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**(1997) 11 AHC CK 0026**

**In the Allahabad High Court**

**Case No :** C.M.W.P. No. 25505 of 1997, Connected with other 3 Writs

Siddhartha Kumar and others

APPELLANT

Vs

Upper Civil Judge, Senior Division, Ghazipur and others

RESPONDENT

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**Date of Decision :** 20-11-1997

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1(2), Order 20 Rule 6B, Order 21 Rule 32, Order 3 Rule 4(2), Order 38 Rule 5  
Constitution of India, 1950 — Article 226, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 164, 483  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21

**Citation :** AIR 1998 All 265 : (1998) 1 AWC 593 : (1998) 2 CivCC 371 : (1998) 1 UPLBEC 587

**Hon'ble Judges :** O.P. Garg, J;M. Katju, J

**Bench :** Division Bench

**Advocate :** S.K. Verma, for the Appellant;

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## **Judgement**

O.P. Garg, J.—More often than not, this Court is faced with the petitions under Article 226 of the Constitution of India in which an unpalatable. Irritating and perturbing prayer is made that the subordinate courts be commanded by means of writ of mandamus to proceed with, conclude and decide the long pending suits, appeals, revisions or other civil proceedings, including execution applications, etc., expeditiously or/and within the time to be phased by this Court. As exemplars, the following four writ petitions have been culled out to highlight the malady about the law's delays :

1. Civil Misc. Writ No. 25505 of 1997--The petitioners filed Suit No. 204 of 1958 for the relief of permanent injunction which was decided in terms of compromise on 8.2.1960. The Judgment debtor-defendants who are the respondents in the writ petition violated the terms of the compromise. The petitioner-decree holders had to file another Suit No. 69 of 1969 which was decreed on 20.7.1971. The appeal preferred by the judgment debtor-respondents was dismissed on

13.12.1971. The defendant-Judgment debtors continued to flout the decree. Consequently, the plaintiff-petitioners filed an application under Order XXI, Rule 32 of the CPC [for short "the Code"] on 11.10.1994 (registered as Misc. Case No. 139 of 1994) in the court of Munsif (now Civil Judge. Junior Division), Mohammadabad. district Ghazipur. It appears that the trial/executing court went on postponing the matter, for one reason or the other, and ultimately on the application of the petitioner-decree holders, the case was transferred to the court of Additional Civil Judge (Senior Division)/Additional Chief Judicial Magistrate, Ghazipur. The respondent-judgment debtors filed objections u/s 47 of the Code raising almost the same questions which were the subject-matter for decision in Original Suit Nos. 204 of 1958 and 69 of 1969. The grievance of the petitioner-decree holders is that they are facing the same problem before the transferee court as the matter has been allowed to pending by adjourning the case on different dates and ultimately, on 1.7.1997 stayed the execution proceedings. The petitioner-decree holders have come forward before this Court with the prayer that the court below be directed to decide the application under Order XXI, Rule 32 of the Code and the objection filed by the judgment debtor-respondents without loss of time as the decree passed way back in the year 1960 in Suit of 1958 continues to be fruitless due to the recalcitrant attitude and the machinations of the Judgment-debtor-respondents.

2 Civil Misc. Writ No. 24675 of 1997. --A suit bearing No. 90 of 1972 (later on numbered as O. S. No. 286 of 1976) was instituted in the year 1972 by the present respondent Nos. 2 and 3 for partition of the share of the plaintiff-petitioners in houses, seventeen in number, situate at Jatipura Ward Varanasi and the grove land situate in village Kazi Saidullapur and other plots of land in village Alampur Varanasi. originally owned and possessed by the petitioners' great grandfather Ram Saran Lal. On the basis of a forged will of Ram Saran Lal, the respondent Nos. 4 and 5 applied for mutation, which was disallowed by the Administrator on 22.12.1959. Appeal No. 1144 of 1960 filed by the respondent Nos. 4 and 5 was allowed on 16.6.1960 on the basis of which they started interference with the rights of other co-sharers in the property which was sought to be partitioned. After the filing of the Suit No. 90 of 1972 by the respondent Nos. 1 and 2. the present petitioners also filed a suit for partition which was numbered as Suit No. 369 of 1973. This subsequent suit was stayed u/s 10 of the Code. The respondent Nos. 4 and 5 went on getting the Suit No. 90 of 1972 adjourned and after having remained successful in protracting the suit for about 8 years, filed a written statement on 19.9.1980. Since then the partition suit instituted in the year 1972 is pending and even the issues have not been framed. The result is that the two other suits of partition, being suit Nos. 90/1972 (286/76) and 369 of 1973 are virtually lying dead. It is prayed that the court below, i.e.. Ist Additional Civil Judge (Senior Division), Varanasi be commanded to decide the suits as early as possible or within the time prescribed by this Court.

3. Civil Misc. Writ No. 23718 of 1997. --A prayer has been made that Suit No. 653 of 1988 pending in the court of IIrd Additional Civil Judge (Senior Division),

Dehradun be directed to be decided as soon as possible. The suit was instituted on 26.10.1988 for partition of house Nos. 64B and 64D Lyton Road (Subhash Road), Dehradun. Written statements were filed by the defendants in the year 1989 claiming themselves to be exclusive owners of the said houses. The suit remains unattended to.

4. Civil Misc. Writ No. 23721 of 1997.--was instituted in the court of Civil Judge (Senior Division), Ghaziabad on 20.10.1994 for recovery of Rs. 4,32,388 with interest pendente lite and future. The plaint was accompanied by an application under Order XXXVIII, Rule 5 of the Code for attachment before judgment. The defendants in the said suit have not filed written statement in spite of the fact that a number of opportunities were afforded to them. On 11.3.1996. the plaintiff-petitioner filed an application under Order VIII, Rule 10 read with Section 151 of the Code with the prayer that since the defendants have failed to file written statement, the suit be proceeded with ex parte. The plaintiff-Lalit Kumar has approached this Court to ventilate his grievance that the court below has without any justification, failed to proceed with the suit. It is prayed that a direction be issued to the court below to proceed with the case (Suit No. 1174 of 1994) and decide the same.

2. A bare perusal of the order sheets of the aforesaid four cases brought to the notice of this Court reveals that the concerned Presiding Officers of the trial courts have been postponing the old cases in a casual and routine manner giving an impression that there is something wrong somewhere ; either they have fallen prey to the designs of one party or the other who is obviously interested only in procrastinating indefinitely the suit or proceedings with an avowed object to deprive the successful party of the fruits of the litigation, or there are certain circumstances and constraints which have made them non-starter. One thing, however, is easily discernible that there is lack of sense of responsibility and seriousness in taking up the old case for disposal. There is antipathy from every corner about the treatment to be prescribed for the old cases. A break-through has to be made to improve the situation. Before embarking upon some of the therapeutic measures, the magnitude of the problem may be considered in its historical retrospect with reference to the concern shown by different agencies and the steps taken to remedy the situation.

3. The imperative need of quick disposal of cases was felt in ancient times. Its echoes are to be found in Mahabharat and Ramayana. In History of Dharmashastra by Dr. P. V. Kane.1973 Ed. III 243 under the head Vyauhora (Law and Administration of Justice), Chapter XI. it is recited :

"..... The Mahabharata (Anusasana 638 and Chapter 70) and Ramayana say that if a King intent on pleasures does not show himself to litigants who approach him for decision, he would suffer like King Nriga. The Sukranitisara (IV 58) also says the same thing. In Ramayana (VII 53-54) King Nriga is said to have been cursed to become a chameleon for a long period by two Brahmanas who had a dispute about the ownership of a cow and could not see the king for many days.

Megasthenes (Frag. XXV1L. pp. 70-71) says "the king remains the whole day in court without allowing the business to be Interrupted". Kautilya (1.19) gives the advice that, when in court the king should not cause petitioners or litigants to wait long at the door, for when a king makes himself inaccessible, those who are near him create confusion about what should or should not be done, whereby the king engenders disaffection among his subjects and makes himself a prey to his foes."

Similarly, during the Mughal period instructions were occasionally issued by the Emperors to Judges to expedite the trials. In Administration of Justice in Medieval India by M. Basheer Ahmad, in Chapter "Working of Judicial Machinery", pages 261-262 (1941 Ed.), the author states :

"..... Those who apply for justice, states one of Akbar's Alms "let them not be inflicted with delay and expectation. Let him object to no one on account of his religion or sect."

Bernier, a contemporary traveller in the 17th Century, India, thinks that the suits were "speedily decided". According to Terry, a European missionary attached to the Staff of Sir Thomas Roe, the trials were "conducted quickly". Manucci says that the Emperor "causes the judgment he pronounces to be executed on the spot". But, it seems special emphasis was laid on the speedy decision of criminal cases. In civil cases sometimes the proceedings took considerably more time. Abdul Wahab's civil suit was referred twice within the space of one year by the Quzi-e-Subah to Jahangir for orders on preliminary issues only, as the defendant was a high personage of the Imperial court [Tuzuk 306 S.A.]. The Governor of Kara disapproved of the delay in Hamiyat Ali v. Gauri Shankar (Baquiat, p. 32), and Sikandar Lodi, is said to have taken to task his Chler Mir AdJ for prolonging proceedings for two months in a suit which he could finish in one day."

"Individual rulers, as Sir Henry Elliot observes. In most cases "never showed any delay" (Vol. (2) p. 411). Fryer who visited India in the reign of Aurangzcb speaks of law suits being soon ended."

4. The frightful problem of mounting arrears of cases in the subordinate courts is one of the greatest challenges which the Judiciary is facing today. It has subjected the Judicial system, as it must, to severe strain. Though the strain at present, is severe, the problem of delay in the disposal of cases is not a recent phenomenon. It has been in existence since a long time. The gradual increase in the institution of cases coupled with failure of disposal to keep pace with them, has resulted in an alarming rise in the pendency of cases in the subordinate courts. The problem has assumed gigantic proportions inviting scathing criticism. The contributory sources and factors are many. It is not the Judiciary alone which has to bear the brunt of the criticism. To deal with the chronic disease in the body of the administration of justice, several Law Commissions and Committees have scratched their heads to find out a solution to the problem. The first Committee, known as Rankin Committee, was appointed in 1924. It was followed by a report

of the High Court Arrears Committee, 1949, set up by the Central Government under the Chairmanship of Justice S. R. Das. In 1972, Justice Shah Committee was appointed. The report of Justice Satish Chandra Committee was also submitted and in the year 1990--Malimath report came into being. Besides these reports of the Committees, the Law Commission of India made as many as 14 reports (14th. 22nd. 27th. 54th, 58th. 77th. 79th. 80th, 99th, 120th. 121th, 123rd, 124th and 129th) in one way or the other to deal with the problem of accumulation of huge arrears of cases and disposal of old cases at various stages and levels of courts. The very fact that the problem of arrears has received the attention for such a long time and has been considered by so many high powered Committees, and yet continues to vex all concerned, is enough to indicate that the problem, by its nature, is not so easy to solve. Concern has been voiced by eminent Jurists, administrators, Parliamentarians and politicians at different platforms but the problem still remains unaffected, unabated and unsolved. In the light of the recommendations made by the Law Commission and the various Committees efforts have been made to tinker with the problem but the surging problem remains insurmountable.

