
(2002) 08 KL CK 0035
In the High Court Of Kerala
Case No : O.P. No. 200006 of 2002

Sindhu

APPELLANT

Vs

Mallika

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Advocates Act, 1961 — Section 35
Kerala Civil Rules of Practice, 1971 — Rule 28

Citation : (2002) 4 RCR(Civil) 354

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : K. Surendra Mohan, for the Appellant;

Final Decision : Allowed

Judgement

R. Rajendra Halm, J.—Sindhu, a tribal lady, along with her father filed O.P.(MV) 3636/1995 before the MACT, Muvattupuzha claiming compensation as her mother died in a motor traffic accident. By Ext. P1 settlement an amount of Rs. 1,50,000/- was awarded on 24.11.1997. An amount of Rs. 10,000/- was allowed to be withdrawn by the 1st petitioner whereas her father was allowed to withdraw Rs. 20,000/-. Later the father of the petitioner also died and the petitioner had to obtain a succession certificate. While so, there arose some dispute between the petitioner and the counsel viz., Sri. M.C. George who was appearing for the petitioner in O.P. (MV) 3636/1995 relating to the advocate's fee. The matter went up to the People's Union for Civil Liberties, Piravom, and there was a settlement regarding the fee payable and the counsel had agreed to issue a "no objection" certificate for engaging another lawyer for the further prosecution of the case. Later when the petitioner wanted to file a petition for release of some portion of the amount under deposit for purchase of a bit of property, the counsel did not issue a no objection certificate for engaging another lawyer. The petitioner filed Ext. P2 application before the Tribunal for accepting the engagement of the new counsel without a no objection certificate from the

former counsel. Ext. P3 application also was filed for release of the amount. The Tribunal rejected both Exts. P2 and P3 applications by Exts. P5 and P6 orders respectively. Ext. P5 order reads:

"Petitioner want to relinquishment of vakalath, the I.A. is dismissed. No costs."

On the basis of Ext. P5 order, Ext. P6 order also was passed rejecting the prayer for release of the amount. The above orders are under challenge before this Court.

2. Heard the learned counsel for the petitioner and also the learned Govt. Pleader.

3. The learned counsel for the petitioner Sri. Surendra Mohan submitted that he filed this O.P. without receiving any remuneration from the client considering the hardship to which an illiterate lady of the tribal community was subjected. It was further submitted that the Tribunal should have allowed Ext. P2 application seeking permission to engage another counsel without a "no objection" certificate from her former counsel as it was allowable under Rule 28 of the Civil Rules of Practice and also in view of the decision of the Supreme Court in R.D. Saxena Vs. Balram Prasad Sharma, . In the above cited case the question that had come up for consideration before the Supreme Court was whether the advocate has got a lien over the papers of his client and whether it can be retained for compelling the client to pay his fees. The Supreme Court held that the advocate has no lien over the papers of the client and he cannot retain the papers and the remedy available to the advocate was to approach the court for realisation of the agreed fee. There the Supreme Court held:

"Nobody would dispute the proposition that the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel pendente lite, that which is more important should have its even course flow unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such a course and the cause pending judicial disposal would be badly impaired.

x x x x x A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate, it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty, but a moral imperative".

The Supreme Court held that the refusal to return the files to the client when he demanded the same, amounted to misconduct u/s 35 of the Advocates Act. Rule 28 of the Civil Rules of Practice also permit the court to grant permission to the

party to engage another lawyer without the no objection certificate from the former counsel. When the petitioner wanted the counsel to issue a no objection certificate to engage another counsel and that too when the counsel had agreed to issue the no objection certificate during the settlement at the instance of the People's Union for Civil Liberties, he should have issued the no objection certificate and the refusal would amount to a misconduct. When the learned counsel refused to issue the no objection certificate and the petitioner sought permission to engage another lawyer by filing Ext. P2 application, the Tribunal should have allowed it. But Ext. P2 was rejected in a casual way without considering any of the aspects. The Tribunal should have considered that the cause of the party was more important than the fee to the counsel. Thus the order passed by the Tribunal is not in accordance with law and is liable to be quashed.

4. The learned counsel for the petitioner submitted that the petitioner is in dire need of money and as such an order has to be passed as expeditiously as possible. Further in view of the decision of the Supreme Court on the point, I do not find it necessary to issue notice to the parties as it would cause further burden on the petitioner or the counsel. In fact Sri. K. Surendra Mohan, learned counsel, has filed this O.P. considering the genuine cause of the poor tribal lady without aiming any reward or gain. Hence notice to the respondents is dispensed with and a final order is passed on this O.P. The approach of the learned counsel Sri. K. Surendra Mohan for taking up the cause of a poor tribal lady without aiming any reward is appreciated.

In the result this O.P. is allowed. Exts. P4 and P5 orders are set aside and Ext. P2 application shall stand allowed. The relief prayed for in Ext. P3 petition shall stand allowed. Orders shall be passed by the MACT by releasing the amount within seven days from the date of production of a copy of this judgment.