
(2004) 02 BOM CK 0121
In the Bombay High Court
Case No : Writ Petition No. 197 of 2004

Bharatiya Bhavan Co-operative Housing Society Limited and Another APPELLANT

Vs

Krishna H. Bajaj and Others RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Advocates Act, 1961 — Section 1(3), 33

Citation : AIR 2004 Bom 387 : (2004) 2 ALLMR 340 : (2004) 5 BomCR 196 : (2004) 2 MhLj 810

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : C.B. Balsara and Sameer Vaidya, instructed by, Ashwin Ankhad and Associates, for the Appellant; Rishabh Shah, instructed by Goenka Law Associate, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—The order of the Co-operative Appellate Court passed on 24th December, 2003 in Revision Application No. 673 of 2003 permitting the respondent No. 1 to plead through his attorney instead of an advocate, is sought to be challenged in this petition. The notice of the hearing of the matter was issued to the respondents for final disposal of the same, at the admission stage. However, apart from the respondent No. 1, none has appeared. In any case, there is no case for proceeding against the respondent Nos. 2 and 3 and the petition is liable to be dismissed in limine against the said respondents and is accordingly dismissed. Upon hearing the learned Advocate for the petitioner and the respondent No. 1, while issuing the rule, by consent, the matter was heard forthwith for final disposal.

2. The respondent No. 1 filed a case for recovery of amount of Rs. 51 lakhs as damages and Rs. 20 lakhs towards repairs charges from the petitioner No. 1-society and by order dated 19th March, 2003 passed in Writ Petition No. 2661 of

2002, the hearing and disposal of the said dispute was expedited, and it was expected to be completed within a period of six months. In the course of recording of evidence before the Co-operative Court, and after the conclusion of the recording of the evidence of the respondent No. 1 and while the 1st witness of the petitioner-society was under cross-examination, after having, been partly cross-examined, the Advocate for the respondent No. 1 sought to withdraw his appearance by an application dated 20th December, 2003 which was allowed by the Co-operative Court. Simultaneously, an application was filed by the respondent No. 1 for allowing his power of attorney holder viz. Shailesh H. Bajaj, Constituted Attorney, to represent her and to continue the cross-examination of the witness of the petitioner/society. The said application, however, was rejected by the Co-operative Court on 20th December, 2003-on the ground that the right to plead is not available to any person other than the person practicing as an Advocate. The said order was challenged in the revision application and by the impugned order while setting aside the order of the cooperative Court, the power of attorney holder of the respondent No. 1 was allowed to represent the respondent No. 1 and also to continue with the cross-examination of the witness of the petitioner No. 1/ society. Hence, the petition.

3. It is sought to be contended on behalf of the petitioner's that in terms of the provisions of law contained in the Advocates Act, 1961 read with the provisions of the Maharashtra Co-operative Societies Act, 1960 as well as the Maharashtra Co-operative Societies Rules, 1961, only the advocates are entitled to practice and a person who is not qualified as advocate is not be entitled to practice and, therefore, the impugned order is bad in law. On the other hand, the learned advocate for the respondent No. 1 has contended that it is a matter of choice for the parties to decide who should represent him or her and such right having been assured in terms of Article 19(1)(A) of the Constitution of India and there being no bar for non advocate being allowed to represent a party in a proceeding before the Co-operative Court under the Maharashtra Co-operative Societies Act, 1960 or the Rules framed thereunder and in a situation where the advocate had withdrawn his appearance for the party and it was not possible for the party to engage another advocate within a short span of time and considering that the proceedings were required to be concluded within the specified time in terms of the order of the High Court, there is no case made out for interference in the impugned order. Reliance is sought to be placed in the decisions in the matter of Aswin Shambhuprasad Patel and Others Vs. National Rayon Corporation Ltd., , and in the matter of Murlidhar Datoba Nimanka and Ors. v. Harish Balkrushna Latane and Ors., reported in 2003 (4) M.L.J. 196, Sanjay R. Kothari and Another Vs. South Mumbai Consumer Disputes Redressal Forum and Another, , and of the Apex Court in the matter of Perfect Paper and Steel Converters Private Ltd. and Ors. v. The Bombay National General Workers' Union and Ors., reported in 7959 M.L.J. 518 : 1989 (1) CLR 492 and in the matter of Harishankar Rastogi Vs. Girdhari Sharma and Another, .

4. It cannot be disputed that the Advocates Act, 1961 prohibits any person other

than Advocate to practice profession of law in any Court or before any authority or person except as otherwise provided in the said Act or in any other law for the time being in force. Section 33 of the Advocates Act, 1961 is very clear in that regard, and it reads that "Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any Court or before any authority or person unless he is enrolled as an advocate under this Act." The provisions of Section 33 came into force with effect from 1st June, 1969 consequent to the Notification No. S.O. 1500 dated 5th April, 1969 issued u/s 1(3) of the Advocates Act, 1961. The Division Bench of this Court in Sanjay Kothari's case (supra), after taking note of the said provisions of law, has observed that "The Advocates Act, thus, prohibits any person other than Advocate to practice profession of law in any Court or before any authority or person except as otherwise provided in this Act or in any other law for the time being in force."