5. There was, no doubt, a time when Judiciary was highly respected by the people who had faith in the quality of justice, dispensed with promptly by the Judges. Now the people have started losing faith in the entire judicial system because of every day increasing arrears. Remarks have come to be made expressing the lamentation in various forms. The whole nation, it was said, is in a Juridical abyss. Many today are dissatisfied over the courts' conduct. All through the years men have protested at the laws' delay and counted it as a grievous wrong, hard to bear. It is linked amongst the whips and scorns of the time. Some talk of it. how it exhausts patience, courage and hope. In substance, it is a Judicial anathema, for all who are concerned with the litigation process. Even the aggrieved persons have, at times, been found remorseful and repentant for filing the case. It is a usual phenomenon to hear the conversation between suitors that they are not likely to reap the fruits of litigation during their life time. Eminent Jurists have gone even to the extent of observing that our Justice Delivery System is cracking under the oppressive weight of delay and arrears. It has been repeated ad nauseam that to delay Justice is to deny justice. An eminent person not less than the former Chief Justice of India, J. C. Shah made the following remarks, which amply exhibits the present situation :

".....The accumulation has reached such a proportion that there is danger of Judicial administration breaking down in future years, if the cases before the courts increase at the rate at which they are mounting today. One shudders to think what the position of Judicial administration will be in a decade or two, if the present worst disparity between in flow and disposal of cases continues. Unless this problem is tackled the litigants might be gripped with a sense of frustration and loss of confidence in courts and Tribunals."

The present state of arrears in our Law Courts and the long delays in the disposal

of cases are Justly causing concern. From time to time, public attention has been drawn to this sorry state of affairs and though the matter has been frequently discussed both in the Parliament and outside, yet the problem has defied any solution. Pt. Jawahar Lal Nehru, while addressing a conference of State Law Ministers expressed alarm at the slow pace of the wheels of justice and pleaded for a change of attitude and a genuine effort to accelerate the judicial machine which according to him was rusty and out-moded.

6. A compilation of mostly identical but a few divergent suggestions of eminent jurist. Judges, legislators, committees and commissions would show that all are raising "alarm" at the mounting arrears and delay in disposal of cases. Almost unanimous view is that unless something "radical" is done the Judicial system would "crash and collapse under its weight."

7. There are other factors also which are contributory for the delay in the disposal of cases. It is expected from the Judges that they will dispense justice in a cool, peaceful atmosphere. Due to the attitude of certain members of the Bar not only the disposal of the cases is delayed but it puts the judicial officers under mental strain. Sometimes the atmosphere of the court rooms is so hot up that mental equilibrium of the judicial officers is unnecessarily disturbed. It has been observed by the Apex Court in K P. Tewari v. State of M. P. AIR 1994 SC 103 :

"It has also to be remembered that the lower Judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks, more correctly up to their nostrils."

8. In spite of the several constraints, stresses and strains, the courts, by and large, enjoy high prestige and command, great respect amongst people. This is because of the moral authority of the courts and the confidence the people have in the role of the court to do justice between rich and poor, mighty and weak, State and citizen, without fear and favour. This feeling of the common people in general and the litigants in particular, is eroding on account of the impasse which it is difficult to overcome.

9. Despite the basic soundness of our judicial system some weaknesses have manifested themselves. One such striking weakness is that of undue delay in the disposal of cases. This weakness has undoubtedly affected the image of the system and undermined people's confidence in its efficacy.

10. It is not intended to burden this judgment by recounting the various factors and causes, which have brought about the present situation. Suffice it to say succinctly that the most common cause put forth for the present malaise are litigation explosion ; radical change in the pattern of litigation ; increase in legislative activity : inordinate concentration of work in the hands of some members of the Bar ; lack of punctuality amongst the Presiding Officers, long arguments and prolix judgments ; lack of priority and interest in disposal of old cases ; granting of unnecessary adjournments ; non-appearance of the lawyers

in courts due to strike and other allied causes.

11. The general public and even the administrators squarely lay the blame mainly on the Judiciary and it is a common belief that the courts and those connected with the courts are responsible for the mess. This general feeling blaming only the Judiciary is the reflection of the attitude that one has not gone deep in the roots of the problems or has not been foreseeing and analysing the causes that have created and accelerated the problem. This again is a field which may be subject-matter of deep research. The causes and reasons for the alarming mounting arrears and who is responsible for bringing about the situation, are such matters which are left to be considered by some other forum. At the moment, for the purpose of this judgment, we are concerned to improve upon the situation within the existing legal frame work and the accentuating circumstances.

12. The nature and the magnitude of the problem may be further appreciated if the position regarding arrears in the subordinate courts of the State is noticed from the following chart :

#### I. PENDENCY OF CIVIL CASES IN THE SUBORDINATE COURTS OF THE STATE AS ON 30TH JUNE. 1997

##### 1. Cases

concerning

Original Jurisdiction

8.35,184

##### 2 Cases

concerning

Appellate Jurisdiction

89.568

Total

9.24,752

(This figure does not include 28,423 pending cases before the family courts).

#### II. DURATION OF PENDENCY OF CASES

Less than 6 months old

61032 months old

1 to 3 years old

3 to 10 years old

Over 10 years old

Grand Total

1. Original Jurisdiction

1.28.228

1.66.080

2.61.578

2,26,711

52,587

8.35,184

2. Appellate Jurisdiction

15,685

20,569

27.848

23.197

4.269

89.568

Total

1,43.913

1,86,649

2.89,426

2,47,908

56,856

9,24,752

Thus, there are 2,47.908 cases, which are more than three years old while as many as 56,856 cases are more than ten years old.

The above staggering figures are not only disquieting but astonishing about the huge pendency of the cases before the subordinate courts of the State.

13. The delay in disposal of old cases, apart from causing hardship to the parties, has a human aspect and has the effect of embroiling succeeding generations in litigation started by the ancestors. The Supreme Court has taken note of this situation and the remarks made in two seminal decisions touching the problem may profitably be referred to. In *Sant Narain Mathur and others v. Ram Krishna*

Mission and others 1970 (2) SCC 730 . the suit giving rise to the appeal before the Supreme Court was instituted in the year 1958. It remained pending for more than 14 years in the trial court and the High Court. Disallowing the prayer to raise a new plea, the Supreme Court noted with concern that we have reached the culminating point of a litigation which arose out of a will executed in the last century and which has been pending in one court or the Other since before the dawn of Indian Independence. The question is whether we should call a halt and put an end to this litigation or whether we should allow the litigation to take a further meandering course which must necessarily be the case if we allow the new plea to be raised in this Court". The other part of the celebrated observations touching the present controversy made in the aforesaid case were reiterated by the Supreme Court in a subsequent case of Bechan Pandey and Others Vs. Dulhin Janki Devi and Others, , in which the prayer for remanding the case to the trial court was rejected. Some of the relevant aspects of the controversy in hand are made clear from the following observations :

".....Apart from that, we find that the suit out of which the present appeal has arisen was filed as long ago as January, 1950. From the title of the appeal we find that many of the original plaintiffs and defendants have during this period of more than a quarter of century departed and are no more in the land of the living, having bowed as it were to the Inexorable law of nature. They are now represented by their legal representatives. To remand the suit to the trial court would necessarily have the effect of keeping alive the strife between the parties and prolonging this long drawn litigation by another round of legal battle in the trial court and thereafter in appeal. It is time, in our opinion, that we draw the final curtain and put an end to this long meandering course of litigation between the parties. If the passage of time and the laws of nature bring to an end the lives of men and women, it would perhaps be the demand of reason and dictate of prudence not to keep alive after so many years the strife and conflict started by the dead. To do so would in effect be defying the laws of nature and offering a futile resistance to the ravage of time. If human life has a short span it would be irrational to entertain a taller claim for disputes and conflicts which are a manifestation of human frailty. The courts should be both to entertain a plea in a case like the present which would have the effect of condemning succeeding generation of families to spend major part of their lives in protracted litigation. It may be appropriate in the above context to reproduce what was said in the case of Sant Narain Mathur and Others Vs. Rama Krishna Mission and Others, (p. 737. para 15) :

"It is time, in our opinion, that we draw the final curtain on this long drawn litigation and not allow its members to smoulder for a further length of time, more so when the principal contestants have all departed bowing as it were to the inexorable law of nature. One is tempted in this context to refer to the observations of Chief Justice Crewe in a case concerning a peerage claim made after the death without issue of the Earl of Oxford. Said the learned Chief Justice :

"Time hath its revolution ; there must be a period and an end to all temporal things--an end of names and dignities and whatsoever is terrene and why not of De Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Why, which is more and most of all. where is Plantagenet? They are all entombed in the urns and sepulchres of mortality. What was said about the inevitable end of all mortal beings, however eminent they may be is equally true of the affairs of mortal beings, their disputes and conflicts, their ventures in the field of love and sport, their achievements and failures for essentially they all have a stamps of mortality on them.

One feels tempted to add that if life like a dome of many-coloured glass stains the while radiance of eternity, so do the doings and conflicts of mortal beings till death tramples them down."

14. Every Presiding Officer of the subordinate court is supposed to manage his own court affairs. It is expected that he is aware of the principles of court management. He is duty bound to take up and decide the old cases and as a matter of fact, direction on the judicial side to the Presiding Officers of the subordinate courts to take up and decide the particular old cases should not be necessary.

The High Court, on its administrative side, has remained alive to the situation and from time to time has issued instructions in the form of circular letters for the guidance of the Presiding Officers of the subordinate courts with a view to ensure that old cases are expeditiously disclosed of. But in course of time, as well as in practice, the administrative instructions are either forgotten or ignored and in any case, certainly, they are not being followed due to the various constraints and variety of reasons, including the shortage of Judges and the apathetic attitude of the Presiding Officers. As far back as in 1925, the Rankln Committee, the first of its kind, which was constituted to look into the problem of existence of arrears, remarked :

"The existence of a mass of arrears takes the heart out of a Presiding Officer. He can hardly be expected to take a strong interest in preliminaries when he knows that the hearing of the evidence and the decision will not be by him, but by his successor after his transfer. So long as such arrears exist, there is a temptation to which many Presiding Officers succumb to hold back the heavier contested suit and devote attention to the lighter ones. The turn out of decisions in contested suits is thus maintained some where near the figure of the institution while really difficult work is pushed further into background."

Various methods have been tried to improve the situation on administrative side but unless a court can start with reasonably clean slate improvement of method is likely to tantalise only. The circular letters on the subject issued by the court on administrative side which are intended to tone up the disposal of old cases and provide for curative measures have virtually been reduced to dead letters to be forgotten conveniently. Concern shown by the court in the matter of

expeditious disposal of old cases is evident from the following letters, which are being quoted in extension with a view to remind the Presiding Officers of their existence:

I.C.L. No. 65 dated 31st October, 1962 :

"In order to avoid accumulation of old cases the tendency of leaving such cases as are of complicated nature involving lengthy arguments recalcitrant witnesses, voluminous documents and intricate law points and taking up only such cases as are short and convenient for heavy disposal should be deprecated. The court would like to impress upon the officers that while passing remarks on their out turn these facts are also taken into account and consideration is given to disposal of old and complicated cases.

The Court has, after due consideration of all aspects of the question, decided that the following procedure should be followed by all concerned ;

(1) Presiding Officers should make concentrated efforts to reduce the arrears in all categories of cases as soon as possible.

