

SUPREME COURT OF INDIA

Dhanraj Singh Choudahry

Vs.

Nathulal Vishwakarma

C.A.No.2293 of 2005

(R.M. Lodha and H.L.Gokhale,JJ.,)

08.12.2011

JUDGMENT

R.M. Lodha,J.,

1. These two Appeals have been preferred by Advocate Dhanraj Singh Choudhary (for short, 'advocate appellant') being dissatisfied with the two orders dated October 31, 2004 passed by the Disciplinary Committee of the Bar Council of India. By the principal order, the advocate appellant has been suspended from practice for a period of one year from the date of communication of the order.

2. On the complaint made by the respondent-Nathulal Vishwakarma against the advocate appellant to the Bar Council of Madhya Pradesh, Jabalpur, the matter was referred to the Disciplinary Committee of the State Bar Council. The allegation of professional mis-conduct against the advocate appellant is that in the sale deed dated November 3, 1999 executed by Jitender Singh Bakna in favour of Smt. Suchi Gupta concerning sale of property House No. 423 situate in Nursing Ward, Jabalpur, which was attested by the advocate appellant, it has been stated that on the Western side of the saleable property one shop adjacent to Sahara lounge presently in occupation of the complainant has already been transferred by the vendor to the advocate appellant by giving him the ownership right, although vendor's father Sardar Desh Singh Bakna had entered into an agreement to sell the suit property to the complainant on November 15, 1991 and the vendor's father has already received an amount of Rs. 2,00,000/- towards the sale consideration. The complainant alleged that he had already filed a suit for specific performance of the agreement dated November 15, 1991 which was pending and was within the knowledge of the advocate appellant. As a matter of fact, the advocate appellant had instituted a suit on behalf of Sardar Desh Singh Bakna against the complainant for eviction of the said shop showing the complainant as a tenant of Sardar Desh Singh Bakna.

3. On notice, the advocate appellant filed reply to the complaint and denied the allegations made against him. In his reply, the advocate appellant explained the circumstances in which the sale deed dated November 3, 1999 was executed. He expressed his ignorance about the

statement made in the sale deed dated November 3, 1999 regarding sale of shop in occupation of the complainant to the advocate appellant by the vendor.

4. On the pleadings of the parties, the Disciplinary Committee of the State Bar Council framed the following issues :-

“1. (a) Whether the Respondent-Advocate purchased the property from Jitendra in Sale Deed dated 3.11.99 of which the Respondent Advocate who was attesting witness?

(b) Whether the Respondent Advocate deliberately filed suit for eviction in the name of Jitendra Singh Bhakna against the complainant although the respondent was the owner thereof as mentioned in the sale deed dated 3.11.99?

(c) Whether the respondent advocate has been guilty of professional mis-conduct?

2. Result ?”

5. The complainant and the advocate appellant examined themselves and also tendered documents in support of their respective case. The Disciplinary Committee of the State Bar Council, after hearing the parties and on consideration of the evidence tendered by them, recorded its finding against the advocate appellant on the above issues and held the advocate appellant guilty of professional mis-conduct. Having adjudged the advocate appellant guilty of professional mis-conduct, the Disciplinary Committee, State Bar Council, Madhya Pradesh, awarded punishment of reprimand to the advocate appellant vide its order dated April 22, 2002.

6. Not satisfied with the order dated April 22, 2002 passed by the Disciplinary Committee, State Bar Council, Madhya Pradesh, the complainant preferred appeal under Section 37 of the Advocates Act, 1961 (for short, '1961 Act') to the Bar Council of India. The Disciplinary Committee of the Bar Council of India issued notice to the advocate appellant on October 5, 2004 intimating him that the matter has been kept on October 30, 2004. On receipt of the notice, the advocate appellant appeared before the Disciplinary Committee of the Bar Council of India, which heard the appeal preferred by the complainant for enhancement of the punishment on October 30, 2004. After the conclusion of the hearing of that appeal, an application was filed by the advocate appellant seeking permission to file cross-appeal and the cross- appeal was tendered.

7. The Disciplinary Committee of the Bar Council of India, vide its judgment dated October 31, 2004, allowed the appeal of the complainant; modified the punishment of reprimand awarded by the Disciplinary Committee of the State Bar Council and ordered his suspension from practice for a period of one year from the date of communication of the order. By a separate order passed on that day, i.e., October 31, 2004, the cross-appeal preferred by the advocate appellant was dismissed.

