DANIEL
v.
CHANDRADEVA

SUPREME COURT.
AMERASINGHE, J.
WADUGODAPITIYA J, AND
WIJETUNGA, J.
S.C. RULE 1/93(D)
NOVEMBER 04, 1993, MAY 31, 1994, AUGUST 15 AND 20, 1994.

Attorney-at-Law – Duties to client on filing proxy – Instructing Attorney – Discourtesy to Court – Supreme Court (Conduct of and Etiquette for Attorneys-at-law) Rules of 1988 (Rules 15, 16 and 28) – Panel of Professional Purposes Committee of the Bar Association – Judicature Act, No. 2 of 1978, Section 42(2) – Deceit – Malpractice – Criminal Breach of trust – Moral turpitude – Standard of proof – Is failure to attend court because of work in another Court or non-payment of fees an acceptable reason? – Absence owing to circumstances beyond control.

One Daniel was sued on a liquid claim by way of summary procedure. Daniel gave a proxy to Mrs. Subramaniam, Attorney-at-Law and her assistant Raviraj. The proxy was filed in Court on 13th January, 1988. Subsequently Daniel was introduced to another Attorney-at-Law Panditharatne and revoked her proxy. Panditharatne got a fresh proxy in his name but handed over the case to the respondent Chandradeva. Chandradeva amended the proxy given to Panditharatne by crossing his name and substituting her name and filed it in Court on 22 March 1988. She thus became the registered attorney on record between 22.3.1988 and 06 August, 1992. On 23.3.1988 she found F. C. Perera appearing for Daniel and seeking permission to file answer. The Court ordered written submissions to be filed on 04th May, 1988. No written submissions were filed on 04th May, 1988 and the respondent was absent from Court. The Court reserved order for 06.6.1988. The Respondent was absent again and the Court issued notice for 27 June, 1988. On this day respondent was absent but Attorney-at-Law Welcome appeared and asked for a postponement. The Court fixed 11 July 1988 as the final date for written submissions. No written submissions were yet filed though Welcome appeared again. The Court fixed 19.8.1988 for order. The respondent claimed she retained Welcome, but her fees were not paid. She admitted receipt of Rs. 750/- from Daniel but said she paid this to Parathalingam to prepare written submissions. The Report of the Panel of the

Professional Purposes Committee of the Bar Association on the complaint of Daniel was that the respondent had committed "acts of (a) deceit; and (b) malpractice; and/or (c) crime (criminal breach of trust) under section 42(2) of the Judicature Act No. 2 of 1978."

Held:

(1) Discourtesy to Court is much more than a matter of good manners. It is axiomatic that every attorney must encourage respect for the administration of justice by treating the courts and tribunals of the country not only with candour and fairness, but also with respect and courtesy. An attorney who is discourteous to Court acts in a manner prejudicial to the administration of justice in that he undermines the work of the court. He renders himself unfit to be an officer of the Court. As an officer of the Court, and as a privileged member of the community who has been conditionally allowed to practise his profession to assist in the administration of justice, every attorney must act with courtesy to Court. It is a duty recognized by Rule 15 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988.

(2) (a) The relationship of attorney and client is much more than an ordinary contractual relationship. It does not terminate automatically on the non-payment of fees. Nor can it be abruptly terminated. An attorney is ordinarily justified in withdrawing if the client fails or refuses to pay or secure the proper fees or expenses of the attorney after being reasonably requested to do so, provided his right of withdrawal is not exercised at a moment at which the client may be unable to find other legal assistance in time to prevent damage being done. The attorney must give his client reasonable warning that he will withdraw unless the client fulfils his obligations.

