

(2025) 09 SC CK 0330

In the Supreme Court Of India

Case No : Civil Appeal No(S). 12232 Of 2025 (Arising Out Of Special Leave Petition (Civil) No(S). 27606 Of 2023)

Bar Council Of Maharashtra And Goa

APPELLANT

Vs

Rajiv Nareshchandra Narula & Ors

RESPONDENT

Date of Decision : 24-09-2025

Acts Referred:

Constitution of India, 1950 — Article 136Advocates Act, 1961
— Section 35, 35(1)

Citation : (2025) 09 SC CK 0330

Hon'ble Judges : Vikram Nath, J;Sandeep Mehta, J

Bench : Division Bench

Advocate : S.R Singh, Dr. Arvind S. Avhad, Rajat Kapoor, Sushil Sonkar, Nitin Jain, Yash Tiwari, Praveen Kumar Jha , Chander Uday Singh, Rohan Thawani,Pooja Dhar, Aakriti Vikas, Prasenjit Keswani, Upmanyu Tewari

Final Decision : Dismissed

Judgement

Sandeep Mehta, J

Civil Appeal @ SLP (Civil) No (s). 27606 of 2023

1. Heard.

2. Leave granted.

3. The Bar Council of Maharashtra and Goa "BCMG" is before us through this appeal by way of special leave assailing the interim order dated 04th November, 2023, passed by the High Court of Judicature at Bombay "High Court" in Writ Petition (L) No.23662 of 2023, staying the order dated 6th July, 2023, passed by the appellant-BCMG in Disciplinary Case No. 27 of 2023, which reads as below:

"Exhibit - "A"

After hearing the Complainant and Respondent and after going through the document available on record, according to me, Complainant has made out a

case by invoking Jurisdiction under Section 35 of the Advocates Act;

There is a prima facie case made out by the Complainant against the Respondent. Hence, I pass the following Order.

|| ORDER ||

Complaint is referred to D.C. for further inquiry and disposal in accordance with law.

Ashish P. Deshmukh

Judge

06.07.2023"

4. By the aforesaid order, the Judge-Advocate took cognizance of the complaint and directed reference thereof to the Disciplinary Committee "DC" of the Bar Council for inquiry against respondent No. 1, Shri Rajiv Narula "respondent-advocate" for alleged professional misconduct referred to under Section 35 of the Advocates Act, 1961 "the 1961 Act".

5. The complaint in question was filed by one Khimji Devji Parmar "complainant" against the respondent-advocate in the year 2022, alleging inter alia that he was an heir to one Devji Parmar, who during his lifetime was a partner of Dara Nariman Sarkari in a firm functioning in the name and style of M/s. Volga Enterprises. Shri Devji Parmar expired in the year 2009, on which the complainant inherited his assets and liabilities.

6. The complainant set up a case that one Nusli Randelia was the owner of a piece of land bearing CTS Nos. 433 and 438, Old Survey No. 30 Hissa No. 4 (P) in Village Valnai, Taluka Malad which he leased out to Dara Nariman Sarkari.

7. Nusli Randelia had also entered into a development agreement with the firm M/s. Volga Enterprises, in which Shri Devji Parmar was a partner, and in that capacity, he was in possession of the property. A suit was instituted by Dara Nariman Sarkari bearing Suit No. 1129 of 1987 in the Court of Small Causes, Bombay, in relation to the above land wherein an injunction was granted against Nusli Randelia, as well as M/s. Unique Construction, which was also asserting title to the suit property.

8. The suit was dismissed for default on account of the fact that Dara Nariman Sarkari had already been impleaded as a party-defendant (defendant No. 2) in another similar suit bearing No. 2541 of 1985, instituted by M/s Unique Construction, pending before the High Court, wherein his rights would be adjudicated. The complainant claimed that his father always confided in him that the suit No.2541 of 1985 was pending, wherein he had the right, title, and interest in the capacity of a partner of M/s. Volga Enterprises.

