

(1994) 02 KL CK 0001

In the High Court Of Kerala

Case No : C.M.P. No. 3060/93 in A.S. 523/91 and C.M.P. No. 3061/93 in A.S. No. 545/91

State Bank of India

APPELLANT

Vs

Viswanatha Nirayath (P) Ltd. and Another

RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Bar Council of India Rules, 1961 — Rule 11, 12, 20, 28
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4, Order 8 Rule 6
Contract Act, 1872 — Section 171
Legal Practitioners Act, 1879 — Section 27, 4

Citation : (1994) 02 KL CK 0001

Hon'ble Judges : K. Narayana Kurup, J; John Mathew, J

Bench : Division Bench

Advocate : V.G. Arun, for the Appellant; T.R.G. Wariyar P.V. Rama Wariyar and P.P. Mathew, for the Respondent

Judgement

John Mathew, J.—What is the fees payable to an Advocate whose engagement is terminated by the client before the disposal of the litigation? This question arises in these petitions filed by the 1st Respondent in these appeals. These appeals arise from two suits filed by the 1st Respondent, namely, State Bank of India. The erstwhile Bank of Cochin Ltd. was amalgamated with the State Bank of India in 1985. Even so the State Bank of India continued to engage the standing counsel for the Bank of Cochin Ltd. for conducting the suits and other proceedings relating to the dealings of the Bank of Cochin Ltd. The suits from which these appeals arose were two such proceedings. It is said that there are other suits, execution, etc., in which the Advocate of the erstwhile Bank of Cochin Ltd. is being engaged. These two suits, namely, O.S. No. 118 of 1984 and O.S. No. 153 of 1984 of the Sub Court, Cochin, in which the State Bank of India was the Plaintiff were decreed by the Trial Court. A.S. No. 523 of 1991 is the appeal filed by Defendants 5 and 6 in O.S. No. 153 of 1984 and A.S. No. 545 of 1991 is the appeal filed by Defendants 4, 6 and 1 in O.S. No. 118 of 1984. In

these appeals also the State Bank of India engaged the same Advocate. In both the appeals the State Bank of India is the 1st Respondent. During the pendency of the appeals the 1st Respondent, State Bank of India, which institution is hereinafter referred to as "the Bank" filed C.M.P. No. 3060 of 1993 in A.S. No. 523 of 1991 to grant leave to the Bank to determine the appointment of its counsel and to allow the Bank to engage some other counsel to conduct the appeal. In A.S. No. 545 of 1991 the Bank filed a similar petition which is C.M.P. No. 3061 of 1993. For the sake of convenience the Bank's present counsel is hereinafter referred to as "the Advocate". In view of general importance of the question to be decided we issued notice to the Bar Council and to the Advocates Association. Their learned Counsel were also heard.

2. In the affidavit in support of these petitions the Branch Manager of the Willingdon Island branch of the Bank stated that "following a comprehensive review of all the suits filed by erstwhile Bank of Cochin Ltd., a decision had been taken by the Controlling Authorities of the Bank to withdraw all briefs from" the Advocate and to engage other Advocates in its panel for the conduct of all appeals, execution petitions, etc. Accordingly Ext. R-1 letter was sent by the bank to the Advocate on 2nd June 1993 intimating him that the engagement stood terminated and requesting him to hand over the files. It is also stated that the Advocate is demanding 1/3rd of the fees allowable under the Advocate Fee rules. According to the affidavit, the Advocate is not entitled to the fees and so he was intimated that the fees cannot be paid. The affidavit further states that the Advocate was paid his fees in the trial Court. The Advocate is only entitled to reasonable remuneration. "Even this he is not entitled to as it is found that he had only filed a vakalat". Since the claim for fees being "unreasonable and unfair" these petitions are filed for leave to determine the appointment of the Advocate in these appeals. Notice of these petitions was given to the Advocate. He has filed an affidavit in A.S. No. 523 of 1991 in reply to the averments in the petitions.

