M. Veerappa

Vs

Evelyn Sequeira and Others

Civil Appeal No. 131 of 1988

(A.P. Sen, S. Natarajan JJ)

13.01.1988

JUDGMENT

NATARAJAN, J. –

1. Leave granted.

2. The limited question falling for our determination in this appeal by special leave is whether a suit for damages already instituted against a counsel has abated or not consequent on the death of the plaintiff.

3. We may now scan the facts. Pursuant to the High Court of Karnataka confirming an order of eviction passed against him in respect of his business premises, a tenant by name Mr. Sequeira wanted to prefer an appeal to the Supreme Court. For that purpose he met the appellant, who is an advocate practising in the Supreme Court, on June 14, 1971 at Mangalore during the latter's visit to that place and engaged him to file the appeal. The special petition came up for hearing on November 22, 1971 and was "dismissed as withdrawn". Mr. Sequeira then filed a suit O.S. No. 255 of 1972 in the Court of the District Munsif, Mangalore against the appellant for damages and compensation. He alleged in the plaint that the appellant had been negligent in rendering professional services and had misconducted himself by filing the appeal after considerable delay and giving misleading information about the filing of the appeal and furthermore in withdrawing the appeal instead of canvassing for its admission. He further alleged that as a consequence of the appeal being dismissed, he came to be evicted from his business premises and thereby he had incurred loss of income as he had been unable to secure an alternate place for running his business besides suffering mental agony, worry and loss of reputation. The plaintiff, therefore, claimed that the appellant was liable to compensate him in a sum of Rs. 20,000 towards the loss sustained by him but he was however content to restrict the amount to Rs. 4500. In addition he claimed a sum of Rs. 1500 under three heads of Rs. 500 each viz., (1) refund of Rs. 500 paid towards court fee and miscellaneous expenses, (2) reimbursement of Rs. 500 expended for engaging another advocate to obtain a certified copy of the order of the Supreme Court in the special leave petition and (3) compensation towards wrongful retention of the case file by the appellant and reimbursement of expenses incurred for telephone and postal charges. Thus in all the suit was laid against the appellant for a sum of Rs. 6000 by way of damages and compensation besides costs etc.

4. The appellant entered appearance in the suit and filed a written statement refuting the charges of negligence and misconduct levelled against him by the plaintiff and also disputing the plaintiff's right to seek damages or reimbursement of amounts from him under any of the heads set out in the plaint.

5. During the pendency of the suit the plaintiff died and his legal representatives, who are the respondents herein, filed a petition under Order XXII Rule 3(1) of the Code of Civil Procedure seeking their substitution in the suit for prosecuting the suit further. The appellant opposed the application and contended that as the suit was one for damages for personal injuries alleged to have been sustained by the plaintiff, the suit abated on his death as per the maxim actio personalis cum moritur persona. The District Munsif upheld the objection and dismissed the suit as having abated but the High Court held otherwise and declared the legal representatives to be entitled to get impleaded and continue the suit. The learned Single Judge who allowed the revision has taken the view that Krishna Behari Sen v. Corporation of Calcutta (ILR 31 Cal 993 : 8 CWN 745), sets out the correct ration and hence he was following it in preference to the ratio laid in Rustomji Dorabji v. W. H. Nurse (ILR 44 Mad 357) and Motilal Satyanarain v. Harnarayan Premsukh (AIR 1923 Bom 408 : 25 Bom LR 435 : ILR 47 Bom 716). The said order of the learned Single Judge is under challenge in this appeal.

6. Even at the threshold of the judgment we may say that the ration followed by the High Court is not a correct one. Section 306 of the Succession Act, 1925 which corresponds to Section 89 of the Probate and Administration Act, 1881, sets out the rights of Executors and Administrators to continue actions of or against a deceased person. Section 306 which is almost a reproduction of Section 89 in the earlier Act reads as follows :

> 306. Demands and rights of action of, or against deceased survive to and against executor or administrator. - All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Insofar as the rights of a legal representative to proceed with a suit filed by a deceased plaintiff is concerned, Order XXII Rules 1 and 3(1) govern the matter. They read as under :

> 1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.
>
> 3(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

