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Court : Orissa

Decided On : Mar-23-1955

Reported in : AIR1955Ori102; 1955CriLJ1085

Judge : Panigrahi, C.J., ;Mohapatra and ;Misra, JJ.

Acts : Legal Practitioners Act, 1879 - Sections 13; Legal Practitioners (Fees) Act, 1926 - Sections 3, 4 and 5; Code of Civil Procedure (CPC) , 1908 - Order 8, Rule 6

Appeal No. : Civil Ref. No. 6 of 1954

Appellant : The State

Respondent : Nrusingha Naik

Advocate for Def. : R.N. Sinha, Adv.

Advocate for Pet/Ap. : Adv. General

Judgement :

Panigrahi, C.J.

1. This is a reference made by the District Judge of Cuttack, under Section 14, Legal Practitioners Act, against the opposite party, Nrusingh Naik, a pleader practising at Jajpur. The proceedings Were started on the complaint of one Gajindra Das who had engaged the pleader for executing a small cause court

decree obtained by him against Chintamoni Dora. The complainant, Gajindra Das, alleged that one Sukhadeb samal, the registered clerk of a pleader named Mukund Charan Panda, realised Rs. 35/- from the judgment debtor and misappropriated the same. He further complained that he engaged the opposite party Nrusingh Naik to execute his decree and that in the course of the execution the pleader had realised Rs. 9/-, but suppressed the payment made by the judgment-debtor from him (the decree-holder) and appropriated the same.

The complainant then made enquiries and came to know that the pleader had actually received Rs. 9/- in the course of execution. He made a complaint to the Bar Association, and thereafter reported the matter to the Munsif, but no action having been taken by the Munsif a petition was sent to this court on 18-1-1954, whereupon an enquiry was started. During the enquiry the pleader paid up the sum of Rs. 9/- to the complainant and produced a receipt dated 30-8-1954. When notice of the enquiry was served upon the complainant a petition dated 17-9-1954 was sent by the complainant to the Court pleading inability to attend the enquiry and praying that the proceedings !be dropped.

2. The learned District Judge held that the pleader, Nrusingh Naik 'should not have behaved with his client in the way he had done' but as he had tendered an apology, he recommended that the proceedings may be dropped.

3. The plea taken by the opposite party is that he filed two execution petitions on behalf of the complainant-decree-holder, in Execution cases Nps. 188 of 1952 and 186 of 1953, and that he received Rs. 9/- on behalf of the decree-holder in the earlier Execution case No, 188 of 1952. He retained this amount as the decree-holder had agreed that he would adjust it towards his fees. He further says that he offered the amount to Gajindra Das in August or September 1953, but the decree-holder went away without making any adjustment towards his fee. He also expressed regret and tendered an apology and pleaded 'good faith' in having retained the amount.

4. It must be stated at the outset that the learned District Judge has not followed the proper procedure in holding the enquiry against the pleader. He ought to have framed a charge specifying the details of the alleged act of professional

misconduct, and examined both the complainant and the accused to satisfy himself whether the one or the other version is correct. The complainant no doubt pleaded inability to incur any further expense in connection with the enquiry, but the District Judge should have summoned him as a witness at state expense, and given him an opportunity to prove the charge. It must be remembered that charges of professional misconduct should not be allowed to be made against a pleader on frivolous grounds. If the complaint made by the decree-holder was found to be substantially untrue, it was open to the District Judge to order his prosecution. Conversely, if his complaint was substantially true, the mere fact that the money retained by the pleader was subsequently repaid does not in any way extenuate the offence committed by the pleader. Apart from the civil liability of the pleader to return the money realised by him on behalf of his client, the court is bound to enquire into the misconduct of the pleader in the discharge of his professional duties, so that the prestige of the legal profession may be kept unsullied.

Whenever a charge of professional misconduct is made against an officer of the court, it ceases to be a dispute between the litigant and his pleader. The court is bound to protect the reputation of the legal profession against unjust attacks, and is equally bound to punish the erring pleader if he has been found guilty of conduct unworthy of his profession. It has been truly said that it is not enough that the doors of the Temple of Justice be kept open: it is essential that the ways of approach be kept clean.