(2) Presiding Officers should be instructed by the District Judge to do their proper share of work and follow the instructions given by him.

(3) Cases should be taken to be "old" according to the following time schedule :

(a) Regular suits in Munsifs and Civil Judges Courts--More than a year old,

(b) Small Cause Suits--More than three months old.

(c) Regular Civil and Revenue Appeals--More than six months old,

(d) Miscellaneous Civil Appeals--More than three months old.

(4) At the beginning of each quarter all officers should draw up a plan for disposal of old suits and cases chronologically and send a copy thereof to the District Judge to enable him to suggest modifications, if any. and to see, when inspecting the diaries and when scrutinizing the returns whether the programme was adhered to and. If not whether reasons for departure were sufficient.

(5) Out of the pending cases the District Judge, at the beginning of each quarter, should be in a position to decide tentatively as to how many and which classes of cases are to be transferred to different courts. The transfer should, as far as possible, be made then to subordinate courts to formulate their plan. The current institution should continue to be transferred in the normal course to the junior officers. Where there are more than two officers of the same class at least one of them usually the junior most should be entrusted with the disposal of current cases so that new institution may not in their turn become old.

(6) The District Judge should call for and examine the diaries of subordinate courts from time to time. At the headquarters this should be possible at short intervals. He should furnish necessary guidance in the matter of arrangement

and point out short comings where they exist.

(7) Adjournments in old and explanatory cases should not be granted as a matter of routine and should be an exception rather than the rule. In an old case ready for hearing, if an adjournment becomes unavoidable, it should not be unduly long and should be granted in consultation with the lawyers with a specific understanding that no further adjournment will be granted on the next date fixed and in case of illness of lawyer already engaged arrangement for another lawyer appearing in his place will be made.

(8) Interlocutory matters should be disposed of expeditiously and proper attention should be given to final decree proceedings.

(9) A list of old cases which are not ready for hearing on account of proceedings for service of substitution etc., being in progress should be prepared and brought upon date and placed every fortnight before the Presiding Officers who must scrutinise it and pass necessary orders to expedite the proceedings. Such lists should be examined by the District Judge also at the time of inspection of the court.

(10) in disposing of cases the subordinate courts should give top priority to the cases categorised above. New cases should not be taken up unless the old cases, are disposed of or there are reasons to be recorded in writing on the order sheet for doing so. Along with the monthly returns, a certificate should be submitted to District Judge that no preference was given by subordinate courts to the new cases over the old cases.

In achieving the above target, resort should not, however, be taken to methods involving rash or sketchy orders being passed in undue haste and quality not be sacrificed at the alter of quantity."

2. C. L. No. IO4/IVth-36 dated 16th June, 1976 :

".....To ensure expeditious disposal of civil cases, following Instructions are issued for guidance of. and compliance by, the Presiding Officers :

(1) Parties shall have the responsibility of bringing any witness required to give evidence or to produce documents.

(2) (a) Hearing of a suit should be continued from day to day until all the witnesses in attendance have been examined, it should not be adjourned unless necessary for exceptional reasons to be recorded.

(b) The court may record statements of witnesses who are present even if the party or his pleader is not present.

(3) Costs imposed in connection with adjournment should be deposited in the court. It should, however, be paid after the disposal of the cases.

(4) The judgment recorded by the Presiding Officers in civil cases should be precise and not prolix. It should deal with essentials and argumentative.

3. C. L. No. 8/IV-1-80Admn. (A) dated 18th February, 1981 :

"(1) The District Judge should keep a close watch on the diaries of the Munsifs directing them not to give adjournments for more than a week after the case is ripe for hearing.

The cases adjourned for one week should be carried over and fixed in the next week, except, of course in genuine cases in which a longer adjournment is needed. While granting longer adjournments, the officer should record in brief the reasons thereof.

(2) Too many cases should not be fixed in a day's cause list to avoid harassment to the litigants coming from distant places. The Presiding Officers should adopt such means as may lead minimise the duration of disposal of cases.

(3) Special attention should be paid to the disposal of order cases."

15. The above circular letters are to be read in conjunction with the expectation which this Court has from its subordinate judicial officers. The anxiety of the court in the matter is manifested in the following circular letter :

"C. L No. 4 dated 3.2.1976 :

The court is trying to improve the service and living conditions of judicial officers in many and far reaching ways. At the same time it has become Imperative that the judicial officers should also galvanise themselves, adopt a more positive attitude to their work and be efficient to acquire real grip and command over their work.

The nation honours judicial officers through the convention of calling them learned--learned Munsif, learned Magistrate, learned Judge. The High Court now requires each officer to justify the appellation and in fact be learned and capable. To this end the following suggestions are made for compliance :

(1) Every officer must be punctual. He should be in his chair in the court room at the stroke of 10.30 a.m. and 2 p.m. That will go a long way in sustaining the good image of the judiciary among the litigants.

(2) The officers should read Order XI. CPC and realise the difference between a party trying to know the nature of his opponent's case and a party trying to know the facts which constitute the evidence of his opponent's case. The parties should be encouraged to utilise the provisions of Order XI. These provisions immensely cut short the oral evidence, thus saving the time (aken in disposal of a case. The disposal of the officers will improve.

(3) There is a growing tendency to remand civil appeals at the slightest pretext. The High Court takes a serious view of unnecessary remands of suits. The officers should study the provisions in Order XLI, CPC for taking additional evidence and remitting an issue. They should be aware that remand is not a substitute for these two. A remand increases the life of litigation by several

years, which is a serious matter."

16. In the wake of the above administrative instructions which every judicial officer is bound to comply, and the confidence reposed by the court in their ability and competence, the judicial officers have to bear in mind that they should rise to the exalted judgment seat to do quick and real justice.

17. If past experience is of any value, one can easily conclude that the Judicial officers by and large for variety of reasons and existing constraints avoid in taking up time consuming, energy exhausting old cases for disposal. The administrative instructions of the High Court have failed to evoke the desired response and impact.

18. Should the old cases be allowed to grow older to meet their own death? is the delay in disposal of cases Indispensable? is the evil of law's delays chronic and incurable? Can the cankers be not weeded out? Can the cancerous spots be not operated upon? These are some of the questions which have direct nexus with the attitude and zeal of the Presiding Officers.

19. The attitude of positive apathy and parsimony in pushing aside the old cases--is well known. Should the superior court having the power of superintendence under Article 227 of the Constitution sit idle over the matter finding itself in a State of helplessness? Or, it should awake and arise in the matter to exhort its subordinate Judicial officers to achieve the results expected of them. The administrative instructions having failed to produce the desired results, the only answer to all the above questions, in our considered view is-- issue a writ of mandamus. In *Waryam Singh v. Amor Nath* AIR 1954 SC 2215 , the Supreme Court discussed the nature of superintendence to be exercised by High Courts under Article 227. It was made clear that the superintendence is not merely administrative but also judicial. In AIR 1975 1297 (SC) . It was held by the Supreme Court that the power of superintendence of High Court under Article 227 being extraordinary, is to be exercised most sparingly and only in appropriate cases. A comparison of Articles 226 and 227 shows that the power of superintendence given to the High Court under Article 227 is in addition to the powers under Article 226 to control the inferior courts and Tribunals by means of writs. The power of the High Court, under Article 227 is not as exclusive as the power under Article 226 in certain respects while it is wider in other respects. Therefore, under Article 227, the High Court may exercise power in cases of grave dereliction of duty for which no Other remedy is available. The object of Article 227 is not confined to giving relief to the litigants. That object is to keep the courts within legal bounds and to awake the courts and Tribunals to shun lethargy and inaction, if any. The High Court at its own instance may exercise the power of superintendence under Article 227. The High Court has also been invested with statutory powers of "superintendence" in regard to "expeditious and proper disposal of cases" u/s 483 of the Code of Criminal Procedure and similar powers of superintendence may be exercised under the Code of Civil Procedure. In short, the High Court in exercise of its power of superintendence

over the subordinate courts may issue a command with regard to the disposal of old cases with a view to cut down pendency of such cases, as the administrative instructions have been followed more in breach rather in observance. The task of resurrecting and revitalising the present court functioning over the morass it has caved into could be accomplished by a mandamus to the subordinate judicial officers, lawyers, and litigants. It is also necessary to goad and remind the Presiding Officers and other agencies connected with the dispensation of Justice that they have to be sincere and serious in the matter, as any solution, howsoever perfect it may be, is bound to fail if devotion, sincerity and seriousness is lacking.

20. The judiciary, like all other organs of the State, is equally accountable to the people. The Presiding Officers of the subordinate courts, therefore, have to realise their accountability to the common man. There can be no denying the fact that the old cases are to be attended to on priority basis unmindful of the various limitations and difficulties. The three principal participants in a litigative process are (i) litigants (ii) lawyers, and (iii) Presiding Officers, besides the ministerial staff of the court, etc. The attitude of the litigants sometimes is motivated. The cases get old and old because this suits one of the contestants. To keep the case pending proves to be of Immense advantage to one of the parties to the litigation. In case of vexatious litigation, it suits the plaintiff because he can subject his adversary to continued harassment with regard to any supposed or genuine grievance. So one party has always a vested Interest in delay backed by expert and tactical management of the case in its passage through one court to another. Nevertheless the party who is interested in delaying the case does not have the last voice in the matter. A sensitised and alert Presiding Officer of the court must be in a position to curb such designs to see that the case proceeds in conformity with law and according to time schedule.

21. The disposal of cases pending in the courts cannot be speeded up by judicial officers only without the essential cooperation of the members of the Bar. It is the Bar which plays an important role. The lawyers should not be a party to fulfill the innate desire of their clients to procrastinate or prolong the case. The Bar has to adopt an attitude of co-participant in the process of dispensation of quick Justice. Sometimes, the lawyers default in appearing before the courts on account of on-going strikes or boycotting of the courts, which is a very disturbing phenomenon developing in the State. Whenever there is a disturbance in the society for whatever reason, the subordinate courts become the first casualty. The courts are not allowed to function and the entire judicial activity comes to a halt for a number of days, without any corresponding advantage to the lawyers or to the litigants. This does not really do any credit to the most enlightened section of the society. This aspect of the matter was noted with concern by the Mallmath Committee appointed to go into the question of arrears and delays in disposal of cases. At page 42 of the report, the Committee made the following observations, which beamingly throw light on the point:

"In a country where rule of law prevails and is a basic feature of our Constitution disputes are required to be resolved not by taking them to street but by bringing them for adjudication by a competent and Impartial Judge functioning in the court. Strike by lawyers is, therefore, very negation of this basic concept. It is obvious that strike or boycott by lawyers or absence of lawyers from the court in the name of one issue or the other has resulted in adding to the already existing back breaking burden. Taking public opinion and persuading the local fraternity to see this problem in the right perspective is no doubt one way of tackling this problem. Though such attempts were attempted the problem very much exists and it is virtually getting out of control as lawyers go on strike all over the country on even smallest provocations. The lawyers who hold the briefs for their clients when they resolve to delay the disposal of their cases or allow their case to be dismissed for default, betray not only the trust reposed by their respective client but also confidence which the courts repose in the legal profession."