9. Shri Devji Parmar, the complainant's father passed away in 2009, upon which he made enquiries about the stage and status of the suit, and was shocked to

find out that the same had been disposed of as settled on Consent Terms. Thereafter, he tried to approach Dara Nariman Sarkari, but despite best efforts, he could not trace him at his last known address. The complainant also made efforts to locate Nusli Randelia, but without any success. Thereupon, the complainant contacted his father's advocate and collected the documents pertaining to the suit in question and on a perusal thereof, he came to know that M/s. Unique Construction - the plaintiff therein, and Nusli Randelia - defendant No. 1, had obtained a consent decree without the knowledge and consent of defendant No. 2, i.e., Dara Nariman Sarkari. The complainant continued to search for the whereabouts of Dara Nariman Sarkari and eventually came to know that he had passed away.

10. As per the complainant, his father was a partner with Dara Nariman Sarkari in M/s. Volga Enterprises and, hence, upon the death of Dara Nariman Sarkari in 1991, his father, Devji Parmar, became entitled to pursue and protect all the rights of the partnership firm as the sole surviving partner. Consequent upon the death of Devji Parmar, the complainant, along with other heirs of Devji Parmar, inherited such rights.

11. The complainant further alleged that during the pendency of the suit, there was a sudden change of advocate representing Nusli Randelia. One Ms. Sheetal D. Mishra, Advocate (respondent No. 3), filed a Vakalatnama on 6th June, 2005, on behalf of Nusli Randelia without obtaining a "no-objection" from the erstwhile advocate. Immediately upon the Vakalatnama being filed, Consent Terms were arrived at between M/s. Unique Construction and Nusli Randelia in the said suit, which act was without the knowledge of the erstwhile advocate on record, who was personally knowing Nusli Randelia. A consent decree was obtained without intimating Dara Sarkari or obtaining his signatures on the said Consent Terms.

12. As per the complainant, the respondent advocate suppressed the material fact from the High Court that Dara Nariman Sarkari was a party to the suit and that he had not affixed his signatures on the Consent Terms. This deliberate omission on part of the Advocate representing M/s. Unique Construction, the plaintiff in the suit, tantamounted to concealment of material fact whereby the legal representatives of Dara Nariman Sarkari and Devji Parmar were defrauded and deprived of their rightful share in the suit property.

13. The complainant further averred that the Consent Terms had been prepared and filed in the Court without recognition of the rights of Dara Nariman Sarkari and M/s. Volga Enterprises in the suit property. He also apprehended that the consideration stipulated in the Consent Terms never passed on to Nusli Randelia, who might even have been impersonated before the Court, and his signatures may also be forged and fabricated.

14. According to the complainant, someone other than Nusli Randelia may have appeared before the Court to execute the Consent Terms, or in all probability, coercion was practiced upon Nusli Randelia, who was induced and pressurised to

sign the Consent Terms without consideration. The complainant also conjectured that Nusli Randelia might have been abducted and murdered, as there was neither any trace of him nor was any death certificate available.

15. The complainant further alleged that the Advocates arraigned in the complaint were complicit to the crime as they were the direct beneficiaries of the fraudulent transactions. Based on this complaint, the Judge-Advocate of the BCMG proceeded to pass the order dated 6th July, 2023, reproduced supra.

16. The respondent, Shri Rajiv Narula, filed an affidavit-in-reply to the disciplinary complaint, setting up a case that the complaint had been filed by suppressing material facts. Various other litigations filed by Nusli Randelia in respect of the land in question had been decided against him, and having lost in all the legal proceedings, Nusli Randelia forged a document purporting to create some rights in favour of Dara Sarkari so as to frustrate the Court orders/decrees.

17. Upon coming to know of this fraud, M/s. Unique Construction took out a Notice of Motion No. 2903 of 1987, for impounding all the documents which they claimed had been fabricated by Nusli Randelia.

18. Consequently, the High Court directed the impounding of all documents sought to be relied upon by Nusli Randelia. During the pendency of the subject suit before the High Court, negotiations ensued, pursuant whereunto the disputes were settled and Consent Terms were drawn up, under which Nusli Randelia confirmed that he had no right, title, or interest in respect of the suit property. Accordingly, the High Court accepted the Consent Terms, discharged the receiver appointed on the said property, and directed that possession be handed over to M/s. Unique Construction.