These provisions of law have come up for consideration in a number of cases before several High Courts. The controversy in all the cases either under Section 89 of the Probate and Administration Act, 1881 or under Section 306 of the Indian Succession Act, 1925 centred round the meaning to be give to the words "other personal injuries not causing the death of the party". Barring the Calcutta High Court and that too in one reported case only and the Rangoon High Court in one decision, other High Courts have uniformly taken the view that the words "personal injuries" do not mean injuries to the body alone but all injuries to a person other than those which cause death and that the relevant words must be read ejusdem generis with the words "defamation and assault" and not with

the word "assault" alone. It would suffice for our purpose if we set out the reasons given in the Full Bench decision of the Madras High Court in Rustomji Dorabji v. W. H. Nurse (ILR 44 Mad 357) and merely give the citations of the other decisions where the same view has been taken. In Rustomji Dorabji v. W. H. Nurse (ILR 44 Mad 357), Coutts Trotter, J. speaking for himself and Ayling, J. set our the law as follows :

> We are therefore driven to the conclusion that the Act must be supposed to have envisaged a logically coherent class of causes of action, and that result can only be achieved by construing "personal injuries" as meaning not "injuries to the body" merely, but injuries to the person in Blackstone's sense, other than those which either cause death or tangibly affect the estate of the deceased injured person or cause an accretion to the estate of the deceased wrongdoer. In effect, we think that the words which we have to construe are ejusdem generis not merely with the last preceding word "assault", but which the two preceding words "defamation" and 'assault".

Kumaraswami Sastri, J., the third judge in the Full Bench, in his concurring judgment gave his reasons as under :

> If the words were simply "all personal injuries not causing the death of the party" and omitted defamation or assault, it may be argued that personal meant only physical and that causes of action for defamation and other similar injuries survived. The legislature took two types of personal injuries, one physical and the other not, and used them by way of illustration of what it meant to exclude. In this view, the words "other personal injuries not causing the death of the party" must be read with "defamation" and "assault".

There has been a conflict of authority on the question referred. In Punjab Singh v. Ramautar Singh ((1919) 4 Pat LJ 676 : AIR 1920 Pat 841) it was held by the Patna High Court that the words "other personal injuries not causing the death of the party" in Section 89 of the Act are ejusdem generis not only with assault but also with defamation and include malicious prosecution. The same view has been held by the Madras High Court in Gadiji Mareppa v. Firm of Marwadi Vannajee Vajanjee ((1917) 38 IC 823) and Marwadi Mothiram v. Samnaji ((1916) 31 MLJ 772). A contrary view was taken in Krishna Behari Sen v. Corporation of Calcutta (ILR 31 Cal 993 : 8 CWN 745) where the learned Judges differed from Justice Henderson, the trial judge, and held that to use the words other personal injuries not resulting in death in connexion with an action for defamation or malicious prosecution would be straining the language used by the legislature and placing on it an unnatural and forced construction. In Punjab Singh v. Ramautar Singh ((1919) 4 Pat LJ 676 : AIR 1920 Pat 841), Dass, J., who was a member of the Calcutta Bar for several years observes that in his experience the case has never been followed subsequently in the Calcutta High Court.

I would follow Punjab Singh v. Ramautar Singh ((1919) 4 Pat LJ 676 : AIR 1920 Pat 841) and Marwadi Mothiram v. Samnaji ((1916) 31 MLJ 772), and hold that a suit for damages for malicious prosecution abates.

7. Not only has this view been consistently followed by the Madras High Court in subsequent decision but the same view has been taken by several other High Courts as may be seen from the following citations : Madras High Court, Palaniappa Chettiar v. Rajah of Ramnad (ILR 49 Mad 208), Irulappa v. Madhava (AIR 1951 Mad 733), Arunachalam v. Subramanian (AIR 1958 Mad 142), Bombay High Court, Gopal v. Ramchandra (ILR 26 Bom 597), Motilal v. Harnarayan (AIR

1923 Bom 408 : 25 Bom LR 435 : ILR 47 Bom 716), Nagpur High Court, Maniramlala v. Mt. Chattibai (ILR 1938 Nag 280 : AIR 1937 Nag 216), Baboo v. Subanshi (ILR 1942 Nag 650 : AIR 1942 Nag 99), Baboolal v. Ramlal (AIR 1952 Nag 408), Patna High Court, Punjab Singh v. Ramautar Singh ((1919) 4 Pat LJ 676 : AIR 1920 Pat 841), Jogindra Kuer v. Jagdish Singh (AIR 1964 Pat 548), Madhya Pradesh High Court, Ratanlal v. Baboolal (AIR 1960 MP 200), Andhra Pradesh High Court, G. Jayaprakash v. State (AIR 1977 AP 20).

