

PETITIONER:
MRS. R.D. BHATIA

Vs.

RESPONDENT:
SMT. RAJINDER KAUR & ORS.

DATE OF JUDGMENT: 10/09/1996

BENCH:
FAIZAN UDDIN (J)
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FAIZAN UDDIN (J)
AHMADI A.M. (CJ)
BHARUCHA S.P. (J)

CITATION:
JT 1996 (8) 4

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Faizan Uddin, J.

1. The appellant who is an advocate has preferred this appeal under Section 38 of the Advocates Act against the order dated March 28, 1992 passed by the Dispensary Committee of the Bar Council of India in BCI/TR Case No. 100 of 1990- suspending the appellant on the roll of the Bar Council of Maharashtra and Goa for a period of two years with a further direction to pay sum of Rs. 1500/- as costs to the complainant respondent No. 1 herein in exercise of its powers under Section 35 (3) (c) read with Section 38 as well as Section 35 (B) of the Advocates Act, 1981, The said appellant was also filed the special Leave Petition referred to above against the order dated October 18, 1982 dismissing the review petition filed by the appellant against the said order dated March 28, 1982.

2. This appeal was heard and disposed of by us on March 21, 1996 by passing the following order :-

"We have heard the learned counsel for the appellant as well as the respondent-original complainant at some length. For reasons which we will state hereafter, we allow the appeal and set aside the order of the Bar Council of India holding the appellant guilty of misconduct. In view of our decision to set aside the view taken by the bar Council of India against the appellant the Special Leave Petition which arises out of the rejection to review application does not survive. Both the matters will, therefore, stand disposed of accordingly, we however, make no

order as to costs".

We, therefore, set out the following reasons in support of our said order dated March 21, 1996.

3. Before we proceed to give reasons in support of our order referred to above allowing the appeal, it would be appropriate to briefly narrate the facts.

Smt. Rajinder Kaur the original complainant/respondent No. 1 herein had instituted a money suit in the Bombay City Civil Court against one Smt. Virgillia D'Souza for recovery of a sum of Rs. 10,000/- due under a bill of exchange. The respondent No. 1 was represented by Advocate Mr. mirchandani (since deceased) in the said suit. An ex-parte decree was passed on December 14, 1984 in favour of the respondent No. 1 and against the defendant Mrs. Virgillia Disouza. The appellant who is enrolled as an advocate with the Bar Council of Maharashtra since 1981 and mainly practicing in Co-operative Courts was introduced with the mother of respondent No. 1 in August, 1986 by one Mrs. Despande, advocate. The respondent No. 1. along with her mother are said to have met the appellant in the City Civil Court, Bombay when the appellant was required to identify the respondent No. 1 in the execution proceedings of the ex-parte decree obtained on December 11, 1984 in which the movables belonging to Mrs. D'Souza were attached. It is said that Mrs. D'Souza obtained the address of the appellant from the Bailiff working in the Office of the Sherif of Bombay, approached the appellant offering to pay the decretal amount by installments. According to the appellant a meeting was held in his office on September 24, 1986 in the presence of the respondent No. 1 her mother and said Mrs. D'Souza wherein the parties reached to an agreement for payment of the decretal amount by installments and a sum of Rs. 500/- was paid towards the decretal amount to the appellant. The appellant's further case is that in pursuance of the agreement to pay the decretal amount by installments the respondents No. 1 requested the Sherif of Bombay to remove the Watchman from the property of Mrs. D'Souza but the attachment may continued. According to the appellant the receipt of the aforesaid sum of Rs. 500 and a further sum of Rs. 1,000/- paid Mrs D'Souza were recorded in the execution proceedings which were signed by the respondent No. 1 on being identified by the appellant. On November 27, 1986 a further sum of Rs. 1000 was paid by Mrs D'Souza towards the decretal amount, the receipt of which was again recorded in the execution proceedings.