19. Learned counsel representing the appellant-Bar Council, vehemently and fervently contended that the challenge laid to the cognizance order was premature and the High Court ought not to have entertained the writ petition filed by the respondent-advocate against the interlocutory order of reference passed by the Judge-Advocate of the Bar Council on the valid complaint filed by Khimji Devji Parmar.

20. It was submitted that at the stage of taking cognizance of a complaint, detailed reasons are not required, and a prima facie finding in the reference order that there are grounds to proceed against the advocate for misconduct would be sufficient for reference of the complaint to the DC. Furthermore, the orders passed by the State Bar Council are amenable to challenge before the Bar Council of India.

21. He thus urged that the High Court committed patent jurisdictional error in entertaining the writ petition filed by the respondent-advocate against the reference order and granting a stay on the proceedings before the DC.

22. Per contra, learned counsel representing the respondent-advocate fervently contended that the complaint filed by Shri Khimji Devji Parmar is, ex facie, mala

fide and malicious.

23. The respondent had admittedly not represented the complainant and thus, entertaining a complaint filed against the advocate of the opposite party is nothing short of a gross abuse of the process of law.

24. It was submitted that till date, there is no order recalling or rescinding the disputed consent terms recorded in the original suit proceedings, and thus, the complaint lacks foundation. Hence, the High Court was justified in entertaining the writ petition and granting a stay on further proceedings.

25. It was further urged that the order dated 6th July, 2023, whereby the complaint was referred to the DC, does not refer to even the barest of allegations set out in the complaint filed against the respondent-advocate, and only a cryptic satisfaction has been recorded that the complainant has made out a case for invoking jurisdiction under Section 35 of the 1961 Act. When a regulatory body like the Bar Council intends to proceed for professional misconduct against an enrolled advocate, then it is essential that at least a bare minimum discussion of allegations set out in the complaint is made before referring the complaint to the DC.

26. On these grounds, learned counsel representing the respondent-advocate implored the court to quash the entire proceedings of the DC pending before the Bar Council and to dismiss the appeal.

27. Heard the learned counsel on either side and perused the material available on record.

28. As the present matter arises from an interim order, under normal circumstances, rather than entertaining this Special Leave Petition, we would have relegated the parties to pursue the pending writ petition before the High Court. However, upon going through the pleadings filed by the parties, the materials placed on record, and more particularly, the stark and glaring facts set out in the counteraffidavit filed by the respondent-advocate, who was sought to be prosecuted before the BCMG, this Court is persuaded to invoke its jurisdiction under Article 136 of the Constitution of India for quashing the proceedings of the complaint as a whole.

29. It is an admitted case of the parties that the respondent-advocate never represented Nusli Randelia, Dara Sarkari, or M/s. Volga Enterprises in the suit before the High Court. The respondent-advocate had simply identified the plaintiff being the authorized representative of M/s. Unique Construction in the Consent Terms, which stand undisturbed to date. Thus, by mere identification of the plaintiff, the respondent-advocate cannot be held liable to face proceedings under Section 35 of the 1961 Act.

30. Indisputably, the Consent Terms taken on record by the High Court continue to hold good and have not been recalled or rescinded. The role assigned to the respondent-advocate was of identifying the plaintiff in these very consent terms.

We are, therefore, of the firm opinion that no one can be allowed to raise an issue questioning the Consent Terms that were arrived at between the plaintiff and the defendants.

31. Devji Parmar was not a party to the suit. Had there been any semblance of a right or claim of Devji Parmar in the suit property, Nusli Randelia would definitely have sought his impleadment in the suit. Not only this, Nusli Randelia never projected that the so-called firm M/s. Volga Enterprises had any role to play in the dispute over the suit premises.

32. Since the respondent-advocate was not representing the complainant or his predecessor Devji Parmar, there was no justification behind his arraignment in the complaint for alleged misconduct within the meaning of Section 35 of the 1961 Act.