22. The problem though highlighted from various quarters has not so far been tackled in a big way by the lawyers themselves who are master of their profession. The statutory provisions available have not been found to be adequate to meet the situation. The directions and guidance Issued by the Supreme Court and the Bar Councils have produced no better results. Obviously if the problem persists and is not tackled in right earnest, it will further add to the problem of arrears. In our sincere attempt to ensure that the pendency of the old cases is liquidated to some extent and the arrears cut down, we would suggest that if an Advocate appearing for a party is absent without reasonable cause, the Presiding Officer should make a note of it and proceed to dispose of the case. If the same lawyer persists in absenting only with a view to delay the disposal of the case, the Presiding Officer may bring this fact to the notice of the Bar Council for appropriate action. This may go a long way in discouraging the lawyers from absenting from courts on untenable grounds. We may, however, make a fervent appeal to the members of the Bar to see the writing on the wall and cooperate in the stupendous task of bringing down the arrears.

23. In the whole exercise, the dominating role is to be performed by the Presiding Officer of the subordinate courts, particularly the trial court. The position of a trial Judge cannot be undermined. In our view, the Judiciary is not like a ladder which steps in a descending order. Our Judiciary is like a ladder ascending from lower to upper-steps. He who holds the ladder at the lower end is far more important. If the first that holds the ladder at the bottom becomes loose or the grip is lost, all those at the upper end along with the ladder would fall down. Therefore, if an evaluation is made of the importance of the role of the different functionaries who play their part in administration of justice, the top position would necessarily have to be assigned to the trial court Judge. He is key-man or say the lynch-pin, the most important and influential participant in the system of dispensation of Justice. It is mostly with the trial court Judge rather than appellate court Judge that the members of the general public come into contact, whether as parties or as witnesses.

24. Hon"ble Supreme Court in its landmark judgment of All India Judges" Association Vs. Union of India and others, observed :

"The trial Judge is the king pin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in Court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personality knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful."

A. M. Ahmadi, former Chief Justice of India spoke about the subordinate courts as follows :

"Subordinate Judiciary is the backbone of Indian Judiciary. It is the base on which the judicial edifice of the country rests. The base must, therefore, be sufficiently strong to carry the weight of the Judicial system. The Image of the judicial system in the public eye rests on the members of the subordinate Judiciary since it is they who come in direct contact with the litigant public. Therefore, a heavy duty and responsibility lies on them to function in a manner as would enhance the image of the judiciary and Its credibility in the public eye."

25. The common man really forms an impression about the judiciary from the working of the trial courts. This is because he is concerned with the Judges and the courts at the bottom only. His hopes are pinned with the subordinate judiciary. The image of the judiciary for the common man, therefore, is projected by the trial court Judges and this. In turn, depends upon their intellectual, moral and personal qualities. Therefore, in the arduous task of disposal of old unyielding and time-consuming cases, the great qualities of head and heart of the trial court Judge and the influence of his personality go a long way.

26. The problem of disposal of old cases has defied any viable solution ; nevertheless, it needs Immediate attention to make certain significant improvement in the area. A few and far. In between stray directions of this Court, in different writ petitions, are just like a few drops in the ocean. Such directions are sometimes counter productive as a feeling of genuine frustration and distress is generated amongst the common people, particularly the litigants. Their feeling that only those cases in which the High Court is approached for a direction to the subordinate court for expeditious disposal, or within the phased time, are taken up on priority basis to the serious detriment of much more older cases which continue to be neglected or proceed at a snail's speed as the parties to those case are not in a position or find it difficult to travel upto this Court, is not without basis for, every body has a right to speedy justice, it is, indeed, regrettable that the parties have often to approach this Court only to obtain a writ of mandamus to command the subordinate court to decide the case expeditiously. We should not, however, hesitate to turn the mirror on ourselves. The Chief Justice of India Hon"ble J. S. Verma, on the day he assumed charge of the exalted office in March this year, articulated this well, when he said These

days we are talking about everyone what they should do. But who is to tell us." While the courts have sometimes resorted to judicial activism and done the work which other State organs should really have done, the judiciary has done precious little to extend the area of cleansing its own precincts and dockets which are fully brimmed up and overflowing with arrears. If we do not question ourselves, the people may resort to extra judicial activities/remedies, the echoes of which are quite rampant. Eviction under the threat of muscle power, land and house grabbing, encroachment over public land are a few instances, which are getting multiplied day in and day out.

27. It is, therefore, thought proper that in the struggle of solving the problem, which is never ending, some general directions be issued on the judicial side so that as far as possible the litigants may evenly be benefited in the justice delivery system. As a matter of caution, it may further be pointed out that it is not the intention of this Judgment to make radical changes or major innovations in the areas. Those who may be looking for it may perhaps experience some disappointment. The Judgment simply strikes at the root of one of the most basic problems afflicting our judicial system, in the wake of the fact that there is absence of a mechanism for ensuring judicial accountability. Our only concern is to deal with the ways and means with a view to reduce, control and streamline the arrears and to cut short the delays in the disposal of cases pending before the subordinate courts taking note of the prevailing environment and circumstances and within the four corners of the existing system of administration of justice, which itself is in the grip of manifold problems. These efforts may prove useful only if concerted and effective steps are taken to deal with the huge arrears, which have already piled up out of proportion. No reform and no suggestion for improvement would make any impact if the existing courts remain burdened with the heavy back-log of cases. As long as the courts remain burdened with arrears, the other suggestions for expeditious disposal of cases would be nothing more than palliatives and would not provide any effective relief.

28. A note of caution against the undue haste in disposal of cases may, however, be sounded. True, speedy Justice is the absence of an organised society. At the same time, it is obvious that in order to speed up the decision of a case, the basic norms, concepts and contents, that are necessary for ensuring justice should not be sacrificed. Therefore, while laying stress on the necessity of elimination of delay in the disposal of cases, we must guard against the undue haste in the matter of disposal because this would be substituting one evil for another evil. Any stress on speedy disposal of cases at the cost of substantial justice would impair faith and confidence of people in the Judicial system--perhaps in a much greater degree than would be the case if there is delay in the disposal of cases. In no case, due procedure as prescribed should be dispensed with, otherwise, it would be mockery of a trial. In Issuing the directions, to be followed by the subordinate courts, we will be keeping in the fore-front the need to maintain a reasonable amount of harmony between these two considerations.

29. Now skipping over the problem as viewed in the historical retrospect and its academics, we straightway come to the practical solution/suggestions, which, if followed with all seriousness, sincerity and devotion, may yield strikingly appreciable results in the disposal of old cases. We sanguinely hope that if the directions are adhered to, there would atleast be a break-through in the attitude of indifference towards the disposal of old cases and in the changed psychology a new climate would be generated resulting in pointed attention of the subordinate courts to take up the old cases for decision on priority basis.

30. If an evaluation were made of the importance of the role of different functionaries, who play their part in the administration of Justice, the top position would necessarily have to be assigned to the District Judge. He is the key-man in our judicial system. The most Important and influential functionary in the dispensation of Justice. The entire system of administration of justice at the district level rotates around the personality of the District Judge, who plays a pivotal role. He is a prime functionary and much depends on the role he plays. In the fabric of the whole system of administration of justice the District Judge is the lynch-pin. If the pin holding the warp and weft gets loose, all the threads drop. It is, therefore the tight grip of the District Judge, which would yield effective and concrete result.

31. In recent limes, there has been manifold increase in the responsibilities of the District Judge. In addition to his own normal judicial work, the primary responsibility for supervising and controlling the judicial work of the Presiding Officer in the district also rests upon him. His hands are always full on account of increase of Judicial work which requires maximum attention. On the administrative side, he has to tackle day to day time consuming problems and, more often than not, has to sort out the disputes between lawyers and the Presiding Officers, lawyers and the employees and inter se employees. To pay attention to the complaints of the litigants and to provide succour to them, after hearing them personally, is another area which consumes a lot of time. He is also required to maintain a report with the administrative and police heads of the districts. It is also his part of duty to make jail Inspections at intervals. He is treated as having the eyes and ears and sometimes the tongue of the High Court. People have not hesitated in remarking that the real basis of establishment of law and order lies in the competency, honesty and fidelity of the District Judge. The manifold responsibilities which the District Judge has to shoulder have subjected him to extreme stress and strains. Conscious of the fact that the District Judges are already over-worked and their working conditions are not conducive and congenial to their well being, we have all the faith and trust in them that they would not fail in their duty of monitoring and supervising the disposal of old cases in the light of the scheme, which is being chalked out through this judgment.

32. One of the Important questions, which we have to consider before issuing directions to the subordinate courts is as to what should be the criterion to

determine as to when a civil case can be treated as an old case in the trial court. Under the various reports of the Law Commissions and the recommendations of other Committees, it has been opined that a civil case which would include a civil suit, as well as the cases under a Special Act should be treated "old" if a period of one year elapses since the date of its registration till the pronouncement of the final Judgment in the case. The target for disposal of most of the cases was attempted to be fixed as one year. In the context of mind-boggling figures of pendency of cases in the State, as has been depicted above, the definition of the old cases with reference to its age of one year would be meaningless as in that event almost all the cases pending in the district courts would be treated as old. A general and sweeping categorisation of the cases as old ones as attempted by the various commissions and committees would negate the very purpose for which this judgment is being rendered. Therefore, for the purpose of issuing directions to the subordinate courts contained in this judgment, we, of necessity, have to adopt a different criteria taking into consideration the fact that as many as about 58,700 cases have been pending for more than 10 years, about 2,50,000 cases ranging between 3 to 10 years, about 2.90.000 cases between period 1 to 3 years and rest, which are less than one year old are pending in the subordinate courts of this State. We categorise and. for purpose of distinction requiring the pointed attention and the emphasis to be supplied, label civil cases in different categories on the basis of the age, which is to be reckoned from the date of the institution/registration. The colour of the folder/file covers, which furnishes a distinctive mark, will determine priorities in the matter of disposal in the following manner :

ORIGINAL JURISDICTION (Original suits, cases under Special Acts. Misc. Cases and execution applications)

DISTINCTIVE MARK

Age of the cases

Label assigned

(Colour of folder/file cover)

(i) Cases over ten years

-CRITICALLY OLD"

RED

lit) Cases from three to ten years

?VERY OLD"

GREEN

(iii) From one to three years

"OLD"

YELLOW

(iv) Less than one year

"RECENT"

PREVALENT.

Taking into consideration the number of cases pending before the appellate/ revisional courts at the district level, they are categorised and labelled as follows :

APPELLATE/REVISIONAL JURISDICTION

(Appeals. Revisions, Misc. and other cases, under various Acts)

DISTINCTIVE MARK

Age of the cases

Label assigned

(Colour of folder/file cover)

(i) Over three years

"CRITICALLY OLD"

RED

(ii) One year to three years

"VERY OLD"

GREEN

(iii) Six months to one year

"OLD"

YELLOW

(iv) Less than six months

"RECENT"

PREVALENT.

Till arrangements are made for the supply of the folder/file covers in requisite number of colours, mentioned above, paper strips of the colours, aforesaid be pasted in the mid-fold of the file cover for purpose of distinction.

In course of time, the cases would keep on shifting from one category to another. For example, by passage of time, a case which is presently in the category of "VERY OLD" would pass on to the category of "CRITICALLY OLD" reckoned from the date of its institution/registration. With the conversion of the category of a

particular case, the colour of the folder/file cover is also to change.