4. Thereafter Mrs. D'Souza took out a Notice of Motion for setting aside the ex-parte decree obtained against her by the respondent No. 1 with the allegations that no writ of summons was served on her in the suit in which ex-parte decree was passed and that the appellant had committed extortion in respect of the amount paid by her and referred to above. According to the appellant it is at this stage that she filed her Power and appeared for the respondent for the first time on January 30, 1987 without charging any fee from the respondent No. 1. According to the appellant the respondent No.1 herein herself had filed an affidavit Annexure H-1 in reply to the Notice of Motion for setting aside the ex-parte decree controverting and refuting all the allegations made against the appellant. According to the appellant since Mrs. D' Souza made allegations against her, the appellant thought it fit to withdraw herself from the proceedings after April 30, 1997. She, therefore, filed an affidavit Annexure - J denying the allegations against her and orally requested the Court to permit her to withdraw her appearance from the Court in the matter. According to the

appellant one Mr Ladiwale, Advocate tendered his appearance on behalf of the respondent No. 1 without charging any fee, Mr. Ladiwala appeared and also filed rejoinder of the respondent No. 1 duly signed by the respondent herself, Ultimately the City Court its order dated June 9, 1987 set aside the ex-parte decree passed on December 10, 1984 by the consent of parties advocates. The appellant passed over the sum of Rs. 3500/- on August 16, 1987 to respondent No. 1 which was paid to her by Mrs. D'Souza as part payment of the decretal amount against a receipt for the same. The City Civil Court by its order dated February 18, 1988 directed the respondent No. 1 to refund /deposit in the court the said sum of Rs. 3500/- which was paid by Mrs D'Souza towards the ex-parte which was set aside. The respondent preferred an appeal before the Bombay High Court represented by Advocate Shri Ladiwala against the order of the City Civil Court dated February 18, 1988 directing her to deposit a sum of Rs. 3500- in Court. The said appeal was converted into a revision and the same was dismissed by the High Court on April 10, 1980. Thereafter the respondent No. 1 took time from the City Civil Court on July 4, 1988 to change her counsel Shri Ladiwale and on August 10, 1988 Mr. Munshi, Advocate is said to have appeared alongwith the respondent No. 1 for the respondent No. 1 in the City Civil Court, Bombay on which date the defendant Mrs. D'Souza was granted unconditional leave to defend the suit.

5. The respondent No. 1 then filed a complaint under Section 88 of the Advocate Act (hereinafter the Act) before the Bar Council of Maharashtra at Bombay alleging that while conducting her case the appellant had committed acts of gross professional misconduct by going hand in 'with the defendant Mrs. D'Souza from behind the curtain and in collusion with and conspiracy of advocates Mr. Ladiwala and Mr. Munshi by not contesting the suit against Mrs. D'Souza diligently and properly with the intention to cause loss and harm to respondent No. 1 herein. As the Bar Council of Maharashtra could not dispose of the complaint filed by the respondent No. 1 against the appellant within one year as required by Section 36 (B) of the Act, the same was transferred to the Bar Council of India and this is how the Bar Council of India was seized of the matter and placed before its Disciplinary Committee for disposal of the complaint filed by the respondent No. 1; Smt. Rajender Kaur.

The said Committee framed the following issues :-

- (1) Whether on 16.2.1987, the respondent appeared in the Court on behalf of the complainant and later on got appointed Shri Ladiwala and Shri Munshi, Advocates on behalf of complainant without her knowledge ?
- (2) Whether Shri Ladiwala and Shri Munshi advocates on the instructions and in collusion with the respondent did not properly contest the case of the complainant in the High Court of Judicature at Bombay ?
- (3) Whether the respondent colluded with the defendant in the said case in either contesting the case or by getting appointed Shri Ladiwala and Shri Munshi ?
- (a) Whether the respondent has committed any act of professional misconduct ? If so, its effect ?

By the consent of parties the complaint made by the complainant respondent No. 1 and the written statement filed by the appellant were respectively treated as their evidence-in-chief and each party was allowed to cross examine its opponent. Thus, there is solitary evidence of complainant respondent No. 1 and the appellant in addition to certain documents on the basis of which the Committee proceeded to record its findings on the issues referred to above. After analysing the evidence and the documents on record the Committee took the view that appellant Advocates was guilty of professional misconduct and, therefore, answered issues No. 1 and 3 in affirmative against the appellant and in favour of the complainant respondent No.1. But as regards issue No. 2 the Committee answered in negative for the reasons that Advocates Shri Ladiwala and Shri Munshi were not before the Committee. On these findings the Committee took the view that the appellant committed professional misconduct and, therefore passed the impugned order dated March 28, 1992 suspending the appellant for two years and pay a sum of rs. 1,000/- as cost. The review preferred by appellant against the said order was also dismissed by order dated October 18, 1992 against which this appeal and the Special Leave Petition as referred to above have been directed.

