

(2012) 11 AHC CK 0185

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25607 of 2012

Smt. Ramawati

APPELLANT

Vs

Motor Accident Claim Tribunal/Additional District Judge and
Others

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Advocates Act, 1961 — Section 35

Motor Vehicles Act, 1988 — Section 140, 163(A)

Penal Code, 1860 (IPC) — Section 279, 304A, 338

Uttar Pradesh Advocates Welfare Fund Act, 1974 — Section 9, 9(1), 9(5)

Citation : (2013) 1 ADJ 356

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Vishwambhar Nath, for the Appellant; Shesh Kumar, S.C., S.K. Tyagi and Radha Mohan Singh, for the Respondent

Judgement

Sudhir Agarwal, J.—The petitioner filed M.A.C.P. No. 578 of 2011 before Motor Accident Claims Tribunal/District Judge, Bareilly u/s 163(A) read with Section 140 Motor Vehicles Act claiming compensation and damages on account of death of her son Deepak Kumar in motor accident i.e. with collision of Mahindra Max Jeep No. U.P. 25AT/3202 on 6.5.2011. It is said that first information report of the said accident was lodged under Sections 279 /338 /304A, I.P.C, registered as Case Crime No. 1236 of 2011 dated 15.5.2011 at P.S. Cantt. Bareilly. The aforesaid claim petition was filed by impleading Chola Mandalum M.S. General Insurance Co. Ltd. and Sri Laturi Singh. The Claim Petition has thumb impression of the petitioner. Every page of this claim petition, which is on record as Annexure 3 to the counter-affidavit of respondent No. 4 contains signature and seal of Sri R.M. Singh, Advocate, respondent No. 4 besides the thumb impression of claimant-petitioner. There is a printed Vakalatnama filed alongwith the said application, photocopy whereof has been placed on record as Annexure 3 to the writ petition, which is in the name of R.M. Singh, Advocate in printed proforma

but the name of Sri D.K. Saxena has been mentioned by pen. The Vakalatnama contains signatures (thumb impression) of executant namely the petitioner and Sri R.M. Singh, Advocate as well as D.K. Saxena, Advocate. Under the signature of Sri R.M. Singh, a seal is also affixed giving his address, phone number etc.

2. The claim petition was presented on 15.7.2011 in the Court of District Judge, Bareilly by petitioner in person duly identified by Sri R.M. Singh, Advocate. The District Judge directed to register the application and sought report of the Munsarim. The order sheet dated 15.7.2011 (at page 26 of Counter-Affidavit of respondent No. 4) contains signature of Sri R.M. Singh, Advocate alongwith his seal. It is, however, not disputed before this Court that on certain dates before the Tribunal Sri D.K. Saxena, Advocate appeared on behalf of the petitioner-claimant and also signed order sheet of the Tribunal.

3. It appears that claimants and the Insurance Company arrived at a compromise to settle the case and therefore presented a compromise before the Court below on 28.2.2012 which was signed on behalf of claimants by Sri D.K. Saxena, Advocate. The copy of compromise has been placed on record as Annexure 4 to writ petition showing that the parties were ready to settle the matter. The defendants were to pay Rs. 2,25,000/- to the claimant i.e. the petitioner. The concerned Additional District Judge i.e. the Court presided by respondent No. 5, in whose Court matter was taken up on 28.2.2012, got the parties identified by their Counsels and thumb impressions of claimants were identified by Sri D.K. Saxena, Advocate. The parties were also present. The claimants were read over the terms of compromise and they accepted to have executed the said compromise as also the terms thereof. These facts were noted by the Court below in order sheet dated 28.2.2012 which reads as under:

English Translation by Court:

This compromise deed has been presented today by the applicants and opposite parties. Verification of thumb impressions of applicants have been verified by their counsel Sri Devesh Kumar Saxena, Advocate. The thumb impressions of opposite parties were verified by Sri Sanjay Kumar, Advocate. The compromise deed was read over to the parties. The parties agreed to the terms of compromise deed.

4. The respondent No. 5 in his counter-affidavit paras 6 and 7 has said that this is an office report but was not signed by him since compromise application was not signed before him. Both these paragraphs of counter-affidavit have been sworn on the basis of record. On the contrary, the photocopy of the certified copy of the order dated 28.2.2012 has been filed by the petitioner on page 26 of the writ petition making averments in paras 9 and 10 thereof and there is no categorical reply to this.

5. It appears that Sri R.M. Singh, Advocate, respondent No. 4, however, filed an objection before the Court below stating that he is the main counsel of claimant and since he has not given any consent for engagement of any other counsel, Sri

D.K. Saxena, Advocate has no authority to present petitioner's compromise before the Trial Court. It is also mentioned therein that unless fees of erstwhile counsel is paid, the Court cannot accept vakalatnama of any other counsel. Copy of this objection has been filed as Annexure 4 to counter-affidavit of respondent No. 4 dated 27.2.2012 and it was registered by the Trial Court as Application No. 13-C.