(b) The respondent gave no warning of her inability to continue the professional relationship on account of the client's failure to pay her fees. If she was unwilling to continue the professional relationship on account of the failure of the complainant to pay her fees, she should have taken steps to have her proxy revoked after warning the client and giving him a reasonable time to appoint another registered attorney. On the other hand, the respondent's conduct by appearing for him from time to time shows that she had no intention of withdrawing altogether from the case. But on other occasions she abandoned him altogether or left him unrepresented. She did so in violation of the contractual duties undertaken by her in the proxy and in violation of her professional obligations prescribed by Rule 16 of the Supreme Court (Conduct of an Etiquette for Attorneys-at-law) Rules of 1988 whereunder "where the services of an

Attorney-at-Law have been retained in any proceedings, ... it shall the duty of such Attorney-at-Law to appear at such proceedings, unless prevented by circumstances beyond his control". The phrase "circumstances beyond his control" should be strictly interpreted. In general, the unexpected inability of the Attorney to attend Court for good reasons, supported by sufficient proof which the Court in its discretion considers adequate, would constitute circumstances beyond the control of the Attorney. Assuming that her version that she retained Welcome because she had work in another Court to be true, her absence was unexcusable. Failure to attend Court because of work in another Court is not an acceptable reason. The respondent ought not to have accepted conflicting professional engagements. It was not her case that the conflicts arose as no doubt they sometimes do, on account of circumstances beyond her control.

(3) Even an instructing attorney has a right of audience and must appear in terms of his or her undertakings to the client. An Attorney appointed by proxy formulated in terms of the Civil Procedure Code has every right to conduct the case in Court. Where an Attorney intends to function in a contentious civil matter only as a Registered Attorney, and not also as Counsel, he or she should ensure that an Attorney who is to appear as Counsel is retained and instructed. Otherwise the Registered Attorney would be acting in contravention of Rules 15 and 16 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988.

(4) Having asked Welcome to obtain a postponement, it was her duty to ascertain what the decision of the Court was in response to his application, from Welcome, or by examining the Journal Entries.

(5) The fact that the Court had allowed the defendant to file answer unconditionally is no excuse for the misconduct. An act or omission is either proper or improper at the time it was done and not by reference to its consequences.

(6) An Attorney should have and maintain full and accurate records so that monies paid or entrusted to him could be accounted for. He should have properly written books of account showing among other things, the amounts of receipts and disbursements against relevant dates and particulars of receipts and disbursements. The respondent had no such records. She admitted she received Rs. 750 and said she paid it for written submissions but has failed to establish this with any records. Rule 28 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988 states, "Attorneys-at-Law shall not appropriate any funds of his client held by him in trust for a specific purpose except with the

permission of the client". Respondent has violated this provision by appropriating the sum of Rs. 750 for her own purposes rather than the purpose intended by Daniel. She erroneously presumed that F. C. Perera would prepare the answer. The respondent has been guilty of deceitful conduct and a breach of trust that was criminal in nature. The respondent is unfit to be a member of the legal profession.

(7) In disciplinary proceedings against an Attorney-at-law, proof beyond reasonable doubt is not necessary but something more than a balancing of scales is necessary to enable the Court to have the desired feeling of comfortable satisfaction. A very high standard of proof is required where there are allegations involving a suggestion of criminality, deceit or moral turpitude.

Cases referred to:

1. *Rondel v. Worsley* [1967] 3 All E.R. 993, 1033.
2. *Herber v. Rand* (1821) 9 Price 58.
3. *Swannel v. Ellis* (1823) 1 Bing. 347.
4. *Courtney v. Stock* (1842) 2 Dr. & War. 251.
5. *Ranaweera v. Jinadasa and Gunapala* S.C. Appeal 41.91 – S.C. Minutes of 27.03.92.
6. *Law Society of New South Wales v. Starky*, C.A. 205/97 New South Wales Solicitors' Manual (4131).

Rule under section 42(2) of the Judicature Act No. 2 of 1978 against Attorney-at-Law of the Supreme Court.

Rohan Sahabandu for respondent.