8. As against the preponderant view taken by several High Courts, a Full Bench of the Calcutta High Court alone took a contrary view in Krishna Behari Sen v. Corporation of Calcutta (ILR 31 Cal 993 : 8 CWN 745). Maclean, C.J. speaking for the Bench held that the words "personal injures not causing the death of the party" if accorded their natural and ordinary meaning appear to refer to physical injures to the person which do not cause death. As has been pointed out by Das, J. in Punjab Singh v. Ramautar Singh ((1919) 4 Pat LJ 676 : AIR 1920 Pat 841), the ration in Krishna Behari Sen case (ILR 31 Cal 993 : 8 CWN 745) had not been followed subsequently by the Calcutta High Court itself in any other case. The view taken by the Calcutta High Court in D. K. Cassim & Sons v. Sara Bibi (ILR 13 Rang 385 : AIR 1936 Rang 17). It is therefore clear that the contrary view taken by the Calcutta High Court is against the weight of judicial pronouncements by other High Courts.

9. In a slightly different context the matter came to be considered by this Court in Melepurath Sankunni Ezhuthassan v. Thekittil Gopalankutty Nair (AIR 1986 SC 411 : (1986) 1 SCC 118). A plaintiff's suit for damages for defamation was decreed by the appellate court but dismissed by the High Court in second appeal. There was an appeal to this Court by the plaintiff by special leave and during its pendency the plaintiff died. This Court declined to allow the legal representatives of the plaintiff to come on record and prosecute the appeal on the ground that by reason of the dismissal of the suit by the High Court, the plaintiff stood relegated to his original position and, therefore, the proceedings abated on his death. The decision pointed out that the position would have been different if the plaintiff had a subsisting decree in his favour because then the cause of action would get merged in the decree and the decree would form part of the estate of the deceased which his legal representatives are entitled to uphold.

10. The maxim 'actio personalis cum moritur persona' has been applied not only to those cases where a plaintiff dies during the pendency of a suit filed by him for damages for personal injuries sustained by him but also to cases where a plaintiff dies during the pendency of an appeal to the appellate court, be it the first appellate court or the second appellate court against the dismissal of the suit by the trial court and/or the first appellate court as the case may be. This is on the footing that by reason of the dismissal of the suit by the trial court or the first appellate court as the case may be, the plaintiff stands relegated to his original position before the trial court. Vide the decisions in Punjab Singh v. Ramautar Singh ((1919) 4 Pat LJ 676 : AIR 1920 Pat 841), Irulappa v. Madhava (AIR 1951 Mad 733), Maniramlala v. Mt. Chattibai (ILR 1938 Nag 280 : AIR 1937 Nag 216), Baboolal v. Ramlal (AIR 1952 Nag 408) and Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty (AIR 1986 SC 411 : (1986) 1 SCC 118). In Palaniappa Chettiar v. Rajah of Ramnad (ILR 49 Mad 208), and Motilal v. Harnarayan (AIR 1923 Bom 408 : 25 Bom LR 435 : ILR 47 Bom 716) it was held that a suit or an action which has abated cannot be continued thereafter even for the limited purpose of recovering the costs suffered by the injured party. The maxim of actio personalis cum moritur persona has been held inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong-doer vide Rustomji Dorabji v. W. H. Nurse (ILR 44 Mad 357) and Ratanlal v. Baboolal (AIR 1960 MP 200) as well as in those cases where a suit for damages for defamation, assault or other

personal injuries sustained by the plaintiff had resulted in a decree in favour of the plaintiff because in such a case the cause of action becomes merged in the decree and the decretal debt forms part of the plaintiff's estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff which his legal representatives are entitled to uphold and defend (vide Gopal v. Ramchandra (ILR 26 Bom 597) and Melepurath Sankunni v. Thekittil (AIR 1986 SC 411 : (1986) 1 SCC 118)).