6. The Court below presided by respondent No. 5 heard this objection of respondent No. 4 on 12.3.2012, passed impugned order on the same day accepting objection and rejecting compromise filed by claimant as verified by Sri D.K. Saxena, Advocate. He directed the claimant i.e. petitioner to file a fresh compromise duly identified and verified by Sri R.M. Singh, Advocate, or Sri D.K. Saxena or any other Advocate should file vakalatnama after obtaining no objection from Sri R.M. Singh and then they may file another compromise.

7. This Court issued notices to the respondents 2 to 5 on 23.5.2012. The respondent No. 4 has filed counter-affidavit giving parawise reply to the writ petition while the respondent No. 5 has filed his affidavit giving his version but not parawise reply to the writ petition.

7-A. Sri Shesh Kumar Advocate has appeared on behalf of respondent No. 4 and Sri S.K. Tyagi, Advocate has appeared on behalf of respondent No. 5.

8. Sri Shesh Kumar, learned counsel for respondent No. 4 submitted, if another counsel appears subsequently without obtaining no objection from the Advocate already appearing on behalf of the same party, it is against the Rule of Conduct contained in Rule 39 Chapter 2 Para 4 of Bar Council of India Rules. He also placed reliance on a Single Judge judgment of this Court in Chitharu Vs. Sita Ram and Others, and contended, if a counsel engaged during the subsisting engagement of another counsel, for the same party, without obtaining consent, it amounts to professional misconduct.

9. Sri S.K. Tyagi has not made any separate submissions but has relied on the affidavit filed by respondent No. 5 and said that the same may be considered.

10. A perusal of Rule 39 shows that it is a rule of conduct providing disability to an Advocate to subsequently appear on behalf of a party in a pending case where the party is already represented by another counsel without obtaining his consent but Rule as such does not prevent a litigant from engaging another counsel without obtaining consent from already engaged counsel. Moreover whether a rule of conduct made by Bar Council to be followed by its members, would bind a litigant also is a question which has not been considered in the aforesaid judgment in Chitharu (supra). In any case, the aforesaid provision and aforesaid situation has no application in the present case. It is admitted case of parties before this Court that Sri D.K. Saxena, Advocate did not file his vakalatnama subsequently during the subsisting engagement of respondent No. 4 but it is one and the same vakalatnama wherein Sri D.K. Saxena, Advocate has signed as an Advocate representing the claimant i.e. petitioner. Such

vakalatnama was part of application presented before the District Judge on 15.7.2011 when the District Judge after initial scrutiny registered the case. In other words, though Sri R.M. Singh, Advocate, presented application before District Judge, but alongwith application the vakalatnama which was also presented by Sri R.M. Singh, Advocate, contained signature of Sri D.K. Saxena, Advocate as one of the counsel for claimant. The signature of Sri D.K. Saxena on vakalatnama has neither been disowned by Sri R.M. Singh, Advocate nor disputed at that time. In the subsequent proceedings also Sri D.K. Saxena, Advocate has actually represented the claimant-petitioner.

11. Respondent No. 5 in the impugned order though has observed when name of a counsel is printed on vakalatnama, and also contains his signature, it would mean that the client had intended to engage only such counsel but thereafter has completely misdirected himself by ignoring the fact that the client namely the claimants never disputed engagement of Sri D.K. Saxena, Advocate. On the contrary, when they filed compromise, the identification was made by Sri D.K. Saxena, Advocate about signatures etc. and the claimants duly accepted such compromise presented through her Advocate Sri D.K. Saxena.

12. In these circumstances, respondent No. 5 had no business at all to enter into the arena as to whether the litigant i.e. claimant has actually engaged Sri D.K. Saxena, Advocate or not and to examine an otherwise inter se dispute between two Advocates representing the claimant and that too on sheer conjectures when as a matter of fact claimant admitted her representation through Sri D.K. Saxena, Advocate.

13. The tone and the tenor of order impugned in this writ petition, passed by respondent No. 5 clearly smacks lack of bona fide. It speaks volume of favouritism on the part of respondent No. 5 and partial attitude towards respondent No. 4. The reasoning given by Court below, besides being absurd shows perversity. He has gone to the extent of referring to an alleged Government Order without giving details thereof and stating that he does not remember its number yet has referred the same in the impugned order for fortifying his logic penned in the impugned order. This kind of order smacks of something other than bona fide and in the peculiar facts and circumstances of the case I am of the view that impugned order passed by respondent No. 5 lacks honesty on his part. There is some hidden agenda between these two i.e. respondents 4 and 5.

