

(1997) 01 SC CK 0133
In the Supreme Court Of India
Case No : Civil Appeal No. 1879 of 1981

B.R. Mahalkari

APPELLANT

Vs

Y.B. Zurange

RESPONDENT

Date of Decision : 07-01-1997

Acts Referred:

Advocates Act, 1961 — Section 38

Citation : (1998) 9 JT 385 : (1997) 11 SCC 109

Hon'ble Judges : Sujata V. Manohar, J; S. C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been filed u/s 38 of the Advocates Act, 1961. The appellant is enrolled as an advocate at Maharashtra Bar Council. A complaint was made by the respondent wherein it was stated that she had filed a suit for maintenance and decree was passed whereby the husband was directed to pay Rs. 4600 as arrears of maintenance till 31-12-1969 and thereafter a sum of Rs. 70 per month from 1-1-1960. The appellant was the advocate representing the complainant in that suit. The grievance of the complainant was that the appellant had paid a sum of Rs. 836.29 p. in all, up to 1963 towards the amount of maintenance and no further amount was paid to her thereafter. On being asked by the complainant about payment of maintenance allowance under the decree, the appellant is said to have informed her that there was a stay order from the High Court against the execution of the decree and hence the amount had not. been paid. The case of the complainant is that in 1978 she came to know that the stay order had been vacated long back and that the appellant had withdrawn the amount of the maintenance allowance deposited in pursuance of the decree from the Court but did not pay the same to her. It was also stated in the complaint that the complainant had sent a notice to the appellant to furnish accounts of the amount of maintenance allowance received by him. Thereupon the appellant sent a cheque for Rs. 1176.60 p. The case of the appellant in his reply to the complaint

was that he had paid to the complainant the entire amount of maintenance which was received by him from the Court. He, however, admitted that he had obtained receipts from the complainant till 1963 but he had not obtained any receipt in respect of payments made after 1963. The Maharashtra State Bar Council, after considering the evidence of the complainant as well as that of the appellant, found that the appellant had failed to pay the amount of maintenance allowance received from the Court during the periods 1963-78 and thereby he had committed professional misconduct. The State Bar Council has ordered the appellant to be suspended from practice for a period of three years. The appeal filed by the appellant against the said order of the State Bar Council has been dismissed by the Bar Council of India by the impugned order dated 21-4-1981. The Bar Council of India, after perusing the statement of the appellant, has held that reliance could not be placed on the testimony of the appellant. The Bar Council of India has also taken note of the fact that the appellant had taken receipts from the complainant for payments made up to 1963 and that there was no reason why he should not have taken receipts for payments made subsequent to 1963. The Bar Council of India has also found that though the appellant claimed that he was maintaining a diary containing the entries of withdrawals but he had failed to produce the same before the State Bar Council or the Bar Council of India. The Bar Council of India also took note of the fact that the appellant had retained the amount of Rs. 1176 which amount was sent subsequently by him to the complainant. The Bar Council of India has, therefore, upheld the order passed by the State Bar Council and has dismissed the appeal of the appellant.

2. We have heard Shri Mahajan, the learned Counsel for the appellant. The respondent has not appeared inspite of service of notice. We have perused the record and the order passed by the State Bar Council as well as the impugned order passed by the Bar Council of India. We do not find any infirmity in the impugned order. No ground is made out for interfering with the findings recorded by the Bar Council of India. In the circumstances, we find no merit in this appeal. It is accordingly dismissed. No order as to costs.