11. Though Section 306 speaks only for executors and administrators and Order XXII of Rule 3 Civil Procedure Code sets out the rights of legal representative to continue the proceedings instituted earlier by a deceased plaintiff if the right to sue survives, the courts have taken the view that the legal representatives stand on par with executors and administrators regarding their right to seek impleadment in order to continue the suit. We may in this connection only quote the following passage occurring in Melepurath Sankunni case (AIR 1986 SC 411 : (1986) 1 SCC 118) : (SCC p. 121, para 8)

> Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.

12. Thus it may be seen that there is unanimity of view among many High Courts in the country regarding the interpretation to the given to the words "other personal injuries not causing the death of the party" occurring in Section 306 of the Indian Succession Act and that the contrary view taken by the Calcutta and Rangoon High Courts in the solitary cases referred to above has not commended itself for acceptance to any of the other High Courts. The preponderant view taken by several High Courts has found acceptance with this Court in its decision in Melepurath Sankunni Ezhuthassan case (AIR 1986 SC 411 : (1986) 1 SCC 118). It is on account of these factors we have expressed our disapproval at the outset itself of the view taken by the High Court in this case.

13. What now falls for consideration is whether the suit filed by the plaintiff was founded on torts or on contract. Mr. Kaushik, learned words "other personal injuries" must be read narrowly - i.e., ejusdem generis only with assault and other physical injuries not resulting in the death of the party. His argument however was that the plaintiff's suit is wholly founded on torts because it related to the damages sought for by the plaintiff for alleged loss of reputation, mental agony, worry etc. and hence the suit is based only on the personal injuries of the plaintiff and it inevitably abated on his death. On the other hand, Mr. Khanduja, counsel for the respondents, contended that the suit is not really founded on torts but is founded on contract and there had been a breach of the conditions of engagement by the appeal being withdrawn contrary to instructions, not to speak of the delay in the filing of the appeal. By reason of the breach of the conditions of engagement, the plaintiff had been evicted and put to loss and, therefore, the suit for damages really pertained to the loss suffered by the estate of the plaintiff and the said loss could well be claimed by the legal representatives after the death of the plaintiff. It was further urged by him that the suit amount consisted of claims under different heads and that while Rs. 4,500 had been claimed by way of compensation for the monetary loss sustained by the plaintiff's estate, the claims relating to Rs. 1,500 under three different heads were also amounts due to the estate as expenditure suffered by it and hence it was not open to the appellant to contend that the suit was only for personal injuries sustained by the plaintiff and

therefore it abated on his death.

14. In view of the fact this aspect of the matter has not been considered by the trial court or the High Court, we do not think it proper to express any opinion one way or the other as to whether the suit cause of action is founded on torts or on contract. Since a copy of the plaint has not been furnished by either party we can only refer to the summary of the plaint contained in the order of the District Munsif. The relevant portion reads as follows :

> at a later stage, he filed the petition and withdrew it; the special leave petition was dismissed as withdrawn; defendant did not inform the plaintiff well in time, plaintiff got suspicion over the attitude of the defendant, he engaged another counsel in the Supreme Court and obtained certified copies of the petitioner's application and order of the Supreme Court on the application filed by the defendant; even after several requests, defendant has not returned the file; defendant incurred Rs. 500 to obtain certified copies; on account of the misconduct of the defendant, plaintiff has suffered untold mental worry, agony, and loss of reputation; plaintiff was evicted from the shop premises situated at Hampankatta; he has not been able to secure a similar place for continuing his business; the defendant is liable to pay the plaintiff an amount of Rs. 500 being the loss incurred by him to engage the service of another advocate to obtain the certified copies of the petition and application filed by the defendant in the Supreme Court; that apart the defendant is liable to compensate the plaintiff to the extent of another sum of Rs. 500 as the defendant has not returned the records that were entrusted to the defendant by the plaintiff and for the charges incurred by the plaintiff in sending telegrams, or correspondences or for trunk phone calls; for want of suitable place for continuing the business of the plaintiff, the plaintiff has suffered damage or loss of over Rs. 20,000 but the plaintiff restricts the claim to Rs. 4,500 in this behalf. The plaintiff is entitled to be compensated by the defendant to the extent of Rs. 6,000 as stated above, viz. Rs. 500, Rs. 500, Rs. 500, Rs. 4500 for loss of damage sustained by the plaintiff and the defendant is liable to compensate the plaintiff in this respect as he has not done his duty which he owed towards the plaintiff.