3. Along with the affidavit the Advocate has also produced Exts. R-1 to R-10. Ext. R-1 is the copy of the letter dated 2nd June 1993 from the Deputy General Manager of the Bank who wanted the return of the case files on the ground that the bank wanted the case to be conducted by an Advocate from their panel of Advocates. In reply to this letter the Advocate sent a letter dated 25th June 1993 addressed to the Deputy General Manager in his official address. Copy of that letter is marked as Ext. R-2. In that letter it was stated as follows:

The Branch Managers may be asked to come to my office with the list of cases and their branch and prepare the list of cases to be handed over. They may also be directed to discuss and come to an agreement of advocate fee I am entitled to, on payment of which I will hand over the files with necessary no objection certificate. With regard to your statement that the Bank will pay my fees for the work done, I may state that recent experience with the bank in Rosy George's case is otherwise. Even though I handed over the appeal file to the then Manager

upon his promise to pay my fees soon, but inspite of his best efforts, a gratis cheque is sent to me for an amount said to be given gratis from his fees by the successor advocate.

Another letter in the personal name of Deputy General Manager of the Bank dated 17th August 1993 was sent by the Advocate. Copy of that letter is Ext. R-3. In that letter it was stated as follows:

...Some of the branches have requested to hand over their files and I had given my bill for the Advocate fees claimed by me. Even though I feel that I could have claimed even more in some of the cases, I had claimed only 1/3rd of the regulation fees. You may know that even at the time of filing the execution petitions, 1/3rd of the regulation fees are given to the Advocates. Even though some of the branches/sections had paid according to my bills and had taken the files, there is no response from the Broadway and Boat jetty branches. The Ernakulam Broadway branch had sent a letter for handing over the files for which I replied enclosing copies of your letter and my reply letter to that.

But some how, I feel that some interested personnel of your bank are trying to block the payments to me. I don't know whether you are aware of the fact, that it the officer or officers of the Bank for some years past are trying to change even the Senior Advocates who were dealing with the cases and to induct Ors. of his/their choice and it is a known fact that the same is done for their own purposes. Some of the Advocates are running about the Courts and branches of the Bank looking into the files.

* * * * * I am writing this personal letter to yon so that you may look into the matter and do the needful in order to avoid unpleasantness.

4. The affidavit of the Advocate further mentioned that he was the legal advisor of the Bank of Cochin Ltd. from 1942 onwards. After its amalgamation with the State Bank of India he was engaged to conduct all cases of Bank of Cochin Ltd. and he was conducting them without any complaint. Rosy George's case which is referred to in Ext. R-2 is A.S. No. 441 of 1989 before this Court. Since the Appellant therein filed the appeal as an indigent person, there were several hearings before accepting the Appellant as an indigent person. Later, when the matter came up before the High Court for hearing the Appellant filed an application requesting the bank to purchase the charged property for Rs. 15 lakhs. The Advocate handed over this suggestion to the Manager stating that the Court has asked for Bank's opinion. It was known that the Bank had valued the property for above Rs. 21 lakhs which amount would have satisfied the decree. The Advocate told the Manager to consider this aspect also. However, thereafter the only reply was that the Bank wants to engage Anr. counsel who is residing nearer to the Bank, by his letter dated 27th September 1991. Copy of this letter is produced as Ext. R-4. By that letter the Advocate was requested to send his bills to enable the Bank to make payment. The Advocate handed over the files with no objection certificate believing the statement in Ext. R-4. He also sent his

bills for advocate fees. More than one year later some more details were required from the Advocate for which a reply was sent by the Advocate on 12th December 1992, copy of which is marked as Ext. R-5. More than five months thereafter, by letter dated 2nd June 1993, copy of which is produced as Ext. R-6, the Advocate was informed by the Assistant General Manager of the bank that the new Advocate has "gracefully consented to deduct Rs. 5,000 from his bill for payment of retainer fees to you". In that letter it was also explained that even though the Advocate's bill was dated 28th September 1991, the appeal was heard on 16th July 1992 and the Bank got the decree copy on 22nd February 1993. To this letter the Advocate sent Ext. R-7 reply dated 25th June 1993 repeating his earlier stand that he handed over the case file with no objection certificate since he was assured that his fees will be paid. It was also stated that the Advocate did not think of keeping back the file till payment because he thought that the Manager will keep the word. He regretted that the Bank thought that he will accept the charity given by the new Advocate and rejected the suggestion to settle the bill for Rs. 5,000. Thereafter along with letter dated 21st August 1993 the Chief Manager of the Broadway Branch of the bank forwarded a bankers cheque for Rs. 4,737 in different cases observing as follows:

Despite this, in view of our long standing relations we will pay you a portion of the fees for the services rendered by you; the clerical expenses incurred for preparation of E.P., the batta charge and other sundry expenses as detailed below.

Another pay order for Rs. 80 was also enclosed in that letter. Along with the Advocate's letter dated 2nd October 1993, copy of which is marked as Ext. R-9, the Advocate returned the pay orders refusing to accept the offer.

