(1983) 08 BOM CK 0026

In the Bombay High Court

Case No : O.S. Appeal No. 612 of 1983

Mohan H. Punjabi — APPELLANT

Vs

Vachha and Co. — RESPONDENT

Date of Decision : 23-08-1983

Acts Referred:
Advocates Act, 1961 — Section 32

Citation : (1984) 86 BOMLR 2 : (1983) MhLj 895

Hon'ble Judges : Mehta, J;Kania, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kania, J.—In Misc. No. 1579 of 1977 A. H. Punjabi, who sought to appear before us with our permission, on behalf of the appellant as his constituted attorney, made an application before the Taxing Master to permit him to appear on behalf of the appellant who is his brother. That application was rejected on October 12, 1978 on the ground that the said A. H. Punjabi was not an advocate. Thereafter the appellant took out a Chamber Summons, being Chamber Summons No. 600 of 1978 dated October 12, 1978, for setting aside the aforesaid order of the Taxing Master and for permitting A. H. Punjabi to proceed with the matter on behalf of the appellant before the Taxing Master. The Chamber Summons was dismissed by Parekh, J. on December 8, 1982 for default of appearance. The appellant then took out a Notice of Motion being Notice of Motion No. 183 of 1983 for setting aside the aforesaid order of dismissal for default and for restoring the said Chamber Summons on file. That Notice of Motion was dismissed by Pendse, J. on March 24, 1983 on the ground that A. H. Punjabi as the Constituted Attorney was not entitled to appear on behalf of the appellant. It is this order which is sought to be impugned in this appeal.

2. The position in law as accepted in this Court at one time was as laid down by Chagla, C.J. in Aswin Shambhuprasad Patel v. The National Rayon Corporation Ltd. (1954) 57 Bom. L.R. 209 where it was held that a constituted attorney

holding a general power-of-attorney has no right of audience in Court, as the right of audience does not form part of an "appearance, application or act in or to any Court" within the meaning of that expression in Order III Rule 1 of the Civil Procedure Code, 1908 and in view of the fact that Clause 10 of the Letters Patent expressly provides that the right to act no less than the right to plead, is only conferred upon advocates, vakils and attorneys and the only exception made in Clause 10 is that the suitor himself may appear, plead and act either on his own behalf or on behalf of a co-suitor. The question is whether that position still holds good in law. In this connection, attention may be drawn to the provisions of Section 32 of the Advocates Act, 1961, which provides that any court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case. Looking to the context in which the word "appear" is used in this section and particularly in view of the earlier specific reference to the person not being enrolled as an advocate under that Act, it appears to us that it would be open to any Court or any authority to permit a person who has not enrolled as an advocate to appear before that court or authority and even plead before them. The aforesaid view is fortified by the decision of Harishankar Rastogi Vs. Girdhari Sharma and Another, where it has been held as follows: {at p. 1021 para 4).

...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 halfway through if the representative proves himself reprehensible. The antecedents, the 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....

3. Krishna Iyer, J. has, in the passage set out above, clearly indicated some of the factors which would have to be considered by the Court as and when an application is made to it by a party to be represented by a person other than advocate. We may point out that when such an application is made to a Court, the Court, in deciding whether to grant the same or not, would have to keep in mind several factors. One of these would be that the general policy underlying the law governing the right to practice in courts is that, normally speaking, a party can be represented only by a duly authorised advocate or can present his case himself. The idea clearly is to prevent persons not qualified as advocates, who might not be expected to have the requisite legal skill which could be expected of an advocate, and who might not be governed by the same standards of professional conduct and etiquette to argue cases of others before Courts. However, the idea is not altogether to prevent a party who is unable, for good reasons, to engage a lawyer or to represent his case himself to be represented by another person who is sufficiently connected with him and in such manner as to show that he is not performing anything in the nature of a professional service in presenting the case of the former. The court would have to examine the

reasons given by the party to show why it is not feasible or convenient for him to engage an advocate or present his own case, and it is only if the court is satisfied of such reasons, that the court would grant permission to the party to be represented by a person other than an advocate.

4. In view of these circumstances, and with the consent of the respondent, we set aside the impugned orders passed in the Notice of Motion as well as the Chamber Summons, which we have referred to earlier and direct that it will be open to the appellant himself personally to make an application before the Taxing Master for allowing him to be represented by his brother A. H. Punjabi. Such an application will be supported by a proper affidavit giving the reasons for which such representation is desired. Mr. A. H. Punjabi who is present states that he will file a general power of attorney of the appellant in his favour before the Taxing Master. If such an application is made, the learned Taxing Master to hear the same and to dispose it of on merits according to law and in the light of the observations made earlier.

5. Appeal allowed.

6. No order as to costs of the appeal.

7. Proceedings before the Taxing Master stayed for a period of four weeks to enable the appellant to make an application, as we have set out earlier, before the Taxing Master within that time. Appeal allowed.