N. R. M. Daluwatte P.C. with *G. Candappa P.C.* and *Dr. J. Wickramaratne* for the Bar Association of Sri Lanka.

A. S. M. Perera, Deputy Solicitor-General as *amicus curiae*.

Cur. adv. vult.

November 23, 1994.
AMERASINGHE, J.

On 26 October 1987, an action was filed in the District Court of Colombo invoking the provisions of Chapter 53 of the Civil Procedure Code relating to the summary procedure on liquid claims, for the recovery of a sum of Rs. 141,051 from D. E. Daniel, the Complainant

in the matter before this Court. A document of appointment as a registered attorney in terms of the Civil Procedure Code, usually described as a "proxy", dated 12 January 1988 (D1), was given by Daniel to Mrs. S. Subramaniam and her assistant N. Raviraj and tendered to Court on 13 January 1988. Subsequently, Subramaniam introduced Daniel to another Attorney-at-Law, Mr. L. Panditharatne, because she was too busy with other engagements to undertake Daniel's work.

On 22 March 1988, on her way to Court, the respondent met Mr. Panditharatne, who had explained that he was "in a difficulty", and requested her to "help him by appearing in the case". The respondent says she "took up this matter" "just to oblige" Mr. Panditharatne, whom she had known from the time she was a law student. She had not met the client before this time. Panditharatne handed her two papers: the proxy intended to be filed on behalf of Daniel (C2), and the revocation of the proxy of Subramaniam and her assistant, Raviraj. The respondent struck out Panditharatne's name and address in the 'proxy', and inserted her own name and address. The printed proxy form is filled in black ink; whereas the alterations and the signature of the client, Daniel appear in blue ink. The Journal Entries relating to the proceedings in Court on 22 March 1988 show that the 'proxy' of Subramaniam was revoked, and that the proxy of Chandradeva (the respondent) had been filed.

The registered Attorney on record between 22 March, 1988 and 6 August 1992 was Chandradeva, the respondent. I am unable to understand the relevance of the question raised by learned Counsel for the respondent in his written submissions: "Is there a valid legal and binding contract between a client and his Attorney-at-Law if he is not properly retained?", for there was no dispute that the professional services of the respondent had been engaged, notwithstanding the highly unsatisfactory way in which the document of appointment was amended. The respondent herself amended the proxy and filed it in Court. The proxy, which is in the standard prescribed form, not only empowered the appointed attorney to act for her client, but also imposed the usual contractual obligations on the attorney. Attorneys who accept appointments as Registered Attorneys would do well,

from time to time, to read what a proxy states. In addition to being liable for resulting loss on account of a breach of contractual obligations, a Registered Attorney who fails to ensure that all things expected of him or her by reason of his or her appointment are done promptly, conscientiously and with reasonable competence, would be guilty of failing to act with due diligence. He or she would therefore be liable for the contravention of Rule 15 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988. From her evidence, the respondent appeared to be quite conscious of the grave responsibilities she bore as a Registered Attorney. In the circumstances. the casualness with which so important an instrument as a 'proxy' seems to have been regarded is astonishing.

Learned Counsel for the respondent in his written submissions suggested that the failure of the respondent to appear in Court "only amounts to being discourteous to Court (only)." (sic); and he raised the question: "If so, in such a circumstance, could a rule be issued against the Attorney-at-Law for not appearing in Court, for not having performed his duties on behalf of the client?" It comes as a surprise that the word "only" was used and repeated for emphasis, as if discourtesy was of little or no significance in the matter of professional conduct. Discourtesy to Court is a very serious matter. The rough and rude conduct of an uncouth attorney unaccustomed to following the usual ways of members of the profession who are of good repute is always shocking and repellent and deplorable, although it may not amount to professional misconduct warranting disciplinary action. However, discourtesy to Court is much more than a matter of good manners. It is axiomatic that every attorney must encourage respect for the administration of justice by treating the courts and tribunals of the country not only with candour and fairness, but also with respect and courtesy. An attorney who is discourteous to Court acts in a manner prejudicial to the administration of justice in that he undermines the work of the Court. He renders himself unfit to be an officer of the Court. As an officer of the Court, and as a privileged member of the community who has been conditionally allowed to practise his profession to assist in the administration of justice, every attorney must act with courtesy to

Court. It is a duty recognized by Rule 15 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988.