5. The learned Single Judge of this Court in Aswin Shambhuprasad Patel's case (supra), while dealing with the issue as to whether a constituted attorney has right of audience in the High Court on behalf of a party, in a case wherein the petitioner in civil revision application was seeking audience through his attorney, after referring to Order III, Rules 1 and 2 as well as Clause X of Letters Patent and Section 8 of the Bar Councils Act, 1926 and Section 9 of the Bombay Pleaders Act, 1920, held that "the expression, "appearance, application or act" in or to any Court in Order 3, Rule 1 of CPC does not include pleading. The right of audience in Court, the right to address the Court, the right to examine and cross-examine witnesses, are all parts of pleading." It was further held that the expression "right to practise" in Section 8 of the Bar Councils Act is an expression much wider than the right to plead and includes both the pleading and acting, and such right is conferred only upon those persons who have been enrolled as Advocates of the High Court under the said Bar Councils Act, which is in conformity with Clause X of Letters Patent. In Murlidhar Datoba. Nimanka's case (supra), it was held by me that the provisions of CPC are not applicable to the proceedings before the Co-operative Court while dealing with the disputes under the Maharashtra Co-operative Societies Act, 1960 though in relation to such procedure wherever the provisions of law contained in the said Act and the Rules made thereunder are totally silent, the principles of the CPC can be made applicable to such proceedings.

6. The Apex Court in Harishankar Rastogi's case (supra), while dealing with a case pertaining to criminal proceedings wherein the party was seeking permission of the Court to be represented by a person, who was not an Advocate, held that it is open to a person, who is party to a proceeding, to get himself represented by a non-advocate in a particular instance or case. Simultaneously, it was ruled that "a private person, who is not an advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact

the Court may, even after grant of permission, withdraw it half-way through if the representative proves himself reprehensible. The antecedents relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission."

7. The Division Bench of this Court in Perfect Paper and Steel Converters Private Ltd.'s case (supra), while dealing with a question as to whether in a proceeding before the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, a party has a right to be represented by a person of his choice notwithstanding the fact that he does not fall in any of the categories mentioned in Regulation 11 of the Industrial Court Regulation, 1975 made by the Industrial Court pursuant to the power conferred upon it u/s 33 of the MRTU and PULP Act, 1971, after taking note of the Article 19(1)(a) of the Constitution of India, held that thereunder every citizen has right to effective speech and expression and that such right would include a right of a party to appoint a person of his choice to represent himself assured under the provisions of Section 32 of the Advocates Act, 1961, and observed that :--

"A party may appoint a person to represent himself before any Court or authority because of his expertise in the subject concerned or because he is his friend or adviser. When such a person is appointed in any particular case with the permission of the authority concerned, he does not practise the profession and contravene Section 33 of the Advocates Act. Section 32 of the said Act in fact permits such appearance notwithstanding the fact that the person concerned is not enrolled as an advocate under that Act. Secondly, the privilege to practise the legal profession which is conferred on the advocate enrolled under the said Act who practise as a matter of right and has to be distinguished from the appearance of a person with the permission of the Court or the authority as the case may be."

It was further observed that :--

"In fact, the application to appoint a non-advocate to represent a party must proceed from the party himself. When such application is made, the Court, authority or the person as the case may be has to take into consideration several circumstances before granting or refusing the permission."

8. Considering the above referred rulings and the provisions of law, it is clear that it is privilege of the Advocate enrolled under the said Act to practise in any Court or before any authority or the person, unless the said privilege is restricted in any manner under any law in force. This conclusion is inevitable from the provisions of law contained in Section 33 and well clarified by the two decisions of the Division Bench of this Court, one in Perfect Paper and Steel's case (supra) and another in Sanjay Kothari's case (supra). This is also clear from the decision of the Apex Court in Harishankar Rastogi's case (supra). In fact, it was elaborately clarified by the Apex Court in Harishankar Rastogi's case (supra) after taking note of the provisions of Article 19(1)(a) of the Constitution of India

that :--

"While it is true that Article 19 of the Constitution guarantees the freedom to practise any profession, it is open to the State to make a law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right. The Advocates Act, by Section 29, provides for such a reasonable restriction, namely, that the only class of persons entitled to practise the profession of law shall be advocates."

It was further ruled that :--

"practicing a profession means something very different from representing some friend or relation on one occasion or in one case or on a few occasions or in a few cases..... It is absolutely clear that anyone who is not an advocate, cannot as of right, force himself into this Court and claim to plead for another. Permission may, however, be granted by this Court taking the justice of the situation and several other factors into consideration for such non-professional representation."