14. Besides above, the Court has also examined whether the kind of dispute entertained by Court below was at all justified or permissible while looking into a compromise presented before it by the parties.

15. Order 23 Rule 3 C.P.C. provides for compromise and reads as under:

3. Compromise of suit.--Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing duly signed by the parties, or where the defendant satisfies the plaintiff

in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.--An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

16. The only thing which is necessary to be examined before accepting a compromise between the parties is the identity of parties, free will in executing the compromise and understanding and volition in execution thereof. In respect to all these aspects the Trial Court found nothing objectionable as is evident from order dated 28.2.2012 which has been quoted above. In the impugned order also the Court below has not disputed anything about the identity or bona fide of compromise filed by the parties but has only directed that either it should be filed through the Advocate Sri R.M. Singh or if any other Advocate has to present the same, he must ensure no objection from Sri R.M. Singh which in the words of Sri R.M. Singh, he was not inclined to grant since allegedly his fees was not paid. Thus he has in effect tended to ensure payment of fees claimed by respondent No. 4 from the claimants.

17. The Apex Court has castigated the dispute of fees to be entertained by a Court while hearing a case unless the counsel himself brings an action against the litigant for payment of fees. In this context, The Apex Court has also stressed upon unimpeded right of litigant to take action for disposal of his matter in a Court of Law instead of watching the interest of legal professionals.

18. In *R.D. Saxena Vs. Balaram Prasad Sharma*, , the Apex Court has said:

.. 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 flowed unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such course and the cause pending judicial disposal would be badly impaired.... 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.

19. Further in para 17 the Court said:

.. if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premises that fees is yet to be paid.

20. In the present case, the counter-affidavit filed by respondent No. 4 before this Court as also objection filed before the Court below shows that his basic complaint was about fees not paid and therefore, the claimants could not have filed compromise through Sri D.K. Saxena, Advocate. The conduct of respondent No. 4 is neither befitting to the role and model conduct of an Advocate which was expected from him nor he has shown a conduct, in the interest of the person, he represented.

21. The Apex Court's observation in R.D. Saxena (supra) are very apt to this kind of situation where it is said:

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." It has also observed that the professional misconduct u/s 35 of Advocates Act, 1961 is not defined but in terms of what was said by Darling J. in In Re: A Solicitor ex parte the Law Society, (1912) 1 KB 302, "If it is shown that an Advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his profession brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

22. The Court also referred to the meaning of "professional misconduct" assigned by Corpus Juris Secundum, Vol. 7 at page 740 which reads as under:

Profession misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the Court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it.

23. Hon"ble R.P. Sethi, J. concurring with the judgment delivered by K.T. Thomas J. in R.D. Saxena (supra) referred to the Bar Council of India Rules that an Advocate shall, at all times, compose himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his non professional capacity may still be improper for an advocate.

24. Here is a case which requires this Court to remind members of the Bar that professional services rendered by the Lawyers are/were always looked with great honour and respect. The reward to the Lawyer(s) never treated to be the salary,

fees or compensation for discharge of legal functions or assistance but actually in the nature of gratitude in recognition to the honorary service rendered by him. It may be that change in time has compelled drastic changes in the conduct, practice and status of lawyers and their requirements but still the basic concept has to sustain otherwise the consequences would be very serious. Still the Lawyers are considered to be an Officer of the Court. Therefore the basic and fundamental traditions have to be maintained so as to maintain confidence reposed by Society and public at large in the Courts of law. The record and pleadings of parties show that respondent No. 4 was claiming fees in terms of proportionate compensation. Such a practice and attitude on the part of an Advocate has been seriously condemned by Apex Court in the matter of In Re: Mr. "G", A Senior Advocate of The Supreme Court, , where the Court said that it was highly reprehensible for an advocate to stipulate for or receive a remuneration proportionate to the result of litigation or a claim whether in the form of a share in the subject-matter, a percentage or otherwise. It cannot be doubted that an advocate who departs from the high standards which the profession has set for itself and conducts in a manner which is not fair, reasonable and according to law, is liable to disciplinary action.

25. In the case in hand, the petitioner did not authorise respondent No. 4 to contest an application or any document or claim of petitioner filed themselves. The objection filed by respondent No. 4 before the Court below has not been shown as to under which authority the same was filed. The Court below thus has also acted illegally by entertaining objection of respondent No. 4 and then to adjudicate thereon. It was wholly warranted.