15. Having regard to the nature of the claim we are not able to comprehend without any enquiry and recording of evidence the trial court and the High Court have proceeded on the basis that the suit claim is based only on tortious liability though the two courts have reached different conclusions about the abatement of the suit. The learned counsel for the respondent placed reliance upon summary of the averments in the plaint set out above and argued that the plaintiff had suffered loss of over Rs. 20,000 due to the closure of the business and hence the restricted claim of Rs. 4,500 is really towards loss suffered by the estate and not a claim made on the basis of the loss of reputation, mental agony, worry etc. suffered by the plaintiff. He further stated that the claim of Rs. 1500 under three heads of Rs. 500 each also related to the loss suffered by the estate of the deceased and hence the suit has to proceed for the entire suit claim. Since no discussion has been made and no finding has been rendered on this question and since we cannot render any finding on the basis of the materials on record whether the suit is based on the personal injuries sustained by the plaintiff or upon the loss suffered by the estate, we think the proper course would be to allow the judgment under appeal to stand even though we do not approve the reasoning of the High Court and dismiss the appeal. We leave the matter open for the trial court to decide whether the suit is founded entirely on torts or on contract or partly on torts and partly on contract and deal with the matter according to law. If the entire suit claim is founded on torts the suit would undoubtedly abate. If the action is

founded partly on torts and partly on contract then such part of the claim as relates to torts would stand abated and the other part would survive. If the suit claim is founded entirely on contract then the suit has to proceed to trial in its entirety and be adjudicated upon.

16. Before concluding the judgment, it would not be out of place for us to refer to some English decisions and to the relevant provisions in the Legal Practitioners Act, 1879 and the Legal Practitioners (Fees) Act, 1920 regarding the liability of counsel to pay damages to their clients for breach of duty or negligence. In England a distinction was made between barristers and other professional men and for a long time it was in usage that a barrister could not be sued by a client for negligence or breach of duty because a barrister's services were deemed to be gratuitous and therefore he could not sue or even make a contract for his fees with a client or with a solicitor who represented the client and correspondingly a barrister could not be sued by a client for breach of duty or negligence. The position is summarised by Prof. Winfield in all the editions of his book On Torts from 1937 onwards as under :

> The reads for this exemption is that in theory his services are gratuitous, and although that, by itself, is not a sufficient ground for preventing a legal duty from arising in other circumstances, the rule with regard to a barrister is inveterate, whatever be its justification.

17. The assumption, however, suffered a setback when the House of Lords enunciated a general principle in Hedley Byrne & Co. Ltd. v. Heller & Partners ((1963) 2 All ER 575 at 594). The principle has been enunciated in the speech of Lord Morris of Borth-Y-Gest as under :

> If someone possessed of a special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies on such skill, a duty of care will arise.

18. By reason of this decision, the Court of Appeals in Rondel v. W. ((1966) 3 All ER 657) and the House of Lords in Rondel v. Worsley ((1967) 3 All ER 993) had to rest the immunity of a barrister from being sued for professional negligence in the conduct of a cause on grounds of public policy. The facts in Rondel case ((1966) 3 All ER 657) - ((1967) 3 All ER 993) were that he was charged for having caused grievous bodily harm to one Manning. He was not given legal aid but after the case had proceeded for some time, he was afforded the facility of a "Dock Brief" and he chose a barrister by name Mr. Worsley to act for him. The case eventually ended in conviction and the conviction was confirmed by the appellate court and Rondel underwent the sentence. Nearly six years later he issued a writ against Mr. Worsley claiming damages for alleged professional negligence in the conduct of his duty. The writ was dismissed on the ground that an action against a barrister cannot be maintained on grounds of public policy for alleged negligence on his part in the conduct of the case especially when the action would amount to seeking a review of the correctness of the conviction awarded to Rondel in the earlier proceedings.

