

(2006) 02 AP CK 0028

In the Andhra Pradesh High Court

Case No : AS No's. 1176, 1275 and 1276 of 2002

Indian Bank, Mogalrajapuram Branch

APPELLANT

Vs

V.K. Avadani

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Advocates Act, 1961 — Section 34(1A)
Constitution of India, 1950 — Article 227(2)

Citation : AIR 2006 AP 252 : (2006) 3 ALD 796 : (2006) 2 APLJ 14 : (2006) 3 KLT 673

Hon'ble Judges : D. Appa Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : P. Shiv Kumar, for the Appellant; M.R.K Chowdary, for M. Radha Krishna in AS No. 1176 of 2002 and M. Sudheer Kumar in AS Nos. 1275 and 1276 of 2002, for the Respondent

Judgement

B. Prakash Rao, J.—Heard Sri P. Shiv Kumar, the learned Counsel appearing for the appellant in all these three appeals and also Sri M.R.K. Chowdary, the learned Senior Counsel, appearing on behalf of the respondent.

2. Since all these three appeals involve a common question, they are being taken up together for disposal.

3. After hearing the learned Counsel on either side and on perusal of the material available on record, the main question which arises for consideration is as to whether, in the facts and circumstances of the case, the claim of the respondent-plaintiff, who as an advocate appeared on behalf of the appellant-defendant, is entitled to the suit claim towards his legal fee.

4. The few facts, which are necessary for disposal of these appeals, are as follows:

The respondent-plaintiff, who is a practising advocate, filed O.S.No. 62 of 2000 in the Court of the II Additional District Judge, Vijayawada, seeking recovery of Rs.

10,25,170/- being the principal and interest due by the appellant-defendant towards the fee for his appearance in O.A. No. 20 of 1995 on the file of the Debt Recovery Tribunal, Bangalore (for short "DRT"), repayable with interest at 12% per annum on the principal amount of Rs. 9,15,330/-. The said claim rests on the ground that the respondent-plaintiff was engaged by the appellant-bank along with the Andhra Bank in respect of the claim made before the DRT, in O.A. No. 20 of 1995, which was filed for recovery of Rs.4,56,56,515/-. Ultimately, the same was allowed and a certificate of recovery was issued on 15-9-1995. However, as against the said orders, an appeal was carried by the sixth respondent in A.S. No. 38 of 1996 before the Appellate Tribunal at Bombay, which was allowed as per the orders dated 20-2-1997 and remanded to the Tribunal for its disposal afresh. Subsequent to the remand, the matter was again taken up by the DRT and again allowed the claim by its order dated 12-9-1998.

5. Since the respondent-plaintiff as its Counsel appeared both prior to and after remand of O.A. No. 20 of 1995 before the DRT, he submitted Bill along with a letter dated 22-9-1995, claiming his legal fee. Since the amounts were not paid, he filed the present suit on 3-6-2000.

6. Similar is the case for the suit claim by the same respondent-plaintiff towards the legal fee in other two suits, against which the other two appeals arose.

7. All these three claims have been contested, inter alia, by the appellant bank on the principal objection that the other bank namely the Andhra Bank is not made as a party and, therefore, the suit suffers from non-joinder of necessary parties. Further, having regard to the fact that the DRT disposed of the proceedings earlier on 15-9-1995 and on remand on 12-9-1998 and no fresh fee was claimed other than the bill as set up on 22-9-1995, the suit filed by the respondent-plaintiff on 3-6-2000 is hopelessly barred by limitation. Further, it is the case of the appellant that in the circular dated 21-11-1995, it has been stated that in all the proceedings before the DRT, a sum of Rs. 30,000/- has been fixed as maximum fee, which is to be payable to the Counsel, who appears in the proceedings. Therefore, the respondent-plaintiff would not be entitled to any amount over and above the said limit. It is also the contention of the appellant that even taking into account the applicability of the Advocate Fee Rules, since the matter was disposed of ex parte, it is only the 50% of the fee as fixed, to which the respondent-plaintiff is entitled to and not more than that.

8. After considering the pleadings put forward by both the parties, the Court below framed the following issues for trial :

- (1) Whether the plaintiff is entitled to the suit amount and interest as prayed for ?
- (2) Whether the suit claim is in time ?
- (3) Whether there is any contract between plaintiff and defendant to pay fee as per A.P. High Court Fee Rules ?
- (4) Whether the suit is bad for non-joinder of necessary party ?