According to the respondent, when she went into court on 23 March 1988, she found another Attorney-at-Law, Mr. F. C. Perera, appearing for her client and seeking the permission of Court to file answer. The Court ordered that written submissions should be filed by the defendant on 4 May, 1988 and by the plaintiff on 11 May, 1988 to enable it to decide whether leave was to be granted conditionally or unconditionally.

Written submissions were not filed on the 4th of May, 1988 as directed by the Court. The defendant's Registered Attorney, the respondent, was absent on the 4th of May, 1988. The Court reserved its order for 6 June, 1988. However, on the 6th of June, 1988, the defendant's Registered Attorney was absent again and the Court issued notice for 27 June, 1988. On the 27th of June, the Registered Attorney was not present in Court, but Mr. Welcome appeared for the defendant and applied for a postponement. The Court fixed the 11th of July 1988 as the final date for the filing of the written submissions. On the 11th of July the written submissions had not yet been filed and the Court directed that the matter be called on the 19th of August 1988 for an Order. The defendant was represented on the 11th of July by Mr. Welcome, but the Registered Attorney was absent.

The Registered Attorney explained in her evidence that on 27 June and 11 July she had retained Mr. Welcome, Attorney-at-Law, and personally paid him to obtain postponements on those two dates. The complainant's position was that he himself retained Mr. Welcome and paid him. The importance of determining who retained Mr. Welcome is this: if Mr. Welcome appeared at the request of Chandradeva, then her duty to ensure that her client was represented would have been fulfilled if, having been reasonably satisfied that in the circumstances the attendance of the registered attorney could be dispensed with, Counsel had agreed to dispense with the attendance of the registered attorney. On the other hand, if representation had been arranged by the client himself without the knowledge of the Registered Attorney, her presence could not have been dispensed

with by Counsel and her absence on the 27th of June and the 11th of July would be culpable. The respondent's explanation for her absence on some of the dates was that she had "no instructions", meaning that she had not been paid her fees. In the circumstances it is highly improbable that the respondent paid Mr. Welcome and retained him. The complainant's version that he himself retained Mr. Welcome, who was personally known to him, is a more acceptable explanation of how Mr. Welcome happened to appear in the case.

Learned Counsel for the respondent submitted that an attorney is entitled to be paid for his services. I agree that an attorney is not engaged in a charitable activity and is not obliged to accept any work unless the client is prepared to meet the expense of litigation and to pay the fees he stipulates. I also agree that the continuation of the attorney-client relationship may depend upon the payment of the agreed fees and compliance by the client with the terms and conditions prescribed by the attorney with regard to deposits to meet disbursements. However, I am unable to accept the submission of learned Counsel for the respondent that "this litigant simply refused to remunerate his lawyer. Thus putting the contract to an end." The relationship of attorney and client is much more than an ordinary contractual relationship. It does not terminate automatically upon the non-payment of fees. Nor can it be abruptly terminated. An attorney is ordinarily justified in withdrawing if the client fails or refuses to pay or secure the proper fees or expenses of the attorney after being reasonably requested to do so, provided his right of withdrawal is not exercised at a moment at which the client may be unable to find other legal assistance in time to prevent damage being done. An Attorney is obliged to protect his client's interests as far as possible and should not desert the client at a critical stage of a matter when the withdrawal would put the client in a position of disadvantage or peril. An attorney should not summarily withdraw from a case or matter he has undertaken. He must not suddenly decide to cease to act for the client and jettison him. The attorney must give his client reasonable warning that he will withdraw unless the client fulfils his obligations. The respondent gave no warning of her inability to continue as the Registered Attorney on account of the client's failure to pay her fees. If she was unwilling to continue the professional

