

(1909) 02 CAL CK 0035
In the Calcutta High Court

Atul Chunder Ghose

APPELLANT

Vs

Lakshman Chunder Sen

RESPONDENT

Date of Decision : 23-02-1909

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39

Citation : (1909) ILR (Cal) 609

Hon'ble Judges : Harington, J

Bench : Single Bench

Judgement

Harington, J.—This is an action by an attorney to recover his bill of costs. The retainer was given by a number of members of the Sen family. The present defendants are either the persons who gave, or the representatives of the person who gave the retainer.

2. Only one defendant appears to contest the plaintiff's claim. He does not deny the retainer and the doing of the work, but says that on January 13th, 1903, he revoked the authority he gave to the attorney, and that he is, therefore, not liable for costs incurred since that date. The claim for costs arising before that date is, he says, barred by limitation. The retainer was given on December 18th, 1901, by Gopal Chunder Sen, Brindabun Chunder Sen, Gocool Chunder Sen and Sreemutty Moonjari Dasse, and the plaintiff acted as attorney for these parties at the hearing before the Court of first instance and in the Court of Appeal.

3. On January 13th, 1903, the defendant Gocool wrote to the plaintiff to the effect that his circumstances did not allow him to bear the expenses necessary to the conduct of the case and giving him notice not to act further on his behalf.

4. The attorney replied saying that as the joint written statement had been filed and counsel had been instructed he could not accede to the request in the letter. He recommended the defendant to settle matters with his co-defendants.

5. In reply the defendant wrote saying that his letter of the 13th cancelled the authority to act, and that he was in no way responsible for costs or counsel's

fees from that date.

6. To this the plaintiff replied "I do not think you can cancel the authority at your pleasure, and as long as I am attorney on the record I do not know if I will be justified in refusing to act for you."

7. To this letter the defendant made no reply.

8. As to what happened after this, there was a dispute in fact. The plaintiff said that during the hearing the defendant Gocool was present and gave him instructions and that he attended at his office on May 13th, 1903. The last piece of evidence was corroborated by an entry in his Day-Book.

9. This the defendant met with a flat denial. He said he never instructed the plaintiff after January 13th that he never went to his office after that date, and while he admitted that he was in Court from time to time during the progress of the trial, he swore he never gave any instructions to the attorney while in Court.

10. As to this I believe the plaintiff, because his evidence is supported by an entry in his Day-Book the genuineness of which I see no reason to doubt. I find in fact, therefore, that the defendant Gocool did attend the attorney in his office as his client at a date subsequent to his letter purporting to withdraw his authority.

11. The first question to be considered is as to whether the letters of January 13th, to which I have referred, were effective to discharge the plaintiff from acting as the defendant's attorney.

12. By Act XIV of 1882, Section 39, read with Section 2, "the appointment of an attorney must be in writing and must be filed in Court, and when filed it is to be considered in force until revoked with leave of the Court by a writing signed by the client and filed in Court."

13. In this case this provision of the law has not been complied with. The letters purport to discharge the attorney and leave it open to the defendant to go on with the litigation in person. In my opinion the attorney's authority is not revoked, because the defendant has not complied with the provisions of Section 39 of Act XIV of 1882,

14. Next, assuming the authority to continue, is the claim barred by limitation? The plaintiffs cause of action arose when the work for which he was retained was completed: see *Coburn v. Colledge* [1897] 1 Q.B. 702.

15. The plaint in the present suit was filed on July 4th, 1908. It is necessary, therefore, for the plaintiff to show that some work was done under the retainer given by the defendants since July 4th, 1905.

16. In the bill there are divers items under date later than that date principally relating to the taxation of the costs in the suit and appeal in which the attorney had acted. This, it is argued, does not bring the case out of the statute. I think it

does-it is work done for the client under the retainer originally given to the solicitor.

17. The case of *Lady de la Pole v. Dick* (1885) 29 Ch. D. 351 is an authority for the proposition that the authority of the attorney may continue after judgment.

18. In the present case, I think in fact the attorney's authority did continue after judgment and covered the taxation of costs, because the decree directs that certain parties, amongst others Gocool, shall personally pay to the appellants 6-12ths of the costs of the appeal to be taxed on scale No. 2. Until taxation, therefore, the amount payable by the client under the decree could not be ascertained. The solicitor's retainer, therefore, covered the taxation of these costs which took place early in July 1905, and was not at an end until the issue of the allocatur on the 6th of that month. Until the allocatur issued, the amount payable by the client was not ascertained and the work was, therefore, not completed.

19. For these reasons, I hold that the plaintiff is entitled to recover, and judgment must be given in his favour for the amount claimed, with costs on scale No. 2.