

(1898) 06 CAL CK 0021
In the Calcutta High Court

Chundra Kanta Roy

APPELLANT

Vs

Sarat Chunder Roy Chowdhry and Others

RESPONDENT

Date of Decision : 23-06-1898

Acts Referred:

Contract Act, 1872 — Section 70

Legal Practitioners Act, 1879 — Section 27, 28

Citation : (1898) ILR (Cal) 805

Hon'ble Judges : Stevens, J; Prinsep, J

Bench : Division Bench

Judgement

Prinsep, J.—The plaintiff sued before the Subordinate Judge of Rungpore exercising the powers of a Small Cause Court for certain fees for appearing and acting as a pleader for the defendants.

2. There was no written agreement within the terms of Section 28 of the Legal Practitioners' Act, 1879, and the fees claimed are not within Section 27.

3. The Judge of the Small Cause Court has referred to two judgments in ILR 9 Mad. 375, and ILR 12 All 169, and upon these he has held that the plaintiff's suit, without a written agreement, is maintainable notwithstanding Section 28 of the Legal Practitioners' Act.

4. It seems us that the Allahabad case is decidedly against that view. The Act, (sic) it, contemplates that legal practitioners shall be entitled to received Section 27 the amount payable under certain rules prepared within the (sic) section, and that they shall not be entitled to claim anything further (sic) of Section 28 are observed. Section 28 requires that there s in possession of should be a written agreement signed by the client and that it should be filed within a certain specified time in a particular Court. The sections that follow all refer to Section 28, and, as we understand it, to nothing else, for they all refer to "such agreement," which is an agreement within the terms of Section 28. It seems to us that in enacting these provisions the Legislature deliberately intended in respect of agreements between such parties to provide definitively for them, and

even to go so far as to rescind anything in the Contract Act or any previous legislation relating to the subject. We agree with the learned Judges of the Allahabad Court that the intention appears to be as stated by them in the judgment reported in ILR 12 All. 169 (see page 174).

5. We have had cited to us several decisions of the Madras Court, in which that Court, notwithstanding the express terms of the Legal Practitioners' Act, has applied Section 70 of the Indian Contract Act. We are unable to follow those decisions for reasons already stated. The judgement of the Small Cause Court Judge, therefore, is, in our opinion, contrary to the terms of the Act and must be set aside.

6. This order will apply to Rule No. 1118. We make no order as to costs in either of these cases.

7. Nos. 1111, 1113 to 1117 and 1119. The learned Advocate-General who appears for petitioners abandons these Rules on its being shown that the fees given are only such as can be legally obtained u/s 27. These Rules will be discharged.

8. We make no order as to costs.