5. The plea put forward by the pleader that the, decree-holder had agreed that he would adjust his fees, out of realizations, has not been attempted to be proved. The pleader did not examine himself. The explanation that he gave before the Munsif was that the decree-holder had to pay him Rs. 17/-as fees for the two Execution Cases. In the statement filed by him before the District Judge he makes no mention of the amount alleged to have been stipulated between himself and his client, to be paid as fees in the two execution cases. The pleader received the notice under Section 14, Legal Practitioners Act from the District Judge on 11-8-1954, and obtained a receipt from the decree-holder acknowledging receipt of the sum of Rs 9/- in cash on 30-8-1954. He filed this receipt, along with his reply, on 4-9-1954. The receipt makes no mention of any fees having been paid by the

decree-holder on that date, and contains a vaguely-worded recital that he had adjusted the fees with the vakil.

There is no recital that any money passed from the decree-holder to the pleader; in the very nature of things no money could have passed when the specific recital is that the decree-holder was paid Rs. 9/. It is also hard to believe that the decree-holder agreed to pay the pleader Rs. 8/- for each of the two Execution Cases, though the first execution case was dismissed for non-prosecution. There is no evidence of any agreement having been entered into between the decree-holder and thepleader stipulating the fee to be paid for services rendered by the pleader. I have, therefore, no hesitation in holding that the plea put forward bythe pleader that there was an agreement that heshould retain the decretal amount with a view toadjust it towards his fees, is more probably whollyfalse than partly true.

It must also be noticed that the Rules framed by the High Court fixing the fees of pleaders show that in uncontested small cause suits the fee payable is 21/2 per cent., and in execution cases arising out of suits tried on the small cause side the fee leviable is half of the scale prescribed. There is ' another proviso to the Rule which says that the pleader is entitled to a fee in execution cases, only for the first execution case, and that for the subsequent execution cases the fee shall be at the discretion of the court (See G. R. & C. O. Vol. I (Civil), Rule 28 (i) at page 132). In these circumstances, the claim of the pleader that the decree-holder had agreed to pay him Rs. 16/- is as fantastic as it is unreal.

6. Undoubtedly, a pleader is entitled to a feel for work done on the basis of quantum meruit in the absence of any specific agreement fixing a stipulated fee; and such an agreement may be express or implied and can be the basis of a suit by the pleader. The Legal Practitioners (Fees) Act (21 of 1926) expressly permits such an agreement being entered into between the legal practitioner and his client. If no such fee had been setded by agreement, Section 4 of the Act says that he shall be entitled to

'a fee computed in accordance with the Jaw for the time being in force in regard to the computation of the costs to be, awarded to a party in respect of the fee of his legal practitioner'.

Apart from his right of suit the pleader has also a lien on the papers entrusted to his custody and can refuse to part with the papers until his fee is paid.

It is, therefore, highly desirable that in order to, avoid any misunderstandings as to the amount of fee to be charged there should be a clear written contract between the parties, and the amount charged should be expressly agreed to by the client; and such an agreement should be entered into before the pleader accepts the engagement. Once he is engaged a confidential relationship is established and the pleader occupies a privileged position which debars him from claiming more than a fair and just remuneration. If he receives any money on behalf of his client in the course of his employment, he does so as a trustee and is bound to return the same. He cannot claim any lien on the moneys so received unless it be expressly stipulated. The only statutory recognition of such a lien is to be found in Order 8, Rule 6, Civil P. C., which deals with a pleading of a set-off in a written statement. Sub-rule (2) of this Rule says:

'The written statement shall have the same effect as a plaint in a cross suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.'

In the absence of a contract, the rights of an Attorney are governed by Section 171, Contract Act which says that an, Attorney of a High Court may retain, as a security for, a general balance of account, any goods bailed to him, but no other persons have the right to retain, as security for such balance, goods bailed to them, unless there is an express contract to that effect. It is not necessary to go into the question as to whether a pleader can claim this privilege granted to an Attorney of a High Court. In any event it is the duty of the pleader to keep complete and accurate accounts so that there may be no dispute between him and his client.

As was observed by Sulaiman C. J.. -- 'In Re: Ranjit Singh', AIR 1936 All 359 (SB) (A).