33. Enormous delay in the disposal of old cases occasions on account of the factors which contribute to the accumulation of arrears and passing of a case from one category to another. These factors with remedial measures on the basis of which we are issuing the directions for strict compliance by all concerned, are as follows:

#### HOW TO INCREASE THE WORKING DAYS/HOURS

34. The normal working days in a year and the working hours on each particular day have come to be reduced to an alarming state for variety of reasons. Unless the full working days and hours are devoted to transact judicial work, it would be difficult to clear the arrears and to make substantial progress towards the decision of the old cases. Therefore, it has become necessary to ensure that the courts function on all working days, without any let or hindrance and that the working hours are also increased :

(a) in the summer or winter vacations, of the district courts, no civil work is transacted meaning thereby the civil work is attended to only during 11 months. Almost all the Presiding Officers of the subordinate courts have to attend to their court work even during the summer/winter vacations. They are detailed to work on the criminal side. Experience has shown that on account of resistance of the lawyers practising on civil side or the casual attitude of the criminal lawyers, who take the vacations as holiday or recess period, even criminal work is not substantially transacted. The result is that the Presiding Officers attend the court during summer/winter vacations Just to merely while away time because they do not have enough of work to do on the criminal side. It is, therefore, suggested that High Court, on its administrative side shall do well if the system of the civil work remaining suspended during the summer/winter vacations is done away with. The suggestion has the merit of increasing at least one month's working days during which civil work would also be taken up for disposal.

(b) The Presiding Officers of the subordinate courts, we are conscious. work very hard not only during court hours but outside the court hours. not only during working days but also during holidays and vacations. They have to catch up and update themselves with a lot of general reading, progress and trends in law. They engage themselves in a highly taxing Intellectual work. They require adequate time for relaxation. At the same time, the Presiding Officers who should be vitally concerned with the problem of arrears, particularly when the problem has reached such critical levels, should come forward to make some sacrifice for achieving the larger goal for the next couple of years, until the problem is brought under control.

The sitting time in the subordinate courts is from 10.30 a.m. to 4 p.m. with a luncheon break of half an hour. Earlier for sometime, working hours were increased by half an hour, i.e., upto 4.30 p.m. but this practice was given up. Disposal of old cases should be treated by the subordinate Judicial Officers as

their pious duty and the same cannot be performed with "one eye on the clock and the other on the cheque book". If the Judicial Officers devote half an hour more on every working day, it would enhance public respect for them to a very considerable extent leading to a strong filial generic relationship between courts and the litigants. For a cause which is so laudable, the subordinate Judicial Officers should not mind working for half an hour more on every working day. The sitting hours, therefore, should be Increased by half an hour by prescribing the court time from 10.30 to 4.30 p.m. with half an hour's lunch break. As and when the problem of arrears is tamed and brought under control, the existing working hour system may be reverted back. The High Court on its administrative side shall consider the feasibility of issuing necessary directions in this regard.

(c) There is a tendency on the part of some of the Judicial officers not to observe strict court-timing. It causes considerable inconvenience and irritation to the litigants, witnesses and the members of the Bar. Complaints are generally voiced by the members of the Bar as well as litigants and others interested in the well being of the institution that the Presiding Officers of the subordinate courts do not sit in court in time. Non-observance of punctuality by the Presiding Officers results in lower out-turn of judicial work. Unless the Presiding Officers sit in court punctually for at least five hours on every working day, it would not be possible to obtain maximum turn-over in the matter of disposal. The time of the court is meant to be utilised for discharging Judicial work. When there is such tremendous pressure of work on the courts, utmost care should be taken to ensure that the judicial time is not utilised for doing any work other than Judicial work. It is also to be considered that if the Presiding Officers do not start the court work punctually, and do not adhere to the court timing, those who have to attend the court would not be able to adjust their other engagements. The punctuality in observing the court hours would save the wastage of time which otherwise could be devoted for Judicial work. Though, this shortcoming is restricted to a few judicial officers, it is they who on account of this habit bring a bad name to the judiciary. The District Judge, who himself is supposed to be more than punctual, may do well to make effective surprise visits to different courts with a view to ensure that judicial officers stick to the court timings.

(d) Loss of judicial time occurs on account of frequent condolence meetings and references as well as due to the closure of courts for half day in order to enable the lawyers to attend the funeral of their colleagues or some local dignitary. The strength of the lawyers in each district has considerably increased and correspondingly the number of casualties has increased. It has become customary to adopt a resolution of condolence by the members of the Bar Association at/around 11 a.m. on the working day even though the death had occurred a few days back and at a place outside the district. Even before 11 a.m. a loud message goes round that a reference meeting is to take place in the Bar with the result no attempt is made to open up the dockets. After adopting of the resolution, the lawyers abstain from work. The judicial work for the whole day stands paralysed. Such a unilateral decision by the Bar is doing more harm to the

living persons than the good to the departed souls. It is of prime importance to realise that the closure of courts is not the only way of showing respect to the deceased. The same objective can be achieved by making a reference and by cessation of work for half an hour or so at the most. Hereafter, no District Judge or for that matter, any Presiding Officer shall stop judicial work in court on account of condolence reference which is made prior to half an hour before of the closing time of the court.

There is a circular letter No. 10/9/-G-11 dated 29.1.1973 of this Court Issued on the administrative side directing that the District Judge may close the courts for half of the day on the death of a senior or prominent member of the Bar if the cremation is to take place on the same day in the district in order to enable the lawyers and others to join the funeral/cremation. This circular letter should be withdrawn as, in practice. It has been found that though the Judicial work for half of the day is suspended, no one or very little number of lawyers Join the funeral/cremation. Only those lawyers who desire to leave court to join the cremation may be accommodated but the judicial work should go on as the cessation of work for half day affects the working of the courts and reduces the number of working days.

(e) For any local disturbance, quarrel or dispute, which has erupted in or nearby a district, the civil courts are the first casualty, inasmuch as. lawyers resort to lightening strike without notice. The menace of strike by the lawyers has assumed the epidemic form. On this point, recently, i.e., on 1.10.1997, a decision has been rendered by a Division Bench of this Court in Civil Misc. Writ Wo. 33778 of 1997, Manoj Kumar and others v. Civil Judge (Junior Division), Deoria and others, in which the following observations have been made :

"..... It is deeply regrettable and highly objectionable that there are strikes in district courts in U. P. on flimsy and frivolous pretexts, and some district courts function only for about 60 or 70 days in a year. This is a shocking State of affairs, and will no longer be tolerated by this Court. The judiciary and Bar are both accountable to the public and they must behave in a responsible manner so that cases are decided quickly and thus the faith of the public in the judiciary is maintained. Surely, the public has a right to expect this from us. We, therefore, issue a general mandamus to all the judicial officers in all district courts in U. P. that if the lawyers go on strike, the judicial officers must, despite the strike of lawyers, sit in court and pass orders in cases before them even in the absence of the counsel. If the lawyers disturb the functioning of the court, the District Judge shall contact the police and the police will give all protection to the Judges and the cases will not be adjourned merely because of the lawyers' strike. People in this State are fed-up with lawyers' strikes and this state of affairs must now end. The lawyers must realise that litigants, witnesses, etc., often come from distant places at heavy expense and it is most improper that they have to go away because of strikes by lawyers. The judiciary exists for the people and not for lawyers or Judges."

Nothing more is required to be added on this score except that those Presiding Officers (though their number is very little] who have developed vested interest in the strikes be dealt with sternly. They become party to engineer a strike on particular day(s). One of us (Justice O. P. Garg). on the basis of long standing experience of the working of the district courts, may venture to say that some Presiding Officers become restive if for a long spell of time, there is no strike. Feelers are sent to the members of the Bar to go on strike so that monotony and drudgery be broken to have a respite. The period of strike is not meant for rejoicing, jubilation or merry-making. Hereafter, the Presiding Officers shall not be granted any remission in their out-turn of work due to the strike by the lawyers. The period of strike days shall also be computed towards working days and the out-turn of work shall be calculated with reference to the actual working days including the strike period.

(f) Presently, the Judicial Officers claim remission in their out-turn of work for their engagement in administrative work, meetings, quarterly and annual inspections and absence on V.I.P. duties. The time of the court is meant to be utilised principally for discharging judicial work. On all the working days, every judicial officer is duty bound to attend to his Judicial work in court. Annual and quarterly inspections shall be carried out only on those days when for one compelling reason or the other, it is absolutely not possible to transact the Judicial work. No judicial officer shall be required to leave the court during the working hours to attend the V.I.Ps. or to join the meetings. The District Judge shall call the monthly meetings and the meeting of the Monitoring Cell and the like, only after the courts hours.

#### COURTS SHOULD NOT REMAIN UNMANNED

35. The statistics indicate that considerable number of courts remain without any Presiding Officer and this situation continues for long time. The full sanctioned strength of the Presiding Officers is never utilised for judicial work. This situation, to some extent can be avoided in the following manner :

(a) A moratorium should be imposed on sending the Judicial Officers on deputation to other departments on ex cadre posts for performing non-judicial functions. It has been seen that a Judicial Officer who has been on deputation for a considerable long time, outlives his utility as a Judicial Officer as he does not remain in touch with the existing laws and the court procedure. On reversion, it takes time for the Judicial Officer to pick up and update himself. In short, a Judicial Officer who goes on deputation and remains there for a period more than three years becomes stale and his judicial outlook changes. His performance for some time, after return, is not as fast and up to the mark as before. He takes time in understanding the judicial intricacies and in rendering judgments and orders. Therefore, if at all, a Judicial Officer is sent on deputation, the period of deputation should not, in any case, exceed three years.

The absence of the officers for attending the meetings, departmental enquiries

and for giving evidence in courts has also to be strictly watched and viewed. In most of the cases, it has been found that a Judicial Officer has been called in a departmental enquiry simply for the purpose of testifying his signatures on a particular document or report. This could be done by any officer or the staff member who recognises the signatures of such Presiding Officer. The visit of the Presiding Officer for the purpose is fruitless. Similar is the case with court cases in which a Presiding Officer is summoned as a witness. Normally, the Presiding Officer are called to prove the statements recorded by them u/s 164. Cr. P.C. or to prove their signatures on complaints lodged by them in their Judicial capacity. Unless it is absolutely necessary, a Presiding Officer should not be spared for the routine evidence. Most of the time which the Presiding Officer devotes in travelling from one station to another to appear as a witness without any corresponding advantage, may usefully be devoted for Judicial work and the ritual of proving signatures or other document may be performed by any officer or staff member with whom the officer summoned has remained posted.

(b) On account of annual transfers and the transfers occasioning due to promotion or otherwise, on administrative grounds, various courts continue to remain unmanned for months together and in some cases for years together with the result that the judicial work in the vacant court is totally dislocated and unattended to. The High Court, on its administrative, side may ensure that no court remains without the Presiding Officer for a period longer than it is necessary in the exigencies of circumstances. All out steps should be taken to ensure that the vacant court is manned with all expedition.