account of the failure of the complainant to pay her fees, she should have taken steps to have her proxy revoked after warning the client and giving him a reasonable time to appoint another Registered Attorney. On the other hand, the respondent's conduct shows that she had no intention of withdrawing altogether from the case. She did appear from time to time. Either she did so whenever she was paid; or, if we are to accept the respondent's explanation that she was trying to help a poor man, whenever she was moved by a feeling of compassion. On other occasions, however, she either deliberately abandoned her client because she had not been paid or left him unrepresented owing to her unmindfulness of the client's misfortune from time to time. She did so in violation of the contractual duties undertaken by her in the proxy and in violation of her professional obligations prescribed by Rule 16 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988 which provides that "'where the services of an Attorney-at-Law have been retained in any proceedings in any Court, Tribunal or other institution established for the administration of justice, it shall be the duty of such Attorney-at-Law to appear at such proceedings, unless prevented by circumstances beyond his control."

The phrase "circumstances beyond his control' should be strictly interpreted. In general, the unexpected inability of the Attorney to attend Court for good reasons, supported by sufficient proof. e.g. by way of certificates and/or affidavits or otherwise, which the Court in its discretion considers adequate, would constitute circumstances beyond the control of an Attorney. The explanation of the respondent in her evidence that she had "no instructions" in the sense that she had not been paid, is a well-known, but deceptive and dishonourable, devise used **to obtain postponements** not only in this country but even in England (e.g. see per Lord Upjohn in *Rondel v. Worsley* [1]). However, it is not a circumstance that would ever excuse an Attorney's failure to observe his or her duty to appear in Court.

The respondent in her evidence, and learned Counsel in his submissions explained that the complainant was unco-operative and had failed to give "instructions" in the sense of information relevant for the preparation of the case. Learned Counsel for the respondent

said that the professional relationship had broken down "irretrievably". In her evidence the respondent stated that she did not have the written submissions and therefore thought that her attendance in Court might be detrimental to the complainant. However she correctly acknowledged the fact that if she had no instructions she ought to have attended Court and so informed Court. It was not a circumstance that excused her absence. As for non-co-operation and the breaking down of their professional relationship, if a client, when requested, declines or neglects to give the attorney any instructions after a reasonable time has elapsed since the engagement of his services, or where the client when requested, declines to give such further instructions as may be necessary to enable him to act on behalf of the client, or where the client fails substantially to fulfil an obligation to the attorney regarding his services, after due warning, the attorney should terminate his services. The respondent did not warn the complainant. She was content to maintain the professional relationship, and therefore continued to be liable to fulfil her obligations as the complainant's registered attorney. Assuming the respondent's version that she retained Mr. Welcome to appear on the 27th of June and the 11th of July to obtain postponements because she had work in another court to be true, her absence was inexcusable, for it has been settled a very long time ago that the failure to attend Court because of work in another Court is not an acceptable reason. (See *Herber v. Rand* [2]). The respondent ought not to have accepted conflicting professional engagements. It was not her case that the conflicts arose, as no doubt they sometimes do, on account of circumstances beyond her control.

When the matter came up on the 19th of August 1988, the respondent was absent and the Court ordered the issue of notice for 20th September, 1988.

In the course of her evidence, the respondent stated that she does not appear in Court except as an "instructing attorney".