8. Civil Appeal No. 2293 of 2005 preferred by the advocate appellant arises from the order of the Disciplinary Committee of the Bar Council of India whereby complainant's appeal for enhancement of punishment has been allowed, while Civil Appeal No. 4484 of 2005 has been preferred by the advocate

appellant aggrieved by the order dismissing his cross- appeal as not maintainable.

9. The order dated October 31, 2004, whereby the advocate appellant's cross-appeal has been dismissed by the Disciplinary Committee of the Bar Council of India, reads as follows :-

"After the conclusion of hearing of Disciplinary Appeal No. 55 of 2002, an application has been filed by the respondent- advocate seeking permission to file a cross- appeal in the above noted appeal. Under Section 37 of the Advocates Act an appeal should be filed within period of 60 days from the date of communication of the order passed by the Disciplinary Committee of the State Bar Council. There is however no provision for filing application seeking permission to file any appeal or cross-appeal. Therefore, the application filed by the respondent- advocate seeking permission to file cross appeal cannot be entertained and as such the same is liable to be rejected. The application filed by the respondent-advocate is accordingly dismissed as not being maintainable."

10. We find no legal infirmity in the order passed by the Disciplinary Committee of the Bar Council of India in not entertaining the cross-appeal preferred by the advocate appellant.

11. Section 37(1) of the 1961 Act provides for a remedy of an appeal to any person aggrieved by an order of the disciplinary committee of a State Bar Council under Section 35 to prefer an appeal to the Bar Council of India within 60 days of the date of the communication of the order to him. Proviso that follows sub-section (2) of Section 37 provides that the disciplinary committee of the Bar Council of India shall not vary the order of the disciplinary committee of the State Bar Council affecting the person prejudicially without giving him reasonable opportunity of being heard. In the cross-appeal preferred by the advocate appellant, it is stated that being aggrieved by the order dated April 22, 2002 passed by the Disciplinary Committee of the State Bar Council, Madhya Pradesh, the cross-appeal is being preferred by the respondent therein (advocate appellant herein). As a matter of law, Section 37 of the 1961 Act does not contemplate cross-appeal. This position is not disputed by Mr. S.B. Sanyal, learned senior counsel for the advocate appellant. He would, however, submit that the advocate appellant preferred cross-objections (titled cross-appeal) within 30 days of the receipt of the notice of the appeal preferred by the complainant and that is permissible under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (for short, 'the Code') which is applicable to the proceedings before the Disciplinary Committee of the Bar Council of India.

12. We do not agree with the submission of Mr. S.B. Sanyal, learned senior counsel for the advocate appellant. The Code has not been made applicable as it is to the proceedings before the disciplinary committee. Section 42 of the 1961 Act makes applicable provisions of the Code in respect of matters contained therein while providing that the disciplinary committee

of a Bar Council shall have the same powers as are vested in a civil court. The matters contained in Section 42 do not refer to the appeals. Thus, the provisions contained in Order 41 of the Code, including Rule 22 thereof, have no applicability to the proceedings before a Disciplinary Committee.

13. Appeal is a creature of statute. The extent and scope of an appeal is governed by statutory provisions. Section 37 of the 1961 Act is the statutory provision for an appeal to the Bar Council of India from the order of the disciplinary committee of the State Bar Council. Section 39 of the 1961 Act, however, makes Sections 5 and 12 of the Limitation Act, 1963 applicable to the appeals preferred under Section 37 and Section 38 of the 1961 Act. There is no provision like Order 41 Rule 22 of the Code in the 1961 Act. The cross-objections titled 'cross-appeal' preferred by the advocate appellant being wholly mis-conceived have rightly been held to be not maintainable by the Disciplinary Committee of the Bar Council of India.

14. There may not be any difficulty in treating the 'cross-appeal' preferred by the advocate appellant as an appeal under Section 37 of the 1961 Act, but then such appeal is hopelessly time barred. The order was passed by the Disciplinary Committee of the State Bar Council on April 22, 2002. The advocate appellant presented his appeal (titled 'cross-appeal') before the Disciplinary Committee of the Bar Council of India on October 30, 2004, i.e., after more than two years. No application for condonation of delay has been made. In this view of the matter also the cross- appeal preferred by the advocate appellant was liable to be dismissed and has rightly been dismissed.

15. The Disciplinary Committee of the State Bar Council has considered the entire material, including the evidence of the complainant and the advocate appellant and arrived at the finding that the advocate appellant was guilty of professional mis-conduct for having attested the sale deed dated November 3, 1999 containing a statement that the shop on the western side of the saleable property in occupation of the complainant has already been transferred to the advocate appellant by giving him ownership right. The attestation of the sale deed containing the above statement, which was apparently false to the knowledge of advocate appellant, amounted to professional mis- conduct. The vendor-Jitender Singh Bakna and his father Sardar Desh Singh Bakna were the clients of the advocate appellant. As a matter of fact, the advocate appellant had filed a suit on behalf of the vendor against the complainant seeking his eviction from the premises for which the statement was made in the sale deed dated November 3, 1999 that the said premises in occupation of the complainant has been transferred by the vendor to the advocate appellant.