(5) To what relief ?

9. In the Court below, both the parties went into trial. On behalf of the respondent-plaintiff, he himself was examined as P.W.I and marked Exs.A1 to 21. No oral evidence was adduced on behalf of the appellant herein, except marking the A.P. Advocate Fee Rules, 1990 as Ex.B1.

10. Considering the entire evidence, both oral and documentary, and the material available on record, the Court below decreed the suit, holding that since the claim as made by the respondent-plaintiff forms part of the decree passed by the DRT, the appellant-defendant has to pay the same. Hence, these appeals have been preferred by the appellant.

11. The learned Counsel appearing for the appellant strenuously contended that having regard to the contract between the parties, especially the circular issued on 21-11-1995, the respondent-plaintiff would not be entitled to be paid the amount over and above such limit and therefore the entire suit claim is exorbitant. He further contended that the suit is hopelessly barred by limitation, since the same was filed on 3-6-2000 though O.A. was disposed of, on remand, on 12-9-1995. According to him, the Bill, which has been put forth first time on 22-9-1995 suffers from latches and limitation, hence the respondent is not entitled to the claim. In support of his case, the learned Counsel sought to place reliance on the judgment in Debts Recovery Tribunal, Advocates Association of Andhra Pradesh Vs. Debts Recovery Tribunal, Karnataka and Andhra Pradesh, Bangalore and Others, , wherein this Court, considering the provisions of the A.P. Advocate Fee Rules vis-a-vis Article 227(2)(b) of the Constitution of India and also Section 34(1-A) of the Advocates Act, held that the said rules governed the fees payable by the adversary as costs but not fees payable by the banks to their advocates.

12. The learned Senior Counsel appearing on behalf of the respondent repels all the above said contentions, holding that in view of the fact that the decree includes the fee that is to be payable by the bank to the respondent-plaintiff, it is for the appellant to pay the same. According to him, in case if it is found over and above the limit as stated above, the same can as well be recovered from the party as a quasi-obligation.

13. Considering the submissions made on behalf of both the parties, across the Bar, the main question that arises for consideration is as to whether, in the facts and circumstances of the case, the respondent-plaintiff would be entitled to the amount of fee as shown in the decree passed by the DRT, which has been fixed as per the A.P. Advocate Fee Rules, from the appellant-bank, in contra to the circular dated 21-11-1995 issued by them.

14. Admittedly, there is no dispute with regard to the aforesaid chequered events, which lead to filing the O.A., before the DRT by the appellant, being the lead bank, along with the other bank and the same was allowed on 15-9-1995. There is no dispute with regard to the fact that the respondent-plaintiff was engaged by

the appellant bank as a panel advocate to appear in the proceedings initiated before DRT and accordingly he appeared in the same. The said O.A. was decreed. However, the same was, subsequently, challenged in appeal in A.S.No. 38 of 1996 at the instance of the sixth respondent in the said proceedings and the same was remitted for its disposal afresh. Thereafter, it was finally disposed of on 12-9-1998. Later, the respondent has submitted a letter along with the Bill on 22-9-1995 claiming the amount towards his legal fee. Since the said amount was not paid, the suit was filed on 3-6-2000. There is no dispute in regard to the circular dated 21-11-1995, wherein the banks have fixed Rs. 30,000/- as the maximum fee payable to the Counsel, who appear before the DRT. It is stated that this amount was arrived at, as a consensus, unilaterally, by all the banks. However, the learned Counsel for the appellant is not able to show any other similar circular existing prior to 21-11-1995 and therefore, it must be construed that before the issuance of said circular, the amount was being paid to the respective Counsel by the banks as per the A.P. Advocate Fee Rules, which is not in dispute. Now, as per the said circular, it becomes a contract between the bank and the advocate. However, in regard to the amounts as shown in the decree by the DRT, which includes the amount shown towards the advocate fee as a part of the costs, the question is as to whether the appellant bank is liable to pay the said quantum or the fixed amount as per the circular issued on 21-11-1995. As rightly contended by the learned Counsel for the appellant, in the aforesaid decision, the Division Bench of this Court held that the amounts as prescribed under the A.P. Advocate Fee Rules are to be recovered from the adversary side but does not reflect the amount that has to be paid by the client to his advocate. Therefore, necessarily it follows that the amount, which has to be paid by the client to his advocate, depends on individual contracts. Therefore, in this case, necessarily, the circular dated 21-11-1995 steps in, and the appellant bank cannot be compelled to pay anything more than the said amount. However, having regard to the fact that the advocates concerned have filed the fee certificate, which forms part of the decree and the said amount is the one to be recovered from the adversary party, any amount which has been claimed towards the advocate fee over and above the limit prescribed under the circular dated 21-11-1995, necessarily has to be paid to the respective Counsel, who filed the certificate and certainly the bank is not entitled to retain the said amount, since they have no right to make claim over the amount. Otherwise, it will amount to enrichment.