19. In Heywood v. Wellers ((1976) 1 All ER 300) the plaintiff was held entitled to recover damages form the defendant firm of solicitors for the mental distress which she had suffered as a result of the molestation suffered by the plaintiff consequent on the solicitor's negligent failure to enforce the injunction obtained against one Reginald Marrion. In that case, the plaintiff instructed a firm of solicitors to apply for an injunction to restrain one Reginald Marrion from molesting her. The solicitors obtained an interim injunction on February 27 but when the defendant again molested the plaintiff on April 28 in breach of the injunction, they failed to enforce the injunction by bringing the

defendant before the court. As a result of the failure to enforce the injunction, the plaintiff was again molested by Marrion on May 25 and on November 8. She suffered mental distress in consequence of the molestation committed on those dates. In an action brought by her against the firm of solicitors, it was held that she was entitled to recover damages as well as the costs incurred by her from the firm of solicitors.

20. In Midland Bank Trust Co. Ltd. v. Hett, Stubbs & Kemp ((1978) 3 All ER 571) a firm of solicitors was sued for damages for their failure to register a formal agreement as a consequence of which the plaintiff could not enforce his option under the agreement to purchase the freehold reversion of a farm at a stated price within a period of ten years as the estate had been conveyed to another. It was held that the solicitors were liable to the plaintiff in tort as they had failed to exercise due care and skill on which they know the client would place reliance and because of the duty they owed to the client not to injure him by failing to do that which they had undertaken to do.

21. Re Beil's Indenture v. Hickley ((1980) 2 All ER 425) is yet another case where a solicitor was held liable to replace the misappropriated money of his client as a constructive trustee. What happened in that case was that money was paid into the firm's client's account in the name of express trustees. The express trustees misappropriated the money with the solicitor's knowledge. It was held that the solicitor was liable to replace the money as a constructive trustee.

22. In India, the matter is governed by the Legal Practitioners (Fees) Act, 1926. In the Legal Practitioners Act, 1879 a legal practitioner has been defined as "an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent". The preamble to the Legal Practitioners (Fees) Act, 1926 reads as follows :

> An Act to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties.

Sections 2 to 5 are important and hence they are extracted below :

> 2. For the purposes of this Act, unless there is anything repugnant in the subject or context, -
>
> (a) "legal practitioner" means a legal practitioner as defined in Section 3 of the Legal Practitioners Act, 1879; and
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> (b) a legal practitioner shall not be deemed to "act" if he only pleads, or to "agree to act" if he agrees only to plead.
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> 3. Any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services.
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> 4. Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner.

> 5. No legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

23. A reading of these sections would go to show that any legal practitioner who acts or agrees to act for any person may settle with the said person the terms of his engagement and the fee to be paid for his professional services; that the legal practitioner will be entitled under law to institute and maintain legal proceedings against his client for the recovery of any fee due to him under the agreement or as per the costs taxed by the court where there has been no pre-settlement of the fee; and that no legal practitioner who has acted or agreed to act shall merely by reason of his status as a legal practitioner be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

24. Therefore, a legal practitioner cannot claim exemption from liability to be sued in respect of any loss or injury suffered by the client due to any negligence in the conduct of his professional duties merely by reason of his being a legal practitioner. As to whether Section 2(b) will afford protection to a legal practitioner from being sued for negligence by a client if he only pleads or agrees to plead is a matter for judicial determination in an appropriate case if an occasion arises for it. For the present we are not expressing any opinion on the matter except to point out that there is a specific provision in the Legal Practitioners (Fees) Act setting out that legal practitioners would also be liable for being sued by their clients if they have been negligent in the performance of their professional duties. The nature of the controversy in this appeal, as we have stated at the outset itself, does not pertain to these questions.

25. In conclusion, since we find that the question whether the suit has abated or not can be answered only after the nature of the suit is determined on the basis of the materials placed and the evidence adduced by the parties, the appeal has to be dismissed. The suit will stand restored to the file of trial court for disposal in accordance with law in the light of the guidelines given by us. Accordingly the appeal is dismissed.

26. In the circumstances of the case, the parties are directed to bear their respective costs.

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