4. Before we embark upon a scrutiny to examine correctness of the impugned judgment, it may be stated that it is a cardinal principals of law that in cases of misconduct or allegations of any guilt against any person involving his indictment or infliction of punishment the evidence adduced should be of such a character and intrinsic value which may not admit any element of a reasonable doubt about alleged misconduct or guilt. In other words the evidence should be beyond all reasonable doubt. That being so, since the provisions of Section 85 of the Advocates Act entail the punishment including removal of the name of the Advocate against whom the allegation of misconduct is made, from the rolls of the Bar Council and suspension from practicing for such period as may deemed fit by the Disciplinary Committee, the evidence adduced should be of such a character which may be beyond all reasonable doubt about the alleged professional misconduct. We shall, therefore, examine the evidence and the material on record to see whether the same establishes the allegation of misconduct against the appellant beyond all the reasonable doubt.

7. First of all we shall scrutinize the evidence in relation to issue No.1 as framed by the Disciplinary Committee and its finding in the affirmative. The allegation made by the complainant respondent against the appellant is that in or about the month of September, 1986 she engaged the appellant as her counsel to represent her in the execution case when she was introduced to the appellant by somebody. The respondent has alleged that she had signed the Vakalatnama in favour of the appellant for presenting it in the court but it was not presented by the appellant till 20.1.1987 and on the contrary got appointed Shri Ladiwala and Shri Munshi. Advocates on her behalf without the knowledge of the respondent No. 1. It has been alleged in the complaint that the appellant collected a sum of Rs. 500/- on 24.4.1986, Rs. 1500/- on 7.10.1986 and a further sum of Rs. 1500/- on 10.11.1986 (in all Rs. 3500/-) towards the part payment of the decretal amount from the defendant Mrs. D. Souza, but the appellant did not pay the same to her inspite of her insistence to pay the said amount to her. The complainant respondent No. 1 has further alleged that the appellant in collusion and conspiracy with two advocates, namely, Shri

Ladiwala and Shri Munshi played a dirty game to get the ex-parte decree set aside by malpractice by remaining behind the curtain with an intent to cause loss and harm to her and to the advantage of defendant Mrs. D'Souza by illegally and wrongfully consenting to set aside the ex-parte decree without her knowledge and consent. In this connection we may first of all refer to affidavit Annexure H-1 dated 16.2.1987 filed by the complainant-respondent No.1 Smt. Rajinder Kaur herself in reply to the Notice of Motion taken out by the defendant Mrs. Virgillia D'Souza. In paragraph 8 of the affidavit referred to above the respondent No. 1 has refuted the allegations made against the appellant and has made categorical statement that the appellant was only acting mediator to settle dispute between the respondent No. 1 as plaintiff and Mrs. D'Souza as defendant and in pursuance of the settlement the total payment of Rs. 3500/- was made towards the decretal amount. In the same paragraph 5 the respondent No. 1 Smt. Rajinder Kaur has categorically stated that the appellant Mrs. Bhatia was not her advocates at that point of time and that the appellant had filed her appearance in the City Civil Court only on 29.1.1997. This statement clearly falsifies the allegation of the complainant-respondent No. 1 that she had engaged the appellant as her counsel in the month of September 1988 but the appellant presented the Vakalatnama on 30.1.1987. The Committee has very lightly brushed aside the aforementioned statement of respondent No. 1 in her own affidavit on the ground that this affidavit was filed in English by the appellant without reading over and explaining the contents thereof to the respondent No. 1 in any language other than English. The Committee thus accepted the said statement of the respondent No. 1 as true, contrary to the Committee's own observations with regard to the demeanour of the complainant respondent No. 1 in paragraph 7 of the impugned order wherein the Committee has made following observations :-

"Though the evidence was given by C in Hindi, English translation of which was recorded by this committee, we have marked the demeanour of 'C' and found to a certain extent C understands English and even speak some words in English at least to get give the sense respectively, though she may not able to have and give a complete picture in English."

(emphasis supplied).