5. In paragraph 9 of the affidavit the Advocate further stated that the Bank's Branch Manager of Willingdon Island met him and discussed about the two appeals in which the present petitions are filed. The Advocate assured him that he will not take a stiff stand if he is paid at least half the Advocate fee prescribed by the rules. It was thereafter that Ext. R-8 letter was sent informing the Advocate that the advocate fee rules are not applicable to scheduled banks. It is further stated in the affidavit that the Advocate never agreed to accept 1/3rd of the fees in appeals. He had only agreed to accept 1/3rd of the fees in execution petitions if the matter is amicably settled. Copy of the letter dated 9th September 1993 from the Branch Manager of the Willingdon Island is also produced along with the affidavit marked as Ext. R-10.

6. Before referring to the authorities cited before us, we may dispose of some points raised during the arguments. In Ext. R-1 letter from the Bank the only reason stated for engaging Anr. counsel, instead of the Advocate, was that the Bank had decided to engage other Advocates from the panel of State Bank of India after Undertaking a comprehensive review of all, the suits filed by the erstwhile Bank of Cochin Ltd. Apart from repeating this sentence in paragraph 3 of the affidavit in support of the petition, no material is placed before us

regarding the review or the decision taken therein. We are also not informed as to the level at which this decision was taken. So much so, we are not in a position to find out whether the engagement given to the Advocate is being changed on account of the policy decision alleged to have been taken. We may add that even if there is such a policy decision the legal rights of the Advocate are not affected by any such decision.

7. The second aspect is that even though in Ext. R-1, the only grounds stated for changing the engagement given to the Advocate was this alleged "Comprehensive review", in Ext. R-8 letter sent by the Chief Manager of the Broadway Branch of the Bank there was an oblique allegation against the Advocate which was as follows:

You would also agree that the Bank has been put to great loss by failure to give cost statement in certain suits and by noncompliance.

There is no reference to this alleged failure to give cost statement in any other correspondence. In any case it is well known that in busy offices there may be some omission in filing advocate fees and cost certificates. This can be easily rectified by filing a petition explaining the reason for the delay and requesting to incorporate the cost in the decree. Even in case there was any omission to include the cost in any decree of the Bank, the Bank ought to have brought that fact to the notice of the Advocate for correcting the respective decrees. It was not at all proper on the part of the Chief Manager to make such a vague insinuation as is made in Ext. R-8, even without giving the number or other details of the concerned decrees. Therefore it is clear that the allegation made in Ext R-8 is clearly an after thought and no importance can be given to that statement.

8. It seems that some officers of the bank have a misconception that the Advocate Fee Rules are not applicable to scheduled banks or that the Advocates who are engaged by such banks have no legal rights which are available to other Advocates under the said rules. There is absolutely no justification for such a stand. No provision of law was brought to our notice in support of this contention. Advocates engaged by scheduled banks are also entitled to all the benefits of the Advocates Act and Advocate Fee Rules. In this connection we may also observe that we have a feeling that this unfortunate controversy arose because of this attitude of some middle and low level officers of the bank. There is nothing before us to say that the top level management was informed about this controversy. We are sure that if this controversy was brought to the notice of the top level management of the bank it would have been amicably settled without bringing this matter for adjudication by a Court. Several letters sent by the Advocate show the conciliatory approach adopted by him. If that opportunity was properly utilised, the matter could have been easily resolved. We may also add that the State Bank of India being an instrumentality of the State is bound to act fairly. See *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, (para 11). Apparently those officers have a wrong impression

that they can arbitrarily include in their panel lawyers of their liking and engage them in bank's cases. If this attitude is allowed to be continued we have no doubt that the interest of the bank will seriously suffer. This is a matter to be examined by the management of the Bank. We may add that State Bank of India does not stand in the same position as a private individual. Being an instrumentality of the State all actions of the Bank should be fair and within the para-metres set out by the Supreme Court in *Ramana v. I.A. Authority of India* AIR 1979 S.C. 1928.