On account of certain transfers, abolition or shifting of the courts from one place to another, wholesale abrupt changes are effected amongst the Presiding Officers posted locally. This has become a normal practice. The present policy is that the Presiding Officers are posted with reference to their seniority (inter se the local officers) in the different parent and additional courts. The point may be elucidated by a concrete example. A Presiding Officer is to be posted in the vacant court of Xth Additional District Judge, Allahabad. The new officer who is posted is per chance senior to the 1st Additional District Judge. On his posting, all the existing officers right from 1st Additional District Judge to IXth Additional District Judge would be pushed down. These changes keep on going quite often. Sometimes, the changes in the comparative bigger districts take place 5-6 times in a year. The shifting of the Presiding Officers in the manner, as above, has a serious telling repercussion on the disposal of the pending cases, particularly the old ones. It becomes difficult to pinpoint the responsibility if the matter of enquiry is as to who was the officer who neglected to take up the old case. Moreover by the time a new officer familiarises himself with the pendency of the old cases and chalks out a phased programme to decide them, he is shifted to another court. A study indicates that an officer, within a period of two and half years posting in a district was shunted nine times. His average period of posting in one court at a time came to 100 days which is too short a period to rotate even once the pending cases in that court. The High Court on the administrative

side has to give serious thought to this matter and may consider the feasibility of posting the officers directly in the vacant court, barring the parent courts, without having regard to his seniority vis-a-vis local officers. Adjustments with reference to the inferior seniority of the officers, if at all necessary, may be made only once when the annual chain of transfers is given effect to. The idea is that in the midstream the Presiding Officers should not be shifted from one court to another merely because a senior or Junior officer from outside has been Inducted in the Judgeship.

#### PROCEDURAL ALERTNESS

36. The CPC lays down an elaborate procedure for the trial of the civil suits and other allied proceedings including execution of the decrees. The subordinate courts or, for that matter, no court can go against the provisions contained in the Code. Yet there are many loopholes which, if plugged by an alert Presiding Officer would produce better results in the direction of disposal of the old cases. Some of the grey areas are :

(a) Service of Summons. --Process serving wing in the district is under the control of the Central Nazir who works under the guidance and supervision of the District Judge or any other subordinate Judge, who is popularly known as officer incharge, Nazarat. After a suit or proceeding is Instituted in the court, the next step is to serve the defendant/opposite parties. This is one point where there is a great pit-fall which leads to inordinate delay in the progress of the suit or proceeding. It is common knowledge that some members of the process serving staff are not discharging their duty sincerely and honestly. There are quite a number of instances in which fictitious service is effected in collusion with the plaintiff or the applicant. The defendant/opposite party totally remains unaware of any proceeding having been launched against him and when the mischief is accomplished in the form of an ex parte decree or order, the affected person rushes to the court to get the ex parte decree or order set aside. Sometimes, the defendant-opposite parties, in their clever move get the process returned as unserved and the process server readily falls prey to their designs for obvious reasons. The complaints are often made against the process servers of getting mixed up with one of the parties to the case and on that account not getting service effected. The District Judge and his Deputy, who is designated as Officer Incharge Nazarat, have to be vigilant in this sphere. Random checking of the "personal" as well as service by "refusal" has to be made by these officers. It should also be ensured that the service is effected within the period specified and the process servers, who effect service personally in more than 80% of cases, should be commended while the others who fall short of the said target be condemned and taken to task. Some incentive may also be provided to the process servers for getting personal service effected on a number of persons in a month. The High Court may in its administrative side, consider the feasibility of issuing necessary instructions for the constitution of a Summons Cell to every district which may be put under the direct charge of an officer whose duty shall be to ensure timely

and effective service.

To obviate delay in the matter of effecting service because of neglect, lethargy or other extraneous considerations on the part of the process servers, it is necessary that there should be proper administrative supervision of their work. Some salutary provisions of the Code, such as Rules 19A, and 20 of Order V be kept in view in order to avoid delay at the stage of service of summons. Provisions of Rule 19 of Order V underlines the importance of the report of the process servers and contemplates that those reports should be correct. To ensure that the said provision is not reduced to a dead letter, we are of the opinion that in those cases where the court as a result of enquiry comes to the conclusion that the process server has made a fake report, it should take stringent and prompt action against the process server concerned. Such action, we have no doubt, would act as a deterrent for other process servers making false reports. It would also obviate the necessity of the applications under Order IX, C.P.C. for setting aside ex parte decree or ex parte proceedings which consumes much time of the court.

It very often happens that after the summons/notices are issued, the defendant/opposite party appears and ask for time to reply. It would be so much simpler if the summons themselves contain a time period after which the defendant/opposite party would have to appear with his reply fully prepared before the court.

(b) Adjournments.---Unnecessary adjournments, time out of number delay the disposal of the cases in the courts. Adjournments are so lightly treated that for any reason on earth a case can be postponed/stifled to another date, which may be after a few months. If three or four adjournments are taken in a case by a party interested in procrastinating it, a whole year is easily passed. Adjournments are generally taken on frivolous grounds. A case study showed 125 adjournments, one after the other. In 12 years period, the order sheet lists only adjournments and the reasons quoted are beyond common imagination. What is disquieting and disconcerting is that very often adjournments are taken in collusion between two opposing lawyers in direct contravention of the provisions of the Advocates Act and that of the proviso to Order XVII. Rule 1 (2) of the Code of Civil Procedure, which reads as below :

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds that, for the exceptional reasons to be recorded by it. the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment.

(d) where the Illness of a pleader or his Inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in court but a party or his pleader is not present or the party or his pleader, though present in court. Is not ready to examine or cross-examine the witness, the court may, if it thinks fit. record the statement of the witness and pass such orders as it thinks fit. dispensing with the examination-in-chief or cross-examination of the witness, as the case may be. by the party or his pleader not present or not ready as aforesaid."

It is further provided :

"Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned the court may, in its discretion. proceed with the case as if such party were present."

The above provision came to be interpreted in a recent decision dated 24.9.1997 of a Division Bench of this Court in Civil Misc. Writ No. 30219 of 1997, Ayodhya Sahai u. District Judge, Jaunpur and another, in which it was observed that the above provision shows that there should be day-to-day hearing of all suits unless for some exceptional reason, to be recorded, the adjournment of the case becomes necessary. Such adjournment should not be granted unless there are exceptional circumstances beyond the control of the party. The case should not be adjourned on the ground of illness of a counsel, unless the court is satisfied that the party applying for adjournment could not have engaged another pleader in time. It was further observed that:

"..... It is distressing to note that the above provisions under Order XVII. Rule 1 (2) of the Code of Civil Procedure..... are hardly ever followed and adhered to by the courts although they are mandatory provisions. We. therefore, direct that the provision of Order XVII. Rule 1 (2) of the Code of Civil Procedure.....must in future be strictly adhered to in all cases in U. P. The principle of these provisions is of general application (i.e. to ensure speedy Justice) and hence the same procedure must also be followed in cases, which are other than suits or criminal trials e.g., applications u/s 21 of the U. P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act. 1972, and cases under the U. P. Industrial Disputes Act, etc."

The above new provisions, if enforced strictly, would prevent unnecessary adjournment of cases. However, if experience is to be any guide, it is found that adjournments are applied for in a routine manner by the lawyers on flimsy grounds and similarly, they are dealt with by the Presiding Officers who are readily prepared to grant adjournments merely for the asking in a casual and mechanical manner. This tendency particularly is apparent in the old cases. Many

Presiding Officers, with a view to avoid a piquant situation with an aggressive counsel, adopt the path of least resistance. The result is soft paddling. In the prevailing circumstances, a Presiding Officer perhaps cannot afford to incur the displeasure of the brow-beating lawyers. The Presiding Officers obviously need support and backing. Through this judgment, we exhort all subordinate Judicial Officers to shun the policy of appeasement and adopt a firm stand and muster courage to refuse the frivolous and motivated adjournments. Only those adjournments, which can withstand the test of scrutiny and which have been moved for compelling and unavoidable reasons, should be granted. In any case, even if an adjournment is allowed in an old case, it shall not be more than a day or two and in no case, it shall extend beyond a period of one week.

Some amount of rationing on adjournment is also required. The malaise can, to a great extent, be remedied within the existing system by allocating quota of adjournments for both the sides. At the stage of filing of the written statement/objection, no defendant or opposite party, as far as possible, shall be granted more than two opportunities in the form of adjournments. In case of the Central or the State Government, or public authorities, or the corporations, one more opportunity may, for valid reasons, be allowed. After a defendant/opposite party has exhausted the quota of adjournments and fails to file the written statement or objection without any Justifiable reasons or cause, the Presiding Officer will be at liberty to proceed with the case according to law. Similarly, at the stage of final hearing, after framing of the issues, not more than three adjournments shall be allowed to either of the parties meaning thereby that if the plaintiff or the defendant have availed adjournments on three occasions, the Presiding Officer shall be free to proceed with the case according to law. In the pending cases, irrespective of the earlier adjournments, the same procedure should be followed by allowing two or three more adjournments, as the case may be. The District Judge or a Senior Additional District Judge, who may be detailed for the purpose by him shall supervise and monitor the adjournment of the cases pending in the various courts.

Interim orders are in ironic cause of delay. They are meant to mitigate sufferings due to the time consuming process. The courts, however, have begun to take lots of time to decide the interim matters. If this situation continues, there will have to be interim orders within Interim orders to mitigate further sufferings. Perjurious and deliberate dilatory behaviour has to be sternly frowned at. The party in whose favour the stay order or injunction has been passed should not be allowed to enjoy the fruits of such interim orders indefinitely by seeking endless adjournments and if such a party asks for adjournments and, if at all, they are granted, beyond the quota prescribed above. It would be proper to vacate the stay or the injunction order then and there.

(c) Piecemeal and truncated hearing.--Piecemeal and truncated hearing should yield place to smooth and speedy trials "diem-de-die-diem" (day-to-day basis). The piecemeal manner in which the cases are heard makes it difficult for a Judge

to remember all evidence thereby delaying the writing of judgments. It is better to decide and conclude one case on day-to-day basis rather than open up a number of cases together without the possibility of concluding them in the near future. The provisions of Order XVII. Rule 1 (2) of the CPC must be adhered to, Statutory practice is to record and complete the entire evidence in continuity to the avoid recording of evidence of a party in installments.

(d) Transfer of cases.--The problem of movement of cases from one court to another poses a question mark. There should be least shunting of the cases from the court of one Presiding Officer to another. No Presiding Officer can be held responsible for the delay in the disposal of old cases unless he remains seized of the case throughout the period of his posting. If a Presiding Officer is shifted from one court to another under the compelling circumstances, the old cases should continue to move with him. No sooner there is a shifting of the Presiding Officer from one court to another, the District Judge shall obtain a list of the "old cases" and transfer the same to the court to which the concerned Presiding Officer has been shifted. In the matters of old cases the provisions of Section 24 of the CPC should very sparingly be resorted to by the District Judge after thorough scrutiny. The District Judge should not allow the transfer of old cases in a casual and mechanical manner from one court to another otherwise, the very purpose of charging a particular Presiding Officer with the responsibility to dispose of the old cases within a particular period shall be rendered otiose. However, if a transfer application is moved in an old case, it shall be disposed of after notice to the counsel of the other side on the next day or within a week after calling for the comments of the concerned Presiding Officer urgently and hearing the counsel for the parties. The transfer applications should not come as an impediment in the smooth disposal of the old cases. In no case, the proceedings in the old cases should be stayed or allowed to be held up for a period of more than one week at the level of the District Judge, who has to take up the transfer application for hearing.

