

Mahesh Chandra Sharma Vs. State

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Court : Rajasthan

Decided On : Mar-06-2000

Reported in : AIR2001Raj126; 2000(4)WLC624

Judge : Gyan Sudha Misra, J.

Acts : [Advocates Act, 1961](#) - Sections 34

Appeal No. : Civil Writ Petn. No. 691 of 2000

Appellant : Mahesh Chandra Sharma

Respondent : State

Advocate for Pet/Ap. : R.D. Rastogi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Gyan Sudha Misra, J.

1. The petitioner was a panel lawyer with the respondent State of Rajasthan for conducting cases on its behalf as per express terms and conditions of agreement between him and the State which envisaged that 50% of the fee would be payable by the respondent after reply is filed in the case and the balance 50% would be

paid after conclusion of the proceeding.

2. Learned counsel for the petitioner Mr. R.D. Rastogi, has submitted that a lawyer, who is engaged by the State or any other litigant, is entitled to the full fee for the entire case and not merely the amount which is due on the date when he is removed by the litigant as his advocate. In support of his submission he has relied upon a decision reported in 1979 Raj LW 73 : (AIR 1979 Raj 137) delivered in the matter of Union of India v. Radhey Shyam in order to emphasis that in the said case also even though as per the terms of agreement, only half of the total fee was payable soon after the written statement was filed and the remaining half was to be paid at the time of conclusion of the suit after judgment was pronounced, yet a learned single Judge in the said case took the view that an advocate removed from the case would be entitled to the full fee if his engagement is cancelled before the case is concluded. It was further contended that the advocate removed from the case without any fault on his part would be precluded from accepting briefs from the other party in those cases even after his removal.

3. However, the petitioner and his counsel have missed that in the case referred to hereinbefore relied upon by them, the entire fee was held to be payable with the leave of the Court as per the provisions of the Civil Procedure Code, since said case related to a particular suit pending in the trial Court wherein the payment was made with the leave of the Court, where as in the Instant case, the terms and conditions were expressly laid down in the agreement between the parties and the occasion for seeking leave of the Court for payment of full fee never cropped up at all as the petitioner has merely sought a general direction in all cases pending for payment of full fee in view of his removal from the panel of such lawyers which had been constituted for prosecuting the cases in the High Court on behalf of the State. The provisions of the C.P.C. thus cannot be relied upon contrary to the agreement in absence of the leave of the Court.

4. In so far as the latter submission is concerned, the same is also devoid of substance as it is an admitted position that the petitioner accepted the engagement to act as a lawyer on behalf of the State Government on the express terms and conditions that only 50% would be payable to him after filing the reply

and rest of the 50% would be payable after conclusion of the entire proceedings. Hence the petitioner before accepting this condition of agreement would be deemed to have anticipated the consequence in the event of his removal from the panel and hence to urge that his removal from the panel would deprive him of engagement in those cases in future, is devoid of any force.

5. It is not disputed that the petitioner was removed from the panel after filing the reply but before conclusion of the proceeding and thus, in my view he is not legally entitled to claim the full fee unless it was with leave of the Court in view of the express terms and conditions of his engagement for the obvious reason that express terms and conditions cannot be attributed a different meaning and intention in absence of any ambiguity. Inference otherwise from the words has to be drawn only where there is ambiguity in the terms of conditions of the agreement which is not the case herein. Hence intention otherwise than what is expressly laid down cannot be gathered contrary to the express terms and conditions of the agreement.

6. I, therefore, do not feel persuaded to issue any direction for payment of the full fee to the petitioner for the entire case even though he had not worked in the case till its conclusion as a consequence of his removal from the panel. He would, however be certainly entitled to 50% of the fee in those cases in which he had filed the reply in consonance with the agreement.

7. The writ petition thus is not fit to be entertained and hence it is dismissed at the admission stage.