The respondent was expressly empowered by the proxy and contractually obliged to appear for her client. Moreover she had a

professional obligation in terms of Rule 16 to appear for her client. The fact that she only acted as an "instructing attorney" was not a valid ground for her absence. If the respondent was unwilling to open her mouth in Court, she should have ensured that there was an Attorney retained and instructed by her to appear as Counsel to protect her client's interests. If the respondent had not engaged the services of Counsel, then she was, despite her personal preferences and inclinations, obliged to be present in Court and also speak for her client. It is no excuse for a registered attorney in a contentious civil matter to say that he or she failed to appear in any Court or Tribunal because such a person acts, as a matter of personal preference, only as an "instructing attorney" and never did any advocacy and did not ordinarily appear in Court or that he or she did not usually appear in that type of Court. Every Attorney has a right of audience before all Courts and Tribunals (unless statutorily excluded) and he or she must, therefore, appear in terms of his or her undertakings to the client. If an Attorney has been appointed by a proxy formulated in terms of the Civil Procedure Code, as it is the case in this matter, such an Attorney has every right to conduct the case in Court. Indeed, even where there are two distinct branches of the profession, as for instance in England, it has been held that if a person in the position of an "instructing attorney" (e.g. a "Solicitor") has a right of audience, then he must appear (See *Swannel v. Ellis*[3] cf. *Courtney v. Stock*[4]). Where an attorney intends to function in a contentious civil matter only as a Registered Attorney, and not also as Counsel, he or she should ensure that an Attorney who is to appear as Counsel is retained and instructed. Otherwise the Registered Attorney would be acting in contravention of his or her contractual duties in terms of the proxy. He or she would also be acting in contravention of Rules 15 and 16 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988.

The respondent also maintained that she was not present in Court on the 19th of August 1988 because on the previous date, namely, 11 July, 1988 Mr. Welcome had appeared on her instructions and obtained the date. Not being present herself, she did not know that the date given was 19 August, 1988. Learned Counsel for the

respondent submitted that when Counsel appears and obtains a date, it is a date convenient to him, and therefore "the responsibility shifts to Counsel" to "keep track of the case and appear on the next date or prepare answer or written submissions or whatever document he undertook to prepare before the next date." The decision in *Ranaweera v. Jinadasa and Gunapala*[5] was cited in support of his submissions.

While an Attorney who has been retained and instructed by a Registered Attorney to appear as Counsel for the purpose of conducting the case, and who in so acting, obtains a date to suit his convenience, could be reasonably expected to appear on that date to conduct the case, Mr. Welcome had not been so retained and instructed. According to the evidence of the respondent, she retained Mr. Welcome on each of the two occasions on which he appeared for the specific and limited purpose of obtaining postponements because the respondent was engaged in the business of another Court. There was nothing to show that the date was suggested by Mr. Welcome to suit his convenience. There was no reason for him to have asked for a particular date since he was not the Counsel in the case. The respondent knew the circumstances in which Mr. Welcome was retained and she could not have reasonably assumed that Mr. Welcome would appear once again. There is certainly no duty, as suggested by learned Counsel for the respondent, that an Attorney who is merely instructed to appear for the purpose of requesting a postponement, should, without being instructed to do so, appear again. Having asked Mr. Welcome to obtain a postponement, it was her duty to ascertain what the decision of the Court was in response to his application. This, she should have ascertained from Mr. Welcome, who, she claims, she retained, or by examining the Journal Entries from time to time, as a Registered Attorney should do, especially if he or she has not been in Court on account of his or her presence having been dispensed with by Counsel. Having ascertained the next date, the respondent should have either instructed Counsel to appear on that date or personally appeared for the client on that date. *Ranaweera v. Jinadasa and Gunapala* (*supra*) does not assist the respondent. If a registered Attorney has not appointed another Attorney to act as Counsel, or having appointed Counsel, he has not agreed with Counsel that the attendance in

Court of such Registered Attorney may be dispensed with, then such Registered Attorney must personally keep a track of the dates of hearing, having regard to the usual way in which dates of hearing are fixed and notice is given in the Court or tribunal, and appear when the case comes on for hearing or other purpose decided or ordered by the Court or Tribunal. In the circumstances, the absence of the respondent on the 19th of August 1988 was an inexcusable contravention of her obligation to appear for the complainant.