9. u/s 27 of the Legal Practitioners Act, 1879, the High Court was to fix and regulate the fees payable by any party. The Legal Practitioners (Fees) Act 21 of 1926 recognised the right of the legal practitioners to sue for their fees. Section 4 of that Act recognised not only the right to sue for fees but also the principle that if no such fee has been settled, a fee computed in accordance with law for the time being in force in regard to the computation of the costs will be the fee of the legal practitioner. By the Advocates Act 25 of 1961 the rule making power was given to the Bar Council, Central Government and also to the High Courts. The Bar Council of India in exercise of its rule making powers under the Advocates Act framed the Bar Council of India Rules, 1961. Rules 11 and 12 of Part VI, Chapter II of the Bar Council of India Rules is as follows:

11. An Advocate is bound to accept any brief in the Courts or Tribunals or before any other authority in or before which he professes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

12. An Advocate shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

10. Under Rule 20 of the Bar Council of India Rules an advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof. Rule 28 provides that after the termination of the proceeding the Advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding. He is bound to refund to the client any balance amount remaining in his hands.

11. The Madras High Court in *Ghulam Moideen v. M.D. Oomr* AIR 1931 Mad. 183 relied on *In re Metre Cabs Ltd* (1911) 2 Ch. 557 and *Guy v. Churchill* (1887) 35 Ch. D. 489 and held that legal practitioner has a lien on the fruits of a judgment and it is not liable to be defeated, on the ground that the assignee of a decree or the attaching creditor of the client had no express notice of the lien. In *A.K. Bijili Sahib Vs. Dadhamia Bhalambai*, the Madras High Court held that a Pleader who retains the papers of his client because his fees were not paid in full does not act wrongly so as to commit professional misconduct. A Special Bench of the Madras

High Court in the matter of an Advocate, Tuticorin, In Re: an Advocate, Tuticorin Thayumanasundarathammal Complainant, , held that there can be no professional misconduct when an Advocate claims a lien over the records and papers for his fees. In A.V. Sundaramurthy Chettiar Vs. S. Muthiah Mudaliar and Another, , the Madras High Court held as follows:

It seems to us clear from the rules and from the decisions that in the absence of misconduct on the part of the Advocate, the client is not entitled to the sanction of the Court for a change of the Advocate without making a satisfactory arrangement to pay the Advocate, who has had charge of the case hitherto. The cases quoted before us on the point are: Ramaswami Chetti v. Subbu Chetti (1900) 23 Mad 134, Pankaj Kumar v. Sudheer Kumar 60 Cal. 1273 and Radhika Debi v. Ramasray Prasad 9 Pat. 865. In the present case, there is no shadow of an allegation against the Advocate, who has had charge of the case hitherto. The client proposes to abandon him when the case is ready for hearing. Although he pleads poverty, he is apparently able to get sufficient means to instruct Anr. Advocate and to purchase the necessary papers. In these circumstances it seems to us proper that the Advocates on the record should be paid their full fee before the change of vakalat is sanctioned and we decline to sanction the change until satisfactory arrangements have been made to that end.

12. The Bombay High Court has also held that the legal practitioner has a lien over the property recovered for the client by his exertions. See Tyabji, Dayabhai and Co. Vs. Jetha Devji and Co., . In Narayandas Sundarlal Rathi Vs. Narayandas Harbhagat, Wadia, J. of the Bombay High Court held that a change of solicitors when the former solicitor has not discharged himself so long as his costs remain unpaid, could not be sanctioned. However, Mirza, J. of the Bombay High Court in Dharamdas Kachudas Vs. Kachudas Makanji, , differed from the view of Wadia, J. and held that it is not open to an attorney to say that his client shall continue to employ him in the suit or proceeding until all the costs due to him are paid. A Division Bench of the Bombay High Court in Basudeo Ramgovind Vs. Vachha and Co., , considered the right of a solicitor for his costs. Chagla, C.J. held that a solicitor is entitled to a lien on the fruits of his exertion (para 14). Shah, J. concurring with the finding of the Chief Justice observed as follows:

The special protection which is afforded to the solicitors in respect of costs takes several forms. A solicitor is entitled to a lien on a fund which has been collected or recovered by his exertions in any litigation. He is also entitled to an order from the Court for recovery of costs payable to him by his client and that order is enforceable as a decree of the Court, and he is not required to file a suit for recovery of costs payable to him by his client.

Mody, J. of the Bombay High Court in Matubhai Jameitram and Another Vs. The Custodian of Evacuee Property, Bombay, , observed that orders made for enforcing or protecting the solicitor's lien are in the nature of an equitable interference by the Court.

