil Court in disguise and watch the performance of the officers on and off the bench and send their assessment reports. The suitable modelaties can be worked out. The very existence of such mechanism will inculcate a sense of accountability and answerability among errant officer. At the same time, the independence of the judicial officers, their honour and dignity should not compromised, as judicial independence is the hallmark of the Institution. Salt should not loose its taste, if it is salteh. Unfortunately a few black sheep are sulleying the image. It is enough if some correctional measures are taken. It are brought to the main stream, the course of justice will flow smoothly and majestically serving the asperations of the litigants and the general public.

A NOTE ON "OFFICE OF PROFIT"

By

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"Office of Profit" used under various articles of constitution is no where defined. It is a composite word. It consist two independent words 'office and profit'. This composite word is used, while prescribing qualification to stand for election as 'President' under Article 58 of the constitution, under Article 102 as a disqualification for being a member of parliament of either house and Article 191 as a disqualification for a member being chosen.

This composite word assumed political importance in recent times and has become an issue before apex Court.

This apex Court in more than one instance laid down certain guidelines to determine the scope of this word. But when a member suffers disqualification as envisaged under Article 102 of the constitution, the deciding authority is the President of the India. His decision shall be final. The President shall