A reading of the aforementioned observations of the Committee go to show that the complaint-respondent No. 1 not only could read and understand English to a certain extent but she could speak as well. That being so the Committee was not right in accepting the statement of respondent that the contents of her affidavit dated 16.2.1987 were not read over and explained to her. This is patently incorrect statement and appears to be an after thought.

8. As regards the allegation of non-payment of Rs. 3500/- which was received by the appellant from defendant Mrs. D'Souza towards the part payment decretal amount we may refer to another affidavit of the complainant respondent No. 1 dated 6.11.1987 filed in the City Civil Court, Bombay. In paragraph 5 of the said affidavit the respondent No. 1 has categorically stated that the said amount of Rs. 3500/- was received by her from the appellant who at the time was acting as a mediator to settle the claim. In addition to

this the aforesaid payment of Rs. 3500/- is further established from the receipt Annexure 'L' dated 29.08.1987 executed by the respondent No. 1 acknowledging the payment of Rs. 3500/- to her by the appellant which she received from Mrs. Virgillia D'Souza towards the settlement of the case. Thus the allegation regarding the non-payment of the said amount is totally fails.

9. This brings us to the allegation of the plaintiff-respondent No. 1 that the above advocate Shri Ladiwala and Shri Munshi were appointed by the appellant to represent the respondent No. 1 without her knowledge and consent who is collusion and conspiracy with the appellant remained behind the curtain and wrongfully agreed to set aside the ex-parte decree in order to cause loss to the respondent No. 1 and undue benefit to the defendant Mrs. D'Souza. We find that this allegation too is without any foundation or any material on record. The material on record presents a contrary picture. It may pointed out that though the ex-parte decree in favour of the respondent was set aside by the City Civil Court, Bombay, with the consent of advocates for parties, by order 8.8.1987 but strangely enough the plaintiff-respondent neither made any application to the City Civil Court objecting to the setting aside of the ex-parte decree by consent of counsel for parties nor made any allegation of malades against any of his counsel representing her in the said Court nor any appeal/revision was filed against the said order agitating that the said order setting aside ex-parte decree was obtained illegally and without her consent by the counsel representing her. Further it may be pointed out that though the allegation of respondent No. 1 was that the advocate Shri Ladiwala and Shri Munshi in collusion with the appellant and the defendant Mrs. D'Souza got the said ex-parte decree set aside but strangely enough the respondent No. 1 appointed Shri Ladiwala, Advocate to represent her in the High Court of Bombay also in the appeal against the order dated 18.02.1988 passed by the City Civil Court directing the respondent No. 1 to deposit/ refund the amount of Rs. 3500/- which is said to have been paid to her by the defendant Mrs. D'Souza as the ex-parte decree was set aside. The said Vakalatnama duly signed by the respondent No. 1 Smt. Rajinder Kaur appointing Shri Ladiwala as her advocate to represent to her in the High Court is to be found at page 179 of this appeal record. The said appeal was dismissed by the High Court by order dated 19.04.1988 in which Shri Ladiwala has been described as the advocate for the respondent No. 1 according to the respondent No. 1 advocate Shri Ladiwala had acted in collusion with other advocates and the opposite party against the interest of respondent No. 1 in getting the ex-parte decree set aside why was he again chosen to represent the respondent No. 1 in the appeal filed before the High court. This simply goes to show that the allegation of misconduct and collusion made against the appellant are only after thought for which there was no basis at all. There is further material on record to show that the advocates Shri Ladiwala and Shri Munshi were appearing on her behalf in the City Civil Court on various dates but the respondent No. 1 at no stage objected to their appearance on her behalf either before or after the setting aside ex-parte decree. On a close scrutiny of the evidence and the material on record it can hardly be said that the respondent No. 1 has been able to prove the allegations beyond all reasonable doubt. The evidence of the complainant herself is very shaky and unacceptable. It is unfortunate that all these aspects of the matter have not

been properly appreciated by the Disciplinary Committee of the Bar Council of India which has resulted into miscarriage of justice. It was for these reasons that after hearing the learned counsel for parties on March 21, 1996 we were convinced that the impugned order could not be sustained for the reasons that we have given herein before. The appeal and the Special Leave Petition already stand disposed of by our order dated March 21, 1996 and we support the same with the aforementioned reasons.

JUDIS