

c Vs.r

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Court : THE DISCIPLINARY COMMITTEE OF THE BAR COUNCIL OF INDIA

Decided On : Nov-19-1995

Reported in : 1996(1)IBR155

Judge : Shri Jagannath Patnaik; Shri Ashok'Kumar Deb; Shri S.K, Padhi, Jj.

Appeal No. : B.C.I. TR. CASE NO.. 104 of 1990

Appellant : Complainant

Respondent : Respondent

Judgement :

APPEARANCE:

For the complainant Mr. Denzil D' Mello.

For the Respondent None.

Per Shri S.K. Padhi, Member.

This proceeding has been initiated at the instance of a complaint made by "C". Since this application could not be disposed of within the stipulated period by the Disciplinary Committee of the Bar Council of Maharashtra and Goa, it has been transferred to the Disciplinary Committee of the Bar Council of India under section 36B of the Advocates Act, 1961.

We heard the counsel of the complainant Sri Denzil D' Mello at length; and perused the submissions and the evidence adduced in this case. The complainant has examined one witness i.e. himself. The respondent has not examined any witness.

The gist of the case of the complainant- as revealed in his pleadings and evidence is that the respondent was acting as. his counsel for a property dispute at Goa. The suit in question was filed by the complainant as plaintiff on 15th March, 1982, in the court of the Rent Controller for eviction. The complainant had made several enquiries about the fate of his case and he was informed that' the matter was pending. On 10th August, 1985, the respondent informed the Registered Attorney/representative of the complainant that the case was pending. Since it is necessary for the purpose of this case, we extract the relevant portion of this letter:-

,"Shri Suvarn R. Bandekar vs. Zuari River Literate.' On account of Mr. Florian Machado being the speaker at the relevant time the case was kept pending in the Dy. Collector with intimation that date will be communicated later on.. However till date I have not received any communication and in the meantime the file for the purpose of calculation rent has been handed over to Mr. Sayyad Harun". (Ex. C-1).

After receipt of this letter, it is stated that the complainant made enquiries in the court of Rent Controller and to his utter surprise, he found out that the case has been dismissed for default on 22-3-1984. Copy of the order sheet of the Court of the Rent Controller has been produced as Ex.C-2. It appears from the order sheet that on 6-5-1986, some Advocate appeared in the Court and it has been recorded in the order-sheet that nothing can be done further as the case has been already dismissed.

On 12-7-1986, the complainant issued a registered. notice to the respondent (Ex.C-5). It is stated before us by the Counsel of the complainant that the suit which was dismissed for default was not restored subsequently by the courts and the complainant had to file a fresh suit. The respondent has filed a written statements well as, a written submission in this' court. In the written statement he has admitted that he was acting as the counsel of the complainant till 10-8-1985.

He has not given any explanation whatsoever as to under what circumstances the case had been dismissed for default on 22-3-1984 and what prompted him to issue letter dated 10-8-1995 informing the complainant that the case is pending and it has been) stayed as one of the Defendant had become the Speaker of the Goa \ Assembly. The respondent's written statement contains no 1 material facts- .to explain the gross negligence and callousness in his professional conduct. The stand of the complainant has been fully corroborated in his evidence and documents. The respondent as stated earlier neither, adduced any evidence nor produced any documents. Taking all these facts and circumstances into consideration, the committee is of the considered view that the respondent has committed gross professional misconduct not only in not taking diligent steps in attending the court but also mislead, the client by giving wrong information that the case is pending.

It is well settled that gross negligence on the part of the Advocate which leads to suffering and harassment of the client will amount to professional misconduct. In the instant case, there is no escape from the conclusion that the respondent has committed gross professional misconduct and as such we find him guilty of the same.

Now coming to the question of quantum of punishment to be imposed, there is no extenuating circumstances and the Advocate has neither expressed remorse nor apology in the written statement. On the contrary, in the written statement, he has unnecessarily tried to put, the blame on the complainant. We are informed by the counsel of the complainant that the Respondent-advocate has already-been punished by the Disciplinary Committee and imposed the punishment of one month's suspension for some such misconduct. The order passed in the earlier case appears to have been confirmed by the Hon'ble Supreme Court of India. A memo has been filed by the counsel of the complainant to that effect and some orders have been produced before us.

We are of the view that the punishment of suspension from practice for six months would meet the ends of justice. We, therefore, direct that the respondent be suspended from practice for a period of six months from the date of notification by

the state bar Council of Maharashtra and Goa pursuant to our order. There will be no order as to costs.

Sd/-

(S.K. Padhi)

Member

I agree Sd/-

(Jagannath Patnaik)

Chairman.

I agree Sd/-

(Ashok Kumar Deb)

Member.

Civil Appeal No. 2340 of 1996 U/s 38 of the Advocates Act against the order dt. 19.11.93 of Q.C.BCI filed before the Hon'ble Supreme Court of India and the same was dismissed vide order dt.12.2.96.

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