15. The learned Counsel for the appellant fairly submitted that they would not retain any such amounts recovered from the adversary party, in execution of the said decrees, over and above the limit prescribed in the circular. Therefore, necessarily it follows that the amount shown towards the advocate fee has to be paid back only to the Counsel who appeared in the proceedings.

16. Though the learned Senior Counsel appearing for the respondent pointed out that there are instances where the banks, subsequent to obtaining the recovery certificates and even at the stage of execution, are trying to settle the matter

with the parties and, ultimately, the Counsel would be at loss since they would be constrained to receive fixed sum of Rs. 30,000/- in spite of the amount as shown based on the fee certificate. It is needless to mention that once the fee amount is shown in the decree, necessarily the appellant bank should take care to see that the amount that is settled ultimately even by way of compromise or otherwise, should include the amount which is shown towards the advocate fee in the decree and the said amount had to be paid to the Counsel. Any settlement made later would not in any way deny the fee shown in the decree or certificate. Therefore, de hors such settlement arrived at by the bank that the defaulters for any lesser amount, the liability continues to remain with the bank for payment of legal fee to the Counsel as per the decree or certificate. No such settlement would not scuttle the amount so fixed towards legal fee to the Counsel.

17. In view of the same, we hold that as and when a decree is passed by the DRT, including the amount towards advocate fee as a part of the costs, the advocate concerned, who appeared, would be entitled to receive the said amount and the banks primarily would be under obligation to pay to their Counsel the fixed amount as per the circular dated 21-11-1995. However, if the amount goes far beyond the said maximum shown in the circular, after it is recovered in the course of execution or otherwise, necessarily, it follows that the entire such amount should be paid to the Counsel and the appellant is not entitled to retain the same.

18. Considering the said rule, the Division Bench of this Court in Debts Recovery Tribunal, Advocates Association of A.P. 's case (supra), held that "the said rules governed the fees payable by the adversary as costs but not fees payable by the banks to their advocates".

19. Having regard to the aforesaid principles as laid down by this Court, where it is made statutorily imperative to have liability on the adversary towards the legal fee that is chargeable by the Counsel appearing from the opposite side, which is normally to be included making part of costs on the certification given by the said Counsel. This amount though forming part of costs to be recovered along with other amounts including principal amount, however, the circumstances stand on a totally different footing for which no claim or right, title or interest of whatsoever in nature can be claimed by the creditor or the decree holder nor there could exist any charge for such amount vis-a-vis the Counsel appearing for the creditor or decree holder. Such amount also does not arise out of any contractual liability between the creditor and the debtor. The liability stems from the decree and as part of the suit proceedings towards the cost. Therefore, to the extent of such liability by the debtor neither creditor nor debtor can claim any right or power to enter into any settlement to the detriment of the person in whose favour such statutory liability is created under the aforesaid fee rules. Therefore, the said amount cannot form part of any settlement nor can be waived with by the creditor. Thereby, quasi-liability arises in between the creditor and its Counsel to see that the said amount shown towards legal fee forming part

of the decree should necessarily be either executed or collected from the debtor at the time of any settlement or in turn payable to its Counsel.

20. Therefore, the appeals are partly allowed to the extent that there shall be only a decree for a sum of Rs. 30,000/-(Rupees thirty thousand only) in favour of the plaintiff as against the defendant and also for the balance amount out of the legal fee as shown in the decree to be payable by the defendant as and when the same is recovered either in execution of the certificate issued by the Tribunal or by way of settlement with the debtors. However, there shall be no order as to costs.