'It would increase the dignity of the profession as well as its purity if a common practice grew up under which the exact terms of the contract of engagement of counsel were reduced into writing, preferably signed by the client, and maintained in the Advocate's office. Such a contract would make it impossible for any dispute or misapprehension to arise later'.

In -- 'Muthukrishna Yachendra Bahadur v. W.H.Nurse', AIR 1921 Mad 320 (B). It was held that'a vakil engaged in a suit is not entitled to refuseto take a necessary step in the suit on the groundthat his own fees had not been paid and at thesame time refuse his consent to a change of vakalat to another vakil'.

In the course of his judgment Wallis C. J., observed that vakils

'can insist on payment of their fees in advance, or rely on their lien on the client's papers and on the fruits of the litigation as well as on their right to sue for their fees'.

This observation might lead to the impression that a vakil has got a lien on his client's moneys that come into his hands, but I am unable to find any authority for this broad general proposition.

In fact, in a later case of the same High Court -- 'Krishnamachariar v. Official Assignee, Madras', AIR 1932 Mad 256 (C), the court held that no such lien as is available to a Solicitor or Attorney is available to an advocate. Cornish J., observes:

'But the appellant is an Advocate and not a solicitor or Attorney, and the only possible ground for supporting a claim to such a lien in his favour would be an express agreement by the client to that effect'.

7. Even in England the extent to which the lien can be extended is merely a right to the costs incurred by the solicitor in realizing any money on behalf of his client. In -- 'Mackenzie v. Mackintosh', (1891) 64 LT 706 (D), Lindley J., laid down the law as follows:

'He (the Solicitor) has a general lien upon deeds and papers in his hands for all costs, however arising. But he has no such general right of lien against moneys which he recovers for his client. Whether he gets them or does not, his lien or right to be paid out of those funds is to be confined to the costs incurred in respect of those funds subject of course only to this: that he has the ordinary rights of a set-off whichone creditor has as against another, and whichI need not further refer to'.

It appears to me, therefore, that in the absence of an express agreement no Advocate or pleader is entitled to retain the moneys of his client and claim a lien to hold it until his own accounts are settled.

8. There is no evidence in this case or even an assertion that the pleader intimated the fact of his having received the sum of Rs. 9/- to the decree-holder at any time. It was urged, however, on his behalf that the pleader gave credit to this sum in the subsequent execution petition which he filed, but this is not sufficient to attribute knowledge to the decree-holder who is a marksman, in the absence of any specific admission by the decree-holder himself. What a pleader should do in such circumstances is a matter of commonsense. He should immediately intimate to his cheat that he had received the amount on his behalf or send it by Money order if he does not come to receive it in person. Where duty and interest conflict, the former should prevail. The Madras Bar Council has issued a number of instructions to the Members of the Bar in the matter of accounting which may well be adopted by the legal profession here. These rules are quoted below:

'1. Regular accounts in bound books, viz., a day book and a ledger, should be maintained by every practitioner regarding the daily receipts and disbursements of the money of his clients.

2. The fee for each case should be settled at the earliest opportunity and wherever possible the settlement should contain the signature of the party. Such settlement should appear in the accounts as soon as settled, and in cases of continuous transactions with clients regarding a series of cases the accounts should be settled at least once a year; and in every case where the practitioner receives moneys from his client without express direction for appropriation to any purpose, it is advisable that the practitioner appropriates such payment towards fees and

out-fees and communicates the same to the client immediately in all cases where the amount received is capable of allocation or appropriation.

3. Moneys received or drawn from court by practitioners on behalf of their clients should be paid without delay to the client who should be intimated by post immediately after such receipt, and where the client does not turn up, the money should be remitted to the client's address by postal money order, If for any reason the money cannot be so paid or remitted to the client the same should be invested in the post office savings Bank at the place in the name of the practitioner, provided that where the amount exceeds the limit prescribed by the postal rules relating to investment in the Savings Bank Account, the excess should be invested in any other Bank in the locality.

4. Practitioners should avoid arrangements by which clients' moneys in their hands are converted into loans. But in no case should such conversion be made without the previous consent to writing of the client'.