(e) Appeal or revisions.--In matters pertaining to old cases, in which an appeal or revision is filed against the interlocutory orders, the District Judge must ensure that they are disposed of within a month's time so that the cases do not get delayed on that score. Except for a very limited and few number of cases, the interlocutory orders appealed against or carried in revision are passed after contest. At the time of the admission of the appeal or revision, the District Judge would do well to call for the record of the court below immediately and to serve the notice on the counsel who has appeared before the court below for the other side. The revision applications, which are filed in a routine manner with an avowed object of gaining time, may be heard and decided on the second or third day or latest within a week as there is no problem of service on the other side because a lawyer who has appeared in the lower court for the party sought to be served, cannot refuse to take the notice as contemplated under the provisions of Rule 5 and in view of the provisions of sub-rule (2) of Rule 4 of Order III of the CPC according to which "proceedings in suit" would include proceedings in appeal

or revision. This suggestion has the merit of reducing the number of appeals or revisions besides their quick disposal. An old case would not remain held up for a long time on account of pendency of the appeal or revision. Such cases in which the counsel for the other side has put in appearance and the record of the case has been received, the date of hearing should be fixed within a week's time either before the District Judge or before the transferee court. Interlocutory/stay orders, if at all necessary to be passed in such situations, should invariably be time bound.

(f) Oral arguments are necessary and have their own impact. There is, however, a common complaint of lengthy arguments being addressed. Orality unlimited has to be avoided. In this context, it would not be out of place to refer to the observations made in the Fourteenth Report of the Law Commission (Volume 1, pages 345 and 346), which read as under :

"It is true that in many cases arguments are unduly prolix. Some times the arguments become lengthy because the court either from inexperience or for other reason is unable to control counsel. Some lawyers are long winded ; others are brief and to the point. Similarly some Judges are unable to control the arguments while some are inclined not to hear any arguments at all and cut them very short. The court which has heard the case from day to day should be familiar with the evidence and can if necessary go through the record of the case before the arguments are commenced to refresh its memory. The Presiding Officer who has followed the evidence will be in a much better position to control arguments. The control of arguments is a matter which must pre-eminently be left to the capacity, experience and discretion of the Judge and the good sense of the advocate. We do not think it s practicable to confer any special powers on the Judge in this respect.

Very often, delay is occasioned by the postponement of argument to a later date on the conclusion of the evidence. The law contemplates that arguments shall be heard immediately after the evidence is concluded. In many cases, however arguments are postponed either because the lawyers are not ready or because the court has other work on hand. If the court's diary is methodically prepared in the manner already indicated, there will be fewer occasions for a Judge to postpone the arguments on the conclusion of the evidence. The court must insist upon the lawyers appearing in the case presenting their arguments immediately on the conclusion of the evidence. Such a practice prevails on the original side of the High Court in Bombay, where however heavy the record, counsel never ask for time to prepare their arguments. In cases of exceptional difficulty, complexity and a heavy record, it may perhaps be reasonable to give a short adjournment to enable the lawyers to prepare their arguments ; but the normal rule should be to hear the arguments immediately on the conclusion of the evidence."

The justification given for the lengthy arguments is that the issue is complex and demands elaborate oral arguments. Oral arguments undoubtedly consume considerable time of the court which otherwise can usefully be utilised in the

disposal of other cases, which are waiting for attention by the Presiding Officer. Written arguments should be encouraged and the arguments filed by both the parties be made part of the record. There is a general tendency to cite a very large number of authorities and to read lengthy passages from those judgments. Experience tells us that the fate of most cases depends upon the facts. At the trial stage, the Judgments are better rendered by dealing with the questions of fact and appraisal of the evidence with reference to the statutory provisions applicable to the matter and the authorities having a direct bearing.

(g) Judgments are very often too long and verbose. Therefore, they are vague and result in various interpretations. In order to write a long Judgment, a Judge takes a long time too, what is worse, a lot of time is spent in correcting the judgment. A judgment, it needs to be emphasised, is not a medium to display the learning of the Judge, on points which have only incidental bearing. The function of a Judge, while deciding a case, is not the same as that of a Research scholar writing thesis on a particular branch of law. Concise narration of facts and brevity of reasonings in the judgment are always appreciated. A judgment, therefore, should set out the salient facts of the case, deal with the points of controversy, appraise the relevant evidence, discuss the questions of law which arise and incorporate the findings of the court on the various issues. The judgment should conclude by stating in precise language the actual relief to be granted to the plaintiff. The Presiding Officers of the subordinate courts have to condition themselves to write brief judgments with a view to avoid prolixity and verbosity. The brevity in the Judgment, should not, however, be used as a justification for not dealing with inconvenient contentions. The stress on brief Judgments should certainly not provide a cover for mental lethargy nor an alibi for intellectual dishonesty. A balance has, therefore, to be kept in the matter.

(h) The record of the trial court is summoned by the higher court for the purposes of disposal of an appeal or revision. Such records are also requisitioned by the High Court in connection with disposal of the appeals/revisions and other miscellaneous matters. Record of the trial court or first appellate or revisional courts continues to gather dust and are shelved in the office of the higher courts for a much longer period than is required. It is this area where the parties also become active. A party interested in delaying the disposal of the case gets the record held up at the higher level even though the record may not be required and the case in which it was summoned has already been decided either by default or after contest. Even though the stay order or interim order has been vacated, the trial court cannot proceed with the case unless the original record summoned by the higher court is received back by it. While deciding the appeals, revisions or other miscellaneous proceedings. It would be proper and necessary if the appellate or revisional court while pronouncing the Judgment, fixes a date on which both the parties may be, required to appear before the trial court. In that event, at least one of the parties would appear before the court below and it may bring to its notice that no further proceedings are pending before the higher court. The court below would then pursue the matter to get back the record from

the higher court. The appellate or revisional courts at the district level shall ensure that the record of the decided cases are immediately transmitted back to the trial courts.

At the level of the High Court, it should be the duty of the concerned Dy. Registrar to ensure that the record of the decided cases is sent back to the trial court so as to reach there positively within one month of the decision. It should not be allowed to be stacked in the already overcrowded and congested shelves of the High Court. In case there is any breach of this direction, the concerned Deputy Registrar shall be personally liable to answer. The District Judge shall forward a list of all such cases which have been decided by the High Court or in which interim orders have been vacated and the record thereof has not been received by them or the trial courts within the period as directed above, to the Registrar, by name, who in his turn, shall ensure that the record, if not already sent, is despatched and delivered to the concerned trial court and disciplinary proceedings against the concerned Deputy Registrar and other officials for suitable action be also initiated. Hon'ble Inspecting Judges may also play a vital role in the matter.

(i) Copy applications.--One of the serious problems noticed on the administrative side is about the inordinate delay in furnishing the certified copies of the judgments and final orders. On an average, it takes more than a fortnight to deliver a certified copy of the Judgment/order. The result of this delay is that filing of the appeals or revisions is delayed, and the process elongated. There is yet another aspect of the matter. The litigants are entitled to know as to what is the decision of the court about their dispute. It becomes necessary for them to obtain a certified copy of the Judgment or final order for the purpose of execution or to make up mind whether further remedies by way of appeal, review or revision etc., have to be pushed or not. It is all right that the Judgments and orders are rendered by the Presiding Officers without delay but it is of equal importance that the same reach the hands of the concerned parties expeditiously. In order to avoid delays, traditional method of preparing handwritten or typed copies be supplemented by zerox or photostat copies which may be prepared just after the delivery of the judgment or order and they may be certified to be true copies. We understand, in almost all the district Photocopiers have been provided which may usefully be put to use for copying purposes. Carbon copies of the Judgment, if ready, are required to be furnished immediately on pronouncement of judgment under Order XX. Rule 6B of the Code of Civil Procedure.

#### TRAINING PROGRAMMES-SYLLABI

37. Whatever directions may be issued and suggestions made to the Presiding Officers of the subordinate courts with a view to eliminate delays and ensure prompt disposal of cases, everything in the ultimate analysis would depend upon the personality of the trial Judge, in general and the District Judge, in particular. In the whole range of public office, there are manifest weaknesses of character,

intellect or psychic constitution but they are revealed more strikingly in the discharge of the responsibilities of a Presiding Officer of a subordinate court. The Judicial Officers have to face all kinds of situations in courts. Including the difficulties created by obstructionist and cantankerous litigants and over-bearing and aggressive counsel. They have to regulate the cross-examination of the witnesses which often tends to be unduly prolix, restrict and limit the undue morality in arguments, control the court diary by fixing such number of cases as may be taken up for Judicious appraisal within the limited court-time etc. In the discharge of their important Judicial functions, they have to face and encounter the advocates (engaged by the rival parties) who fight tenaciously to protect the interest of their clients. No one can preside effectively over such a situation if he is mediocre in intellect or professional skill, lacking in decisiveness or is otherwise not emotionally stable. The court room decorum has to be maintained with a firm hand if cases are to be tried fairly and expeditiously, The trial Judge, it has been said by an American writer--Henry W. Jones (The trial Judge--Role, Analysis and Profile--The Courts, the Public and the Law Explosion (1965) page 137), who is shaky in professional understanding, imperfect in moral resolution or unduly conciliatory in personality, will inevitably be overpowered and overborne by forceful and aggressive trial counsel. The evil that weak Judges do, less often from partiality as commonly supposed, than from simple psychic inability to stand up to aggressive or strong willed leaders of the trial bar is a bitter but largely untold story in the administration of justice. Sometimes certain shortcomings in the trial Judge leave a bad taste with the litigants and lawyers. Proper and fair trial requires not only professional competence, it also needs cool temperament, mental fairness and capacity for remaining unruffled despite the provocation given and the stress and strain caused by the unscrupulous conduct of those who appear during the course of the trial. To equip the Judicial Officers to properly discharge their responsibilities and to enable them to meet the challenging situations, it is essential that there should be intermittent training courses for the Judicial Officers in phases. There is a well established Judicial Training and Research Institute in the State. Fortunately, it is walking with long steps. The training facilities available at the Institute must be fully exploited to the full advantage of Judicial Officers. The Director of the Institute should devote his energies more on the practical aspects of the problems which arise in day-to-day working in the battling courts rather than the academic aspects of law. The training schedule should include the courses to find out the ways and means to meet and encounter the court room problems--a reality to which now no one can afford to shut his eyes. In the training syllabi--a new horizon about the emphasis on eliminating the delays and prompt disposal of cases should also be projected.

The staff is an integral part of the courts. Unless they are well equipped and trained in the work which is assigned to them. Presiding Officers would not be able to work effectively and efficiently. The ministerial wing of the High Court also has its major role to play in the governance of the subordinate courts. It is,

therefore, considered necessary that the staff of the subordinate courts as well as High Court, particularly gazetted ministerial staff (those who are rankers) should also be imparted training, at intervals. The Ministerial staff--both of High Court and subordinate courts, can usefully be utilised for purpose of training during the period of their recess in summer vacations. This aspect of the matter may be considered by the High Court on its administrative side and if found feasible, it should be implemented.