On the 20 of September, the respondent attended Court and found Mr. F. C. Perera, whom she had neither briefed, nor retained nor instructed, appearing for her client. However, it seems the respondent was quite satisfied having her appearance marked as the "instructing attorney." On that day the Court made Order permitting the defendant – the complainant in the matter before us – to file answer unconditionally on the 26th of October 1988.

Learned Counsel for the respondent submitted that the Registered Attorney's absence on certain dates between 22 March, 1988 and the 20th of September, 1988 "had not caused any prejudice to the complainant as the Court had allowed the respondent to file answer unconditionally." In my view, this is an erroneous way of approaching the matter. If an act of professional misconduct results in a benefit to a client, does it mean that the attorney is excused? I do not think so. What we have for consideration is not the result of misconduct, good, bad or indifferent, but whether there was misconduct. In a matter of the kind before us, an act or omission is either proper or improper at the time it was done and not by reference to its consequences. This quite obvious principle was illustrated in the Australian case of *Law Society of New South Wales v. Starky,*[6]. In that case, the clients whose money had been "juggled with", as the Court observed, by their Solicitor "in pursuance of his land speculation schemes", fortuitously escaped without loss. The Solicitor was, nevertheless, struck off the Roll.

The Court, as we have seen, had ordered that answer should be filed on the 26th of October 1988. However, when the matter came up on the 26th of October, the answer had not been filed and the Court fixed the matter for *ex parte* trial on the 7th of November 1988. The

defendant was present on 26 October, but he was unrepresented by either Counsel or by his registered attorney.

When the matter came up on the 7th of November, the defendant, D. E. Daniel, was absent and unrepresented and judgment was given in favour of the plaintiff.

Daniel complained to the Bar Association by his letter dated 14 March 1991. He said, among other things, that, although he had "handed over" his case to Chandradeva, she had "only appeared twice", and that he "came to hear" that Chandradeva "was supporting the other party".

With regard to the allegation that Chandradeva was guilty of disloyalty and was "supporting the other party", the complainant adduced no admissible evidence in that regard either before the Bar Association or in these proceedings and I reject that allegation as being unproved.

Daniel also complained to the Bar Association as follows:

"I trusted her and paid Rs. 750/- to file the answer, but as my case was not called for months, with the help of another Proctor I went and checked in the Record Room and found out that the answer has not been submitted. I went and asked Chandradeva, she told me that she has filed the answer and I am mad." (Sic.) "After a month or so, I came to hear that the case was called and judgment given, the Plaintiff was present." (Sic.) "I again approached Chandradeva, she told me that it is not so. I once again went to meet Chandradeva at Kalubowila, she wanted me to come to her office but she did not come. Thereafter I gave her three telephone calls but she was evading and did not take up the calls. She undoubtedly has cheated me and let me down very badly.

Sir, I appeal to you, to kindly ask her to give me a letter revoking the proxy, and as I am jobless and undergoing great hardships, I managed to settle her up to date. I do hope that you would help me in this matter and to kindly get me the letter of revocation as early as possible."

It is not necessary for our purposes to go into the correspondence between the Bar Association and the respondent although some time and effort was spent on the matter during the leading of evidence and in the submissions of learned counsel. What needs to be noted is that the Professional Purposes Committee of the Bar Association on the 11th of July 1992, after an inquiry at which the respondent was not present despite notice to her to be present, recommended that the matter be reported to the Chief Justice.

On the 19th of May 1993, a Rule was issued under the hand of the Registrar of the Supreme Court referring to the complaint of Daniel and the Report of the Panel of the Professional Purposes Committee of the Bar Association and stating that the complaint and report disclosed that the respondent has committed "acts of (a) deceit; and (b) malpractice; and/or (c) crime (criminal breach of trust) under section 42 (2) of the Judicature Act No. 2 of 1978."

For the reasons explained above, I am of the view that the failure of the respondent to appear in Court on the various dates referred to was in dereliction of her professional duties as a Registered Attorney-at-Law.