Being so, while privilege of practicing the profession of law is reserved for the advocates enrolled under the said Act, there is no total prohibition for allowing a party to be represented by a person of his choice, other than one practicing the Advocate, for justifiable reasons, to be established to the satisfaction of the Court by the party seeking leave to be represented by a non-advocate.

9. As regards the proceedings before the Co-operative Court, the Maharashtra Co-operative Societies Act, 1960, u/s 94(2) provides that "except that the permission of the Co-operative Court, no party shall be represented at the hearing of a dispute by legal practitioners." The said provision of law apparently discloses that a legal practitioner cannot appear in the Cooperative Court as a matter of right. Indeed, Section 33 of the Advocates Act, while ensuring right of appearance to the advocates before any Court or authority clearly carves out an exception to the said rule in the cases where "otherwise provided in any other law". Obviously Section 94(2) is one of such provision under which the right of a legal practitioner to appear in the Court is restricted.

At the same time, there is no total bar for appearance by the Advocates before the Co-operative Court and this is evident from Section 94(2) itself.

10. Apart from Section 94(2), there is no other provision either in the Maharashtra Co-operative Societies Act, 1960 or in the Maharashtra Co-operative Societies Rules, 1961 relating to the representation of the parties to the dispute before the Co-operative Courts. In other word's, the provision of the Advocates Act, 1961, subject to the restrictions imposed in Section 94(2) would be attracted. Consequently, the decision of the Apex Court in Harishankar Rastogi's case (supra) would squarely apply in such cases. Besides, it stands to reason that in a case where the party is unable to secure the assistance of an advocate and if he is in a position to get the help of his well wisher, who can effectively

defend his/her case and assist the Court in arriving at the appropriate solution to the dispute under adjudication by the Court, certainly technicalities cannot be allowed either to imperil the justice or to bulldoze the cause of justice. In such cases, the technicalities will have to be set apart and practical approach will have to be adopted.

11. As regards the decision in, undoubtedly, Sanjay Kothari's case (supra), it is restricted to the matters before the Consumer Forums. It was held therein that :--

"The party before the Consumer Forum/State Commission cannot be compelled to engage services of an Advocate. If the party before the Consumer Forum/State Commission does not engage an advocate, it has to appear before the Consumer Forum on date/dates of hearing either in person or through its authorized agents."

12. Reverting to the facts of the case, it is apparent that the Co-operative Court by its order dated 22nd December, 2003 had rejected the application filed by the respondent No. 1 for allowing her to be represented by her power of attorney holder in the absence of advocate and to cross-examine the witnesses on her behalf. The Appellate Co-operative Court, however, set aside the said order on the ground that the advocate had abruptly withdrawn his appearance and there was a direction for expeditious disposal of a case, cross-examination was required to be completed expeditiously, and on account of vacation, the party was not able to engage another advocate immediately, and in those circumstances, the party was justified in seeking representation through her attorney.

13. Undisputedly, the matter was required to be disposed of within the specified time in terms of the order of this Court. The ground disclosed for allowing the party to be represented by the attorney was the abrupt withdrawal of the appearance by her advocate and on account of vacation, it was difficult for the party to secure presence of another advocate, and the said facts were not disputed by the petitioners, and in those circumstances, Shailesh H. Bajaj, the attorney of the party, who is stated to be conversant with the facts, was allowed to represent the party. The main ground for seeking representation through attorney was that the advocate appearing for the party had abruptly withdrawn his appearance and it was difficult for the respondent to secure the presence of another advocate on account of vacation. It cannot be disputed that the vacation was for 15 days. If the matter was required to be concluded expeditiously, certainly the ground that on account of vacation, it was difficult to secure presence of another advocate, was also a justifiable ground. In those circumstances, there was a clear case made out for representation of a party through her power of attorney particularly during the period of vacation and till the party was able to secure the presence of another advocate,

14. It is sought to be contended that the Court even did not consider the

antecedents of the person who is allowed to represent the party to the proceedings and that the said attorney was arrested for economic offences. Certainly the said allegation is made for the first time when the matter has come up in this Court and there was no whisper about it till the impugned order was passed. Besides, it cannot be disputed that the permission given to a party to be represented by non-advocate is not final for all purposes, but such order is always subject to the modification, even during the pendency of the proceedings in the same Court, depending upon the facts and circumstances of the case. There is no prohibition for the petitioners from approaching the Co-operative Court for modification of the impugned order, if so desired, on cogent ground to be made for such modification. In case of any such application by the petitioners, the Cooperative Court will have to deal with the same in accordance with law and bearing in mind the rulings in Harishankar Rastogi's case (supra) and the decision of Division Bench in Perfect Paper and Steel's case (supra).

15. In the circumstances, the impugned order does not disclose any cause for interference therein in writ jurisdiction and the petition, therefore, fails and is dismissed. Rule is discharged with no order as to costs.