

In Re: an Attorney

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Court : Kolkata

Decided On : Mar-19-1925

Reported in : (1925)ILR52Cal795

Judge : C.C. Ghose, J.

Appellant : In Re: an Attorney

Judgement :

Ghose, J.

1. In this case the applicant, who is a Solicitor of this Court, applies under Section 10 of the Letters Patent for an order that the respondent who is also an attorney of this Court, may be called upon to answer the matters set forth in the application.

2. The short facts are as follows:---It appears that the applicant attorney has been acting for a Mahomedan lady, Shahebzadi Mahmudi Begum, in the matter, of negotiating for and completing mortgages of properties belonging to a certain Waqf estate, of which Shahebzadi Mahmudi Begum is the Mutwali, and in carrying out preliminary investigations and other incidental matters connected therewith, including the obtaining of necessary orders from Court sanctioning the raising of moneys upon such mortgages. It appears that in August, 1923, the Mutwali instructed the applicant attorney to negotiate for and complete a mortgage of the Waqf estate for a sum of Rs. 1,70,000. It is alleged that the said Mutwali instructed the applicant attorney to advance such moneys as may be necessary or incidental

in connection with the negotiations for and completion of such mortgage and that she agreed that the proceeds of the mortgage to be effected were to be held as security for the in-pocket and out of pocket costs in connection with the said mortgage. It is also alleged that the applicant attorney, acting for the said Mutwali obtained an order from the Court on the 30th August 1923, for leave to raise a loan of Rs. 1,70,000. The order of the Court had to be modified to a certain extent and subsequently on an application made to this Court on the 14th of March 1921, a modified order in manner indicated in this petition was obtained. It is said that while the negotiations for a mortgage were pending, the applicant attorney came to discover that the said Mutwali had gone over to the respondent attorney and had through the latter obtained an order from Court on the 8th August, 1924, which order, it is alleged, was in substance a variation of the order obtained through the applicant attorney on the 14th March, 1924. The applicant attorney's costs had not been paid by the Mutwali, although efforts were made to obtain payment and the applicant attorney now alleges that the respondent attorney ought to have referred to him before taking up any retainer on behalf of the Mutwali and that his default in doing so calls for the interference of this Court under Section 10 of the Letters Patent.

3. The respondent attorney has filed an affidavit, in which he states that the warrant in favour of the applicant attorney was executed for a particular purpose, namely, to enable the applicant attorney to act in the matter of an application of the said Mutwali for sanction to raise a loan and that the applicant attorney's retainer came to an end when the proceedings in that application terminated. He further states that in the circumstances set out in his affidavit, he was entitled to accept a retainer from the Mutwali, for the purpose of making an application on her behalf to this Court for sanction to raise a fresh loan on first mortgage of the Waqf property. He denies that the order obtained through him was in substance a variation of the order made on the 14th March, 1924, and he states that the application made through him resulted in an order giving permission to raise a fresh loan on the first mortgage of the Waqf properties. In these circumstances the respondent attorney denies that he has been guilty of any improper conduct and submits that the grievance of the applicant attorney has no foundation whatsoever.

4. Mr. Pugh, who appeared on behalf of the applicant attorney, has argued that there has been an attempt on the part of the respondent attorney to detach a client from the applicant attorney during the period of his retainer and that the respondent attorney in dealing with the Mutwali, who had already retained the applicant attorney, has not acted with that caution which as between members of the Solicitor's branch of the profession would be considered proper.

5. As an abstract proposition it cannot be questioned that a solicitor ought not to detach a client from another solicitor during the period of his retainer; it is only necessary for me to state my respectful concurrence with the view expressed by the Lord Chancellor of Ireland in the case of *In re A Solicitor* (1915) 1 Ir. R. 152, 163. But in this case I have got to determine whether on the facts set out before me there has been such professional misconduct as to attract to itself the disciplinary jurisdiction of this Court under Section 10 of the Letters Patent. It is to be remembered that it is not every reprehensible conduct (I desire to guard myself from being understood to say that there has been any reprehensible conduct on the part of the respondent attorney) that necessarily amounts to that professional misconduct which entails the serious result of being struck off the roll of solicitors, suspended, or otherwise dealt with by the Court, and I desire to state that in respect of applications under Section 10 of the Letters Patent the Court cannot be too careful in scrutinizing the materials upon which the jurisdiction of the Court is invoked. At all times it is a serious matter and the machinery of the Court ought not to be set in motion, except upon the clearest evidence of professional misconduct. I desire to say that having scrutinized the materials before me, I find that there is a singular and striking lack of all materials which would justify a reasonable man in making an application of this nature. While one may sympathize with the applicant attorney in his annoyance or irritation, it is a very different proposition to say that the respondent attorney has been guilty of misconduct. In the circumstances of this case I find no trace of misconduct on the part of the respondent attorney and I must, therefore, dismiss the present application with costs.