33. We say so for the reason that there existed no professional relationship between the respondent-advocate and the complainant. His prosecution, as being the lawyer of the opposite party in the suit before the High Court, was highly objectionable, totally impermissible, and absolutely uncalled for. Ordinarily, the existence of a jural relationship between the complainant and the advocate concerned is a precondition for the invocation of disciplinary jurisdiction on the ground of "professional misconduct".

34. We are of the considered opinion that even if the respondent-advocate had actually represented and pleaded the case of the plaintiff-M/s. Unique Construction in the suit and had not merely identified the plaintiff; that act in isolation could not be termed as misconduct within the meaning of Section 35 of the 1961 Act because the acts attributed to the advocate, taken on their face value, cannot be regarded as misconduct, professional or otherwise.

35. The scheme of Section 35 of the 1961 Act expositis that where a complaint is received from the State Bar Council, it must record its reasons to believe that any Advocate on its roll has been guilty of professional or other misconduct, and only thereafter can the matter be referred for disposal to the DC. For ready reference, Section 35 of the Act is quoted hereinbelow:-

"35. Punishment of advocates for misconduct.-(1) Where, on receipt of a complaint or otherwise, a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

[(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council 4 shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate- General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:-

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate- General under sub-section (2), the Advocate- General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

[Explanation.-In this section, [section 37 and section 38], the expressions "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]

(Emphasis supplied)

36. It would be apposite here to refer to the following observations made by this Court in *Nandlal Khodidas Barot v. Bar Council of Gujarat* 1980 Supp SCC 318, whereby, the State Bar Council's referral of the complaint to the Disciplinary Committee was set aside, for it did not contain reasons for the satisfaction of a prima facie case:-

"It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief...

...The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

...the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a disciplinary committee is entrusted with such inquiry...."

(Emphasis supplied)

37. Thus, recording of reasons to believe that the advocate has committed misconduct is a sine qua non before the complaint can be referred to the disciplinary committee for inquiry.

38. In the present case, the order passed supra by the Judge-Advocate, referring the complaint to the DC, is absolutely cryptic and laconic for it does not record any satisfaction to the effect that the respondent-advocate had committed misconduct as provided under Section 35 of the 1961 Act. The order dated 6th July, 2023, does not even make a bald reference to the gist of allegations as set out in the complaint and hence, the same suffers from total non-application of mind. Reference of a complaint of the DC would have serious consequences on the professional career of the lawyer and could tarnish his image and standing in the profession. Hence a cryptic order referring the complaint to the DC without a bare minimum discussion of the allegations contained in the complaint would not satisfy the requirements of a valid reference order.

39. In the absence of such prima facie satisfaction, the statutory requirement under Section 35 remains non-complied, and the order of reference is ex facie in teeth of Section 35(1) of the 1961 Act. Hence, the same cannot be sustained.

40. Resultantly, the Complaint No. 27 of 2023 filed by the complainant, before BCMG and all proceedings sought to be undertaken in furtherance thereof, are hereby quashed and set aside. The pending writ petition before the High Court shall stand closed.

41. Cost of Rs.50,000/- (Rupees Fifty Thousand only) is imposed on the appellant-BCMG for entertaining the frivolous complaint and for dragging the respondent-advocate Shri Rajiv Narula to this Court. The said cost shall be deposited with the Registry of the Bombay High Court within a period of four weeks from today, and thereafter, be paid to the respondent-advocate Shri Rajiv Narula.

42. The appeal is, accordingly, disposed of in the above terms.

43. All Pending application(s), if any, shall also stand disposed of.

SLP (CIVIL) NO (s). of 2025 (Diary No(s). 38238 of 2023)

SLP (CIVIL) NO (S). 1492 OF 2024

44. Delay condoned.

45. These matters are heard along with the above matter, as the legal issues raised are common. However, since the factual matrix is distinct, we proceed to note the facts of the connected case separately.

