

H.V. Panchaksharappa

Vs

K.G. Eshwar

Civil Appeal No. 684 of 1997

(Mr. R.C. Lahoti and Mr. K.G. Balakrishnan, JJ.)

20.07.2000

JUDGMENT

The appellant engaged respondent, an advocate, to file a suit against one Siddaramma Shetty for recovery of Rs. 60,175/- on the basis of a pronote in the Court of Civil Judge, Shimoga. The suit was numbered as O.S. No. 237/1986. During the pendency of the suit, property situate in Nehru Road belonging to defendant Siddaramma Shetty was get attached by a Court order. The suit was compromised on 16.1.1987. It appears that the attachment of the property continued even after judgment. Prior to the filing of O.S. No. 237/1986, the respondent as a lawyer, had also filed a suit on behalf of Siddaramma Shetty before the Civil Judge. That suit was a partition suit and was numbered as O.S. No. 119/1986. The property involved in the partition suit was the same property which became subject matter of attachment in O.S. No. 237/1986. In the partition suit (O.S. No. 119/1986), admittedly the appellant was not a party. In that suit Siddaramma Shetty had obtained an injunction against the defendants therein with regard to the property situate at Nehru Road, subject matter of attachment in O.S. No. 237/1986.

Despite the compromise entered into on 16.1.1987 in O.S. No. 237/1986, Siddaramma Shetty did not pay the decretal amount. The respondent is stated to have filed a miscellaneous application under Order XXIV Rule 4(2) read with Section 151 of the Code of Civil Procedure, being No. 105/1990, on behalf of the appellant in the Court of Principal Civil Judge Shimoga entering full satisfaction of the decretal amount with a further prayer to remove the order of attachment signed by the appellant and sworn before an Oath Commissioner. Miscellaneous application No. 105/90, however, was not pressed and subsequent thereto execution proceedings were initiated in respect of the decree in O.S. No. 237/1986.

The appellant on coming to know that respondent was also a counsel for Siddaramma Shetty in O.S. No. 119/1986 filed a complaint alleging professional misconduct against the respondent under Section 35 of the Advocates Act before the State Bar Council at Bangalore on 19.2.199. One of the main allegations raised in that complaint was that the respondent had filed Miscellaneous Application No. 105/1990 without any instructions from the appellant. The respondent denied the allegations and asserted that Miscellaneous Application No.105/1990 had been filed on the instructions of the appellant and that the appellant had himself signed the application as also the affidavit, which was duly sworn before the Oath Commissioner. The Disciplinary Committee of the State Bar Council dismissed the complaint filed against the respondent on 6.1.1995. Against dismissal of the complaint, the appellant filed an appeal before the Disciplinary Committee of the Bar Council of India. Vide order dated 225.3.1996, the Disciplinary Committee of the Bar Council of India dismissed the appeal filed by the appellant. Hence, this appeal.

We have heard learned counsel for the parties and perused the orders of the State Bar Council as also the the Bar Council of India and the records.

On the basis of the material placed before the State Bar Council, the Disciplinary Committee came to the conclusion, after framing issues and recording of evidence, that appellant had failed to prove commission of any misconduct by the respondent. It was noticed that at the most the allegations levelled against the respondent could amount to a negligent act of not disclosing to the appellant that he had also been retained in another case by Siddaramma Shetty though there was no malicious intent involved. Since there was no clash of interest in the two cases more particularly when the partition suit had been filed prior in point of time to the suit for recovery at the instance of the appellant.

A charge of professional misconduct is in the nature of a quasi-criminal charge. Such a charge requires to be proved in the manner of proving a criminal charge and the nature of proof required to prove it, is that of beyond a reasonable doubt. Both, the State Bar Council as also the Bar Council of India, on the basis of material on the record, found that charge against the respondent has not been proved. In our opinion the findings, recorded by both, the State Bar Council and the Bar Council of India, are on correct and proper appreciation of evidence available on the record. The findings do not suffer from any infirmity. Even if we were to overlook the assertions made on behalf of the respondent regarding conduct of the appellant as disclosed in the counter-affidavit filed by him in this Court on 14.10.1997, to which the appellant has filed no rejoinder, we find that the appellant has miserably failed to establish that the respondent committed any professional misconduct. We are not persuaded to accept the submission made by learned counsel for the appellant that application and the affidavit filed in Miscellaneous Application No. 105/1990 had not been signed and verified by the Appellant. The submission is without any basis. The documentary evidence belies the submission. According to the appellant, some conversation had taken place in the office of the respondent when the appellant along with his friend Shri Nagaraja and Shri Jayanna had gone to make enquiries about the Miscellaneous Application No. 105/1990 when the respondent admitted filing of the miscellaneous application without instruction using signatures obtained on blank papers. In the complaint it was stated that the conversation was recorded on a tape and the same will be produced, but none was in fact produced. The withholding of the tape recorded conversation is a serious lacuna. The Bar Council took a serious note of it, and in our opinion, rightly. Learned counsel for the appellant had failed to point out any infirmity in the impugned order.

After giving our careful consideration to the material and the record, we do not find any reason to interfere with the order made by the State Bar Council and upheld by the Bar Council of India and dismiss this appeal.

Before parting with this appeal, we would, however, like to observe that respondent ought to have, according to the best traditions of the Bar, disclosed to the appellant that he had been retained by the defendant in O.S. No. 119/1986. There may not have been any clash of interest but since the defendant in O.S. No. 237/1986 was his client as a plaintiff in O.S. No. 119/1986, the information should have been disclosed to the appellant. It is just plain and simple obligation of a counsel to disclose such facts to his client. Though, withholding of the information may not amount to professional misconduct, nonetheless the action does not speak well of the conduct of the respondent. On this account, we leave the parties to bear their own costs in this appeal.