I turn now to the question of deceit. There was no dispute with regard to the fact that the complainant paid the respondent a sum of Rs. 750. The complainant states that this sum was paid to the respondent for the preparation of the 'Answer' to be filed in the District Court but that no 'Answer' was prepared or filed, and he was unrepresented when the matter came up in Court, with the result that the matter was decided *ex parte* against him. The respondent, however, states that the money was paid by her to Mr. Shankey Parathalingam for the preparation of **written submissions.** Although there was some confusion at one stage, it was eventually established by the evidence that the sum of Rs. 750 was paid two weeks before the date for the filing of the answer, namely the 26th of October 1988. By this time there was no need to file written submissions to enable the Court to decide whether the answer should be filed conditionally or otherwise. That matter had been already decided by the Court on the 20 of September. The respondent did not call Mr. Parathalingam to give evidence. She had not asked Mr. Parathalingam whether he

would give evidence. Understandably so, for Mr. Parathalingam had nothing to do with Daniel's case. If the respondent had obtained the written submissions of Mr. Parathalingam after paying him the sum of Rs. 750 entrusted to her for the purpose of paying his fees; why did the respondent not file the submissions in Court, or at least make them available to Mr. Perera, the Counsel appearing instructed by her when it might have been of some use to him in making his oral submissions? The written submissions were not produced in these proceedings. I do not think it was possible to do so simply because they never existed. An Attorney should have and maintain full and accurate records so that monies paid or entrusted to him could be accounted for. He should have properly written books of account showing, among other things, the amounts of receipts and disbursements against relevant dates and particulars of receipts and disbursements. The respondent in her evidence said that she had no records of moneys paid to her. She was unable to demonstrate by reference to any record when or why she received payments or made disbursements. She admitted receiving the sum of Rs. 750 and said that she had paid it for written submissions, but she has failed to establish it by reference to records which she should have maintained. The money was in my view not appropriated for the specific purpose for which it was entrusted to her, but for her private purposes. Rule 28 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988 states that "Attorneys-at-Law shall not appropriate any funds of his client held by him in trust for a specific purpose except with the permission of the client." I am of the view that the respondent violated that provision by appropriating the sum of Rs. 750 to her own purposes rather than the purpose intended by Daniel, her client. In my view the respondent obtained the sum of Rs. 750 from the complainant on the **pretext** of having the 'Answer' prepared by Counsel. She never had any intention of paying Counsel to do so, for her position was that, albeit erroneously, she presumed that Mr. Perera, because he was in Court on the 20th of September and was aware of the fact that 'Answer' was to be filed on 26 October 1988, had a duty to and would prepare and file the 'Answer' in time. In the circumstances I hold that the respondent was guilty of deceitful conduct and a breach of trust that was criminal in nature. The respondent is unfit to be a member of the legal profession.

Learned Counsel for the respondent drew our attention to the standard of proof in matters of this nature. Where the conduct of an attorney is in question in disciplinary proceedings, it requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that a just and correct decision has been reached. The importance and gravity of asking an attorney to show cause makes it impossible for the Court to be satisfied of the truth of an allegation without the exercise of caution and unless the proofs survive a careful scrutiny. Proof beyond reasonable doubt is not necessary, but something more than a balancing of the scales is necessary to enable the Court to have the desired feeling of comfortable satisfaction. A very high standard of proof is required where there are allegations involving a suggestion of criminality, deceit or moral turpitude. I have very carefully scrutinized the evidence in this case and in all the circumstances established I have a comfortable satisfaction that a just and correct decision has been reached.

For the reasons stated in my judgment, I make the Rule absolute and make order that Chandradeva, the respondent in these proceedings, shall be forthwith struck out of the Roll of Attorneys-at-Law.

WADUGODAPITIYA, J. – I agree.

WIJETUNGA, J. – I agree.

Rule made absolute. Respondent struck off the roll of Attorneys-at-Law.