46. Both these special leave petitions arise from the Order dated 9th August, 2023, passed by the High Court of Judicature at Bombay in Writ Petition (L) No. 7383 of 2023. By the impugned order, the High Court allowed the writ petition filed by respondent No.1-Ms. Geeta Ramanugrah Shastri "respondent-advocate", a practicing advocate, and quashed the order-cum-report dated 20th September, 2020, and proceedings of Disciplinary Case No. 264 of 2017 registered with the BCMG (petitioner in SLP (C) No.1492 of 2024).

47. The pith and substance of the allegations set out in the complaint filed by Bansidhar Annaji Bhakad "Complainant" (petitioner in SLP (C) Diary No. 38238 of 2023) was that there was a dispute between him and Ismail Yusuf Junior College, a State Government Educational Institution, where he used to serve as a Lecturer. His services were terminated by the college with effect from 1st December, 1993. Thereafter, Shri Bhakad commenced practice as an advocate.

48. He instituted suit No. 1204 of 1995 against the college by invoking the Original Jurisdiction of the High Court seeking damages to the tune of Rs. 43 lakhs from the college. Owing to an increase in the pecuniary jurisdiction, the suit was transferred from the High Court to the City Civil Court, Bombay.

49. The college thereafter filed a chamber summons in the suit seeking amendment of its written statement. Certain documents were annexed with the chamber summons, which were supported by an affidavit.

50. It is alleged that the advocate on record, Shri N.P. Pandit certified the documents filed with the chamber summons as true copies. As per the complainant, the respondent-advocate identified the deponent of the affidavit filed with the chamber summons, and in doing so, she purportedly attested to the correctness of the contents of that affidavit and the chamber summons as being of her personal knowledge. As per the complainant, the statements set out in the affidavit were ultimately found to be false and, therefore, the respondent-advocate, by subscribing to the affidavit, had lent support to the false recitals and made a false deposition based on the contents of the affidavit.

51. The gravamen of the case, as set out in the complaint, was that the respondent-advocate could not have identified signatures of the deponent without assuming responsibility for the correctness of the statements contained in the body of the affidavit. As per the complainant, the deponent of the affidavit made incorrect statements and filed false documents, and thus, the advocate who identified the deponent by appending signatures on the same would be equally responsible for the offences of forgery, perjury, or cheating.

52. The respondent-advocate filed the subject writ petition before the High Court, and the High Court, upon consideration of the material available on record, held that the respondent-advocate at no point of time had sworn any affidavit in the suit, motion, interim application, or the chamber summons. The mere act of identifying the deponent in an affidavit filed with the chamber summons would not make the advocate responsible for the contents of the affidavit. Upon overall appreciation of the materials placed on record, the High Court found the allegations set out in the complaint to be wholly absurd and untenable.

53. In our considered view, the said finding recorded by the High Court is perfectly justified and hence unassailable. An advocate, by mere attestation of the affidavit, does not become a privy to the contents of the affidavit. Hence, ex facie, the complaint filed by the petitioner, Bansidhar Annaji Bhakad, against the

respondent-advocate was not only bereft of substance but was also founded on malicious and spiteful insinuations directed against the advocate who merely identified the opposite party in an affidavit.

54. The steps taken and order passed by the BCMG in directing registration of the complaint and in referring the same to the DC for undertaking the inquiry were illegal on the face of the record, bordering on perversity. It is manifestly a case of malicious prosecution of the advocate at the behest of the opponent litigant.

55. The impugned order dated 9th August, 2023, passed by the High Court quashing the complaint in writ jurisdiction, does not, ex facie, suffer from any infirmity. The complainant and, thereafter, the BCMG, have caused immeasurable grief and harassment to the respondent-advocate.

56. Thus, both the special leave petitions are devoid of merit and are dismissed as such.

57. Cost of Rs.50,000/- (Rupees Fifty Thousand only) each is imposed on the complainant-petitioner Bansidhar Annaji Bhakad, and the BCMG. The said cost shall be deposited with the Registry of the Bombay High Court within a period of four weeks from today, from where the same shall be paid to the respondent-advocate Ms. Geeta Ramanugrah Shastri.

58. Pending application(s), if any, shall stand disposed of.