16. From the material on record the professional mis-conduct of the advocate appellant is clearly established and the Disciplinary Committee of the State Bar Council, Madhya Pradesh, cannot be said to have committed any error in holding him guilty of the professional mis-conduct. Having held that, the Disciplinary Committee of the State Bar Council awarded him punishment of reprimand. Against the inadequate punishment awarded to the advocate appellant for the proved professional mis-conduct, the complainant preferred appeal. In that appeal, notice was issued to the advocate appellant and in response thereto, he did appear before the Disciplinary Committee of the Bar Council of India on October 30,

2004 and was fully heard. The requirement of the proviso appended to Section 37(2) of the 1961 is, thus, fully met.

17. The legal profession is a noble profession. It is not a business or a trade. A person practising law has to practise in the spirit of honesty and not in the spirit of mischief-making or money-getting. An advocate's attitude towards and dealings with his client has to be scrupulously honest and fair.

18. In *V.C. Rangadurai Vs. D. Gopalan and others*¹ Krishna Iyer, J. stated :-

"Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community."

19. Any compromise with the law's nobility as a profession is bound to affect the faith of the people in the rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality.

20. In the above backdrop, if the conduct of the advocate appellant is seen, it becomes clear that he was privy to the following false statement recorded in the sale deed dated November 3, 1999 :-

"That on the Western side of the saleable property one shop adjacent to the Sahara lounge having 257 sq.ft. is there and in which at present Shri Nathu Lal Vishwakarma runs the hotel and the same has already been transferred by the Seller to Shri Dhan Raj Singh Choudhary by giving him the ownership right...."

21. In his deposition before the Disciplinary Committee, State Bar Council, Madhya Pradesh, the advocate appellant stated that he came to know of the said fact when the complainant had lodged the complaint against him. His explanation does not merit acceptance. On a question put by the Disciplinary Committee to him that prior to signing the sale deed dated November 3, 1999 in the form of witness why did he not read the said document, his reply was that he did not consider it essential to read the contents of the sale deed. Can it be believed? We think not. It was not only undesirable but highly unethical on the part of the advocate appellant to have created title or at least having attempted to create title in him in respect of the property for which litigation was pending in the court and he was representing one of the parties in that litigation. But for his connivance with the vendor, no such statement would have found place in the sale deed dated November 3, 1999. The professional misconduct proved against the advocate appellant is quite grave and serious. The question now is of the award of appropriate punishment to the advocate appellant.

22. Mr. S.B. Sanyal, learned senior counsel, submitted that the incident was quite old; the advocate appellant did not get any benefit out of the said statement made in the sale deed and, subsequently the above statement in the sale deed has been expunged on the agreement of the vendor and vendee. In the light of these mitigating circumstances, the learned counsel

submitted that suspension of practice for one year was harsh. He appealed for reduction of the suspension period.

23. By order dated November 30, 2011, we directed the advocate appellant to remain personally present on the next date of hearing. In view of that, the advocate appellant is present before us. In addition to the circumstances pointed out by Mr. S.B. Sanyal, learned senior counsel, the advocate appellant informed us that he has been suffering from glaucoma in his both eyes and was not keeping good health.

24. We find that the two applications, being Interlocutory Application No. 4 in Civil Appeal No. 4484 of 2005 and Interlocutor Application No. 8 in Civil Appeal No. 2293 of 2005, have been made by the advocate appellant and the complainant jointly for disposal of the Appeals in terms of the compromise between them. We are unable to accede to their request. In our view the settlement with the complainant does not mitigate or wipe out professional misconduct and must not prevent adequate punishment to the advocate appellant. Both these applications are, accordingly, rejected.

25. The punishment for professional misconduct has twin objectives - deterrence and correction. Having

regard to the over all facts and circumstances of the case which have been noted above, we are of the view that if the advocate appellant is suspended from practice for a period of three months effective from today the above objectives would be met. We order accordingly.

26. Both Civil Appeals are dismissed with the modification in punishment as indicated above. No costs.

27. The Registry shall send copy of this Order to the Secretary, State Bar Council, Madhya Pradesh and the Secretary, Bar Council of India immediately.

¹*AIR 1979 SC 0281*