38. After having identified the area and the shortcomings which give rise to arrears and delays in prompt disposal of cases, the next point which required emphasis is the supervision and monitoring of the work of disposal of old cases under the categories as have been determined in para 32 above. The old cases have been categorised in three categories, namely, "critically old". Very old" and "old." The cases of "critically old" category have to be given TOP PRIORITY" and precedence over the cases of the next category and likewise, till a Presiding Officer reaches the category of "recent" cases. The cases covered by "recent" category shall not be neglected and they shall also be paid due attention simultaneously with other categories of cases. The idea is to most out a new work culture and to fix accountability at all levels. Judicial Officers shall take up the cases on the basis of priorities as fixed by this Court, for example, firstly, the cases, which are of the category of "critically old" shall be taken up, failing which, the cases of the next category of Very old" are to be attended to and thereafter the "old" and "recent" cases shall be taken up. It is expected that the existing cases covered by categories "critically old" and Very old" may be disposed of in a couple of years. All the Judicial Officers shall devote their energies and time in the disposal of the cases falling in the first two categories in particular, as if a judicial emergency has been imposed and a "RED ALERT" sounded. In no eventuality, a case of a lower category shall be given preference and precedence over the listed cases of the higher categories. The Presiding Officer shall scale down to the next lower category only when, for reasons to be recorded on the order sheet, the listed case(s) of the higher categories had collapsed on that day.

In the absence of the Presiding Officer of a court, a link officer looks after the routine and urgent work. The link officer shall himself see to it that the old cases are not put off to a date more than a week. The task of giving the dates in respect of cases which are required to be adjourned on account of absence of Presiding Officer must be attended to by the link officer himself and in no case it shall be left to the ministerial staff.

39. The District Judge has a very onerous duty to shoulder and has to undertake an arduous task of monitoring and supervising the prompt disposal of the cases of different categories. The District Judge shall himself supervise and monitor the progress of the disposal of the cases of the categories "critically old" and Very old". Taking into consideration the fact that the District Judge is already over worked and has to discharge and perform multifarious duties and functions, as

detailed above, he may nominate an officer or officers of the rank of Additional District and Sessions Judge, or if no Additional District and Sessions Judge is available in the district, the next seniormost officer, for charging them with the duty to monitor and supervise the cases falling under the two other categories of "old" and "recent" cases. The District Judge would gauge the performance of each one of the Presiding Officers subordinate to him with reference to the disposal of old cases of the different categories. The appraisal and evaluation of the personality and performance of a Presiding Officer has, of necessity, to be result oriented. The message should run loud and clear that there cannot be any compromise on the count of prompt disposal of the old cases. Those Presiding Officers who fail to abide by the directions contained in this Judgment or do not pay proper heed and attention in taking up and deciding the cases, as categorised by us, shall initially be administered a stern warning by the District Judge under intimation to this Court. If the concerned Judicial Officer falls to make improvement, the District Judge will send a report in this connection to this Court. In the monthly meetings of the Judicial Officers presided over by District Judge, one of the items for scrutiny and consideration shall be with regard to the disposal of old cases category-wise. The annual appraisal and evaluation of the Judicial Officer being "outstanding", "excellent" Very good", "good" or "fair" etc., inter alia, is to depend upon his performance or otherwise in the field of prompt disposal of old cases. In the standard form of self assessment, a column be incorporated with regard to the disposal of old cases category-wise.

40. This fact cannot be denied that the task of disposal of old cases is not only time-consuming but taxing too. The Presiding Officer has to wade through the labyrinths of the voluminous record which has swollen in course of time on account of continued long pendency. The Presiding Officer dealing with the cases under the categories of "critical" and "very old" have to put in extra labour, energy and time. The present standard prescribed for outturn of work may not be sufficient to recompense the Judicial Officer for the time and energy devoted by him in the prompt disposal of such cases and this is one reason which impels the Presiding Officers to give preference to the recent uncomplicated and easy civil cases. Our considered view is that the standard of out-turn of work should be increased and allowed to the Judicial Officers by 50% more, meaning thereby, if a Judicial Officer earns quota of 3 days by deciding a civil suit, he shall now get 4-1/2 days out-turn of work. If the case decided by him falls in the category of "critically old" or Very old". Similarly in respect of the cases which have been categorised as "old", relief to the extent of 25% of the existing standard of out-turn of work shall be allowed, for example, if a case yields 2 days out-turn of work, the Presiding Officer deciding the case of the "old category" shall get out-turn of work for 2-1/2 days.

41. The District Judge should be liberal in awarding "good", "outstanding" and "excellent" enterics, as the case may be, to those officers who have really devoted time and energies towards the prompt disposal of the cases or the categories "critically old", Very old" and "old". If the District Judge is of the

opinion that a particular officer has worked hard and has strived well to decide the cases of the above categories, and has achieved the targets, special remarks/entries appreciating and commending his work shall be recorded by him. In future promotions also, other things remaining the same, performance--either way of the Judicial Officer in the area of prompt disposal of old cases shall also be a weighing factor.

42. We are conscious of the fact that this judgment, though not radical and innovative in approach, is likely to produce some working problems and difficulties. A Committee, at the State level, is, therefore, necessary to be constituted to scrutinise the various difficulties of the Judicial Officers and to provide them due assistance and guidance. The Committee shall consist of one of the Hon"ble sitting Judges of this Court to be known as the Chairman and two senior District Judges of the State to be nominated by Hon"ble the Chief Justice. the Registrar of this Court. Principal Secretary-cum-L.R./Judicial Secretary, Government of U. P. the Director of the Judicial Research and Training Institute, U. P. and the President of the U. P. Judicial Officers" Service Association. The Committee shall convene at least three meetings in a year. The main function of the Committee would be to supervise and monitor the disposal of the old case under the different categories and to provide help, assistance, and guidance to the District Judges, and other Judicial officers in the wake of the difficulties and problems faced by them in implementing the directions contained in this Judgment.

43. Now we have reached the stage to conclude the Judgment by concretising our directions to command and mandate all concerned to abide by them:

1. The Presiding Officers and all concerned, e.g., lawyers, litigants and others shall be bound by the directions contained in the body of the judgment in so far as they relate to them.

2 The directions issued by the High Court on administrative side through various circular letters and as incorporated in para 14 above, and in so far as they are not inconsistent with the directions and objectives, contained in this judgment are hereby given the force of law and shall be strictly observed, followed and compiled with.

3 All the old cases distinctly labelled as "critically old", Very old" and "old" shall be posted in separate registers and for the purpose of distinction they shall be kept in the folders/file covers of the colours as mentioned in para 32 above.

4 In the cause list as well as in the diary of the Presiding Officer, the cases shall be posted in chronological order. The cases of "critically old" category shall be posted on the top in "Red ink" followed by the cases of category of "very old" in "Green ink", cases of "old" category in "Block ink" and the cases falling in the "recent" category shall be listed at the bottom in Blue ink."

5 The concerned Presiding Officer including the District Judge shall give utmost

priority to the "critically old" cases, failing which the case falling in the category of Very old", and so on and so forth.

6 The directions relating to adjournment of cases shall be strictly adhered to and followed. The number of adjournments shall normally not exceed the quota as prescribed in paragraph 36 (b) above.

7. Barring exceptional circumstances and exigencies, all out efforts should be made to dispose of the existing cases of original jurisdiction falling in the category of "critical cases" within a period of one year, cases falling under the category of "very old" in two years, "old cases" in three years and the remaining cases of the "recent" category in four years period.

With regard to the cases relating to Appellate or revisional jurisdiction, the above limit of time shall be reduced to one half. meaning thereby the appeals and revisions of the "critically old" category shall be decided within six months" period. Very old" within one year, "old" within eighteen months and that of "recent" category in two years" period.

The age of the cases is to be reckoned as on 1st of January, 1998. The prescription of time given in this direction is supposed to be the normal outside limit.

8 To begin with, the District Judge shall chalk out a phased programme for every court under him and for his own court for the disposal of the cases of first two categories, i.e. "critically old" and Very old" to be taken up on TOP PRIORITY" basis with a view to ensure that the cases falling under these two categories are decided within the period prescribed above. Efforts should be made to dispose of the cases of the two categories specified above much before the time aforesaid which shall not go unnoticed out to be appreciated and commended. The District Judge himself or through his nominated Additional District Judge/or the next seniormost officer available at station, shall supervise and monitor the disposal of old cases and extend all possible help, assistance and guidance to the Presiding Officers subordinate to him in deciding the old cases, according to phased programme and the directions contained in this judgment.

9 Normally cases of the category of "critically old" and Very old" shall be taken up by the same officer as long as he remains posted in the district and is seized of the cases. The Judicial officers, who fail in achieving the desired targets are bound to earn displeasure of this Court and adverse remarks based on the appraisal of out-turn of work with reference to the disposal or otherwise of the cases of different categories. The officer who has achieved the target may be given remission in the out-turn of work, as above, and may also earn a special appreciative entry for his commendable performance in the area of disposal of old cases.

10. The Registrar of this Court shall ensure that the records of the decided cases in which further proceedings are to be taken by the subordinate courts are

transmitted in all circumstances and delivered to the trial court within one month of the order passed by this Court on judicial side. He shall obtain a certificate from all the Judicial Sections of this Court that the record has been transmitted within specified period and that no record, which is required to be transmitted under the directions contained in this judgment, is pending in the Section. The Registrar shall also ensure that the reply to the enquiries made by the District Judges or other Presiding Officers of the subordinate courts are sent by the concerned Deputy Registrar within 20 days of the receipt of the letter from the subordinate courts, failing which the defaulter may be suitably dealt with and punished.

11. To implement the various directions, particularly, as contained in paragraphs 34 (a) to (f), 35 (a) and (b). 36 (a) to (i) and 37 of this judgment, action is to be initiated and decision taken by the High Court on administrative side. The Registrar shall ensure that all these matters which require approval of the Administrative Committee or that of the Full Court are put up with all expedition and circular letters issued to the subordinate courts in the light of the decisions taken in the matter. The District Judges shall initiate action in the light of the above directions immediately and in any case, latest by 1st January. 1998.

12. A seven member Committee consisting of one Hon"ble Judge of this Court to be known as "Chairman", and two senior District Judges to be nominated by Hon"ble the Chief Justice, the Registrar of this Court, Principal Secretary-cum-L.R. of the Judicial Department of the State of U. P., Director of the Judicial Training and Research Institute and the President of the Uttar Pradesh Judicial Officers' Association shall be constituted to monitor and supervise the prompt disposal of old cases at State level and to assist and guide the subordinate courts in overcoming their problems in the implementation of the directions contained in this judgment.

44. The Registrar of tills Court is directed to place a copy of this judgment before Hon"ble the Chief Justice as well as the Administrative Committee for taking appropriate decisions and issuing circular letters on the administrative side in the light of the directions contained in this judgment. He shall also immediately send copies of this judgment to all the District Judges and all Presiding Officers of the subordinate courts for strict observance and compliance of the directions contained in the judgment. Copies shall also be sent immediately to High Court Bar Associations, all the District Bars. Board of Revenue, Tribunals, etc.

45. We understand that an Administrative Conference is scheduled to take place in the first fortnight of December, 1997 in which all District Judges have been invited to participate. In the agenda items, the subject of elimination of delays and prompt disposal of the cases in the light of this decision shall be included and discussed threadbare and it shall be made clear to the District Judges in unerring and certain terms that the responsibility to ensure the implementation of the directions in this judgment rests squarely on them. A copy of this judgment be made available to all the District Judges well in advance so that

they are in a position to point their difficulties. If any, in the working out of this judgment.

46. Civil Misc. Writ Petition Nos. 23718, 23721, 24675 and 25505 of 1997 shall stand disposed of in the light of the above directions.