The Calcutta High Court also has approved of the same principles as would be seen from the casereported in -- 'In the matter of An Attorney', ILR (1943)-1 Cal 81 (E). There it has been laid downthat it is his (attorney's) duty first to distinguish the client's money from other moneys and for this purpose to enter the amount properly in his own books into a ledger account of his client; and secondly to put the money into a separate account in the Bank. He has no right to use the money. The fact that he can put it back or may be able to pay it back immediately on demand, or within a reasonable time, makes no difference.- Jt does not appear that the pleader, in the case before us, kept any accounts of this particular client's transactions or that he kept his moneys in a separate account. Nor did he bring it to the knowledge of his client that he had received the money on his behalf. I am, therefore, unable to accept the plea of 'good faith' put forward by him.

9. Even if such a Hen in favour of the pleader existed, it does not extend to appropriation of his client's money in exercise of the lien. He has no right to appropriate it and drive the client to a suit. In England rules have been framed for the guidance of Solicitors and any disregard of the rules attracts unpleasant consequences. In -- 'In re: A Solicitor', (1911) 28 TLR 59 (F), the following

passage occurs in the judgment of Darling J. :--

'As to the practice of mixing up the moneys of the client with that of the Solicitor himself, there were not only the older cases in the books which condemned it but there had been recent cases, which had apparently not been reported, in which this Court had expressed a strong opinion. He himself had heard the Lord Chief Justice on several occasions denounce the practice as reprehensible, and Solicitors must either abandon it or must be prepared for severe treatment should circumstances bring them before the Court'.

I am of the same opinion. If the money thatcomes into the hands of a pleader was paid for a special purpose, it must be utilized for that purpose 'and for no other. No lien exists in respect of -such moneys. If there is no express agreement for payment of costs the moneys of the clients are not usable and should be kept distinct. This does not prejudice the pleader's lien for costs assuming that it exists. But both according to the law in England and the law here it is clear that the pleader is not entitled to appropriate, use, or pay himself moneys which he holds in lien because the Legislature enables the pleader to sue for his fees. It may be useful to draw the attention, of the members of the legal profession to certain rules of etiquette, framed by the General Council of the Barof England relating to 'Counsel's Fees'.

Rule 17 of these Rules says that

'it is a breach of professional etiquette for counsel to accept instructions from a Solicitor on terms that payment of fees shall be postponed'. See Boulton's 'Conduct and Etiquette at the Bar' Page 39.

In the Report of the Committee of the SupremeCourt practice and procedure in 1953, it is laid down that a Barrister is responsible for whatever is done on his behalf by his clerk. If there is any dispute regarding payment of fees, complaint is made to the Statutory Committee of the Law 'Society and the dispute is settled between counseland solicitors. This method of settlement has on many occasions, proved successful. It is open to the Bar Council to devise a machinery by which a Tribunal can be established wherever a Bar Association exists, and such disputes

between a lawyer and his client may be settled by reference to this Tribunal without being brought to the notice of the Court.

On previous occasions this Court has intervened and helped Advocates in realizing their fees from their clients. Such practice can easily be extended to mofussil Courts by suitable amendment to the rules. But it should be remembered that when ever a charge of professional misconduct is brought to the notice of the Court and an agreement is set up on behalf of the lawyer accused of misconduct the Court will require strict proof that the confidential relationship existing between the lawyer and his client has not been utilised to the advantage of the lawyer. Section 16, Contract Act raises a presumption against the person who stands in a fiduciary relationship to another, and it would be extremely difficult for the lawyer to establish the bona fides of an agreement even if it is reduced to writing. It is, therefore, desirable in the interests of the legal profession and I take this opportunity of appealing to the Bar Council to give their earnest consideration to this matter to frame appropriate rules which will protect the lawyers against attacks by unscrupulous clients.

10. The opposite party is clearly guilty of professional misconduct in having acted in a manner not in keeping with the duties of his profession. I do not think, however, that any harsh sentence is called for in the circumstances of this case. It is enough if we express our disapproval of the conduct of the pleader & censure him. We would accordingly order that the opposite party, Nrusing Naik, pleader, Jajpur, be reprimanded. He should, however, pay the hearing fee of the Advocate-General which we assess at Rs. 100/- (Rupees one hundred only).

Mohapatra, J.

11. I agree.

Misra, J.

12. I agree.