26. The respondent No. 5, in his affidavit, has mainly relied on the fact that there only one Advocate Welfare Stamp was affixed on the Vakalatnama and the same would be treated for Sri R.M. Singh, whose name was printed in the Vakalatnama and not for Sri D.K. Saxena, Advocate. He further drew attention of this Court to Section 9 of U.P. Advocate Welfare Funds Act, 1974 (hereinafter referred to as "Act, 1974"), as amended in 1999, in particular reference to sub-Section (5) thereof, as inserted in 2003, to insist upon that, if two advocates have signed a Vakalatnama and two welfare stamps have not been affixed, the Court shall not permit such Advocate for further proceedings in that case. The explanation is hollow and lacks apparent bona fide for the reason that this ought to have been taken care by respondent No. 5 when he had earlier permitted Sri D.K. Saxena to appear on behalf of the petitioner-claimant in claim petition but at no stage it appears, any such objection was raised. It is only when compromise was filed and verified, but objected by respondent No. 4 namely Radha Mohan Singh, Advocate, then he (respondent No. 5) has declined to accept. The respondent No. 5 in the impugned order himself has admitted that Sri D.K. Saxena used to appear and sign the order sheet also. Moreover, for the purpose of present case, I do not intend to indulge in interpretation, of Section 9(1) of Act, 1974 whether it would cover different Vakalatnama or if on a single Vakalatnama more than one advocate sign, still the said provision will apply. In the present case

reference to the said provision is irrelevant for the reason that respondent No. 5, as a matter of fact, from the date of filing of Vakalatnama by the two advocates namely respondent No. 4 and Sri D.K. Saxena has been accepting their appearance on various dates and it is not the case of respondent No. 5 that he stopped Sri D.K. Saxena Advocate from proceeding before him with reference to Section 9(5) of Act, 1974. Moreover, deficiency is curable, inasmuch as, Sri D.K. Saxena by affixing welfare stamp could have cured the defect if the respondent No. 5 would have acted u/s 9(5) of Act, 1974 but the impugned order does not show that he stopped appearance of Sri D.K. Saxena, Advocate in purported exercise of power u/s 9(5) of Act, 1974. What, on the contrary, he has said is that Sri D.K. Saxena unless obtain no objection certificate from Sri R.M. Singh, cannot appear for the claimant and it is this order, up for consideration before this Court. The defence set up by respondent No. 5 is only an afterthought and eye wash.

27. In the result, the writ petition is allowed. The impugned order dated 12.3.2012 (Annexure 5 to writ petition) is hereby quashed. The Court below is directed to proceed with the compromise filed by petitioner through her Counsel Sri D.K. Saxena and pass appropriate order in accordance with law without any further delay, if not already passed.

28. Petitioner shall also be entitled to cost which I quantify to Rs. 20,000/- equally to be borne by respondent Nos. 4 and 5. They shall pay the above cost within two months from the date of service of a copy of this order upon them failing which on an application; submitted by petitioner before the Court below, the amount of cost may be realised as arrears of land revenue.

29. Before parting with this matter, I find myself duty bound to observe that whenever this Court finds in a case Judicial Officer of subordinate Court has not performed his duties honestly and faith-fully, an action should be taken on administrative side so as to examine entire aspect in depth. A Judicial Officer, who has even a minutest attribute of lack of integrity etc., should be flushed out from the system to make it pure. The people have very high regard and deep confidence in the system of justice. This Court enjoys its strength upon people's confidence. An onerous burden lies on this Court to maintain purity in the system so that this faith of the people should continue otherwise it will erode the very system gradually but persistently.

30. In the matter of lack of integrity etc., we are duty bound to observe zero tolerance policy without comparing with other wings of State where standards, scales and testing standards are different. Other wings may afford to have a little dilution in their approach, but whenever it comes to test standards of judiciary, we have to abide a policy of no dilution, no compromise and no tolerance. The degree of tolerance cannot be measured or controlled, therefore, to have uniformity, it should be a policy of zero tolerance. Whenever the Court finds from record want of due integrity or fairness or impartiality etc. on the part of a judicial official, in discharge of judicial function, the normal procedure should be

that the matter should be referred on administrative side for further action and on administrative side, the Court must proceed to find out truth after holding such enquiry, as provided in law, and thereafter would be free to take appropriate decision. But despite judicial finding/observations, it would not be in the interest of system, if no action is taken whatsoever. Not only it will give a wrong message to all but would set a bad precedent. It is in these circumstances following well established practice and procedure in this matter, I direct Registrar General to get the record placed before the Court on administrative side for further action against respondent No. 5. Registrar General is thus directed to place copy of this order before Hon"ble the Chief Justice for His Lordship's kind perusal and appropriate action against respondent No. 5, as the case may be. Further, a copy of this judgment shall be furnished to Bar Council of Uttar Pradesh for appropriate action with regard to conduct of respondent No. 4