

K. V. Umre

Vs

Smt. Venubai D. Gage and Another

Civil Appeal No. 2385 (NCM) of 1977

(A. P. Sen, E. S. Venkataramiah, R. B. Misra JJ)

20.07.1983

ORDER

1. This appeal under Section 38 of the Advocates Act, 1961 is directed against an order of the Disciplinary Committee of the Bar Council of India dated July 13, 1977 rejecting an application for review.

2. By an order dated May 9, 1977 the Disciplinary Committee of the Bar Council of India directed the appellant, who had misappropriated the decretal amount of Rs. 11,760.70 payable to the respondent, to pay the same to her in two instalments, one of Rs. 6000 by May 25, 1977 and another of Rs. 4000 within three months from May 9, 1977. The appellant was held guilty of grave professional misconduct and the Disciplinary Committee took a serious view of the matter but gave the appellant another chance. It accordingly directed that if the appellant paid the amount of Rs. 10,000 as directed, he shall remain suspended from practice for a period of one year from August 10, 1977. On his failure to deposit Rs. 6000 by May 25, 1977 as stipulated, his name shall stand removed from the rolls of advocates permanently with effect from May 25, 1977. Although the appellant made payment of Rs. 10,000 in two instalments but he made a default in not making the deposits on due dates as stipulated and consequently the exigibility clause was attracted resulting in his permanent disbarment. The appellant made an application for review to the Disciplinary Committee praying that the delay in making the payment be condoned and the period of suspension be limited to one year. The Disciplinary Committee however rejected the application observing that if the appellant had not volunteered to pay Rs. 10,000 in two instalments on due dates, the punishment would have been much more severe. It observed that he had deprived the respondent, who was a helpless widow, of money legitimately due to her without any reasonable excuse and that there was no ground for showing any leniency as it would be against the spirit of Rule 20 of the Disciplinary Rules of the Bar Council of India. It took a strict view having regard to the fact that there were a large number of claims for death or bodily injury resulting in motor accident in the country, and if lawyers were allowed to withhold payment of compensation awarded and pay the same in instalments, it would amount to sharing of profits of litigation.

3. It is needless to stress that in a case like this the punishment has to be deterrent. There was in this case complete lack of candour on the part of the appellant as earlier alleged and thereafter when the State Bar Council initial disciplinary proceedings, he took a false plea that Rs. 6600 were due to him towards fee and other miscellaneous expenses. The respondent was prevailed upon by the Disciplinary Committee of the Bar Council of India to accept a lesser sum of Rs. 10,000. Looking to the seriousness of the charge, we feel that the Disciplinary Committee took a rather lenient view in limiting the period of suspension to one year, but the fact remains that the appellant ultimately paid Rs. 10,000 although there was delay in making payment of the instalments. If the Disciplinary

Committee had initially struck off the name of the name of the appellant from the rolls for all times, then the rejection of the application for review would be justified but the Disciplinary Committee limited the period of suspension to one year. The appellant having paid the amount of Rs. 10,000, the Disciplinary Committee had to consider whether it could condone the delay in making payment of the instalments. While condoning the delay, it could have enhanced the period of suspension but this could not result in permanent disbarment. We therefore feel that the Disciplinary Committee should consider the application for review afresh in the light of the facts and circumstances of the case. This direction of ours should not be construed to mean that the period of suspension should be limited to one year. In fixing the period of suspension, it must keep in view that the appellant had completely betrayed the trust reposed in him by the respondent.

4. Subject to this direction, the appeal stands disposed of. There shall be no order as to costs.

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