13. A Division Bench of the Calcutta High Court held that where a party employs a Pleader without any agreement as to the amount of fees the Pleader is entitled to recover on an implied promise of reasonable remuneration. *Sib Kishore Ghose v. Manik Chandra Nath* AIR 1961 Cal 669. In *Damodar Das Vs. Morgan and Co.*, , the Calcutta High Court Clarified that Attorney in India is entitled to retaining lien and common law lien to protect his right to recover his costs from his client. Fees of a lawyer engaged by a client who was sought to be discharged by the client came up for consideration before a Division Bench of the Calcutta High Court in *Mohanlal Sewlal, a Firm Vs. Probodh Krishna Shome*, . In that judgment the Court made the following observations:

6...It is true that before the Court grants the leave to discharge a lawyer under Order 3, Rule 4, CPC the Court is entitled to make suitable provisions for the payment of the sums due to the outgoing pleader in respect of the service rendered by him and in respect of the costs incurred by him on behalf of his client. We also agree with Mr. Ghosh that as a subterfuge the Petitioner cannot engage Anr. lawyer without formally discharging the previous lawyer and without arranging for payment of the sums due to him.

14. The Mysore High Court has also held that the solicitor has a lien for his fees *Srikantaiah v. Bansilal* AIR 1952 Mys 141. The Karnataka High Court had to consider a prayer for change of counsel during the pendency of a case in *C.I.T. Board, Mysore v. M.P. Ramanna* AIR 1974 Knt. 88. In that case the Respondent was appointed as the legal adviser of the Petitioner to appear in some land acquisition cases on its behalf. The appointment was made in 1969 and it was continued till 1973 when the Petitioner terminated his services and appointed Anr. Advocate to conduct their cases. The Respondent filed a memo stating that he has no objection to retire provided his full fee is paid by the Petitioner. After considering the contentions the Court held as follows:

8...In case there is an agreement between the client and his Advocate with regard to the fee payable for the entire case and there is no proof of misconduct on the part of the Advocate, or where the Advocate himself has not discharged the client, leave will be granted subject to the condition that the client pays the full fee agreed upon for the entire case. If there is no agreement between the client and the Advocate with regard to the fee payable to the Advocate, then leave will be sanctioned, where the Advocate himself has not discharged the client, on payment by the client of such fee which is found reasonable by the Court on the basis of quantum meruit taking into consideration all the circumstances of the case.

15. The Nagpur High Court in *re Application of an advocate to retire from the case* AIR 1951 Nag 278, held that in the case of termination of an appointment at Advocate's own request he would be entitled only to the costs for work already done and not the agreed fees. In *Babui Radhika Debi Vs. Ramasray Prasad Chowdhry and Others*, , the Patna High Court held that the client applying for determination of pleader's appointment without sufficient ground the

Advocate is entitled to their full fees for the entire case.

16. The Andhra Pradesh High Court in *Damordardass Agarwal and Others Vs. R. Badrilal and Others*, , observed that though Order III, Rule 4 is silent about the power of the Court to determine any question disputed between the parties, Courts have construed this provision as one empowering the Court to pass an appropriate order while granting leave to the client to terminate the appointment of his counsel. The enquiry is clearly summary and the Court cannot make an elaborate adjudication on seriously disputed questions of fact and law. In that case the Court followed the ruling of the Madras High Court in *A.V. Sundaramurthy Chettiar Vs. S. Muthiah Mudaliar and Another*, , where it was held that in the absence of misconduct on the part of the Advocate, the client is not entitled to the sanction of the Court for a change of the Advocate without making a satisfactory arrangement to pay the Advocate who has had charge of the case. The Court also held that the Advocates have a lien over the records and that they can insist on payment of their fees before the records are handed over.

17. The relationship between the lawyer and his client is one of trust and confidence. The lawyer is not an agent of his client but he is his dignified and responsible spokesman. The relationship between, the lawyer and his client can be in general terms described as contractual. A client may engage a lawyer either for a specified case or for a specified or unspecified period. The rights of a lawyer in India are generally the same as the rights of an attorney or solicitor in England. A special Bench of the Madras High Court in *Re Rajagopala Ayyangar* AIR 1942 Mad 553, held that in India a Pleader, like an Advocate combines the functions of the solicitor and barrister in England since he does that solicitor's part of the work and he pleads in Court. Section 171 of the Contract Act allows attorneys of a High Court, among Ors. , to retain as a security for a general balance of account, any goods bailed to them. Order VIII, Rule 6 CPC recognizes the right of lien of a Pleader in respect of the costs payable to him under the decree, which is in the following terms:

6(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect of both the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Therefore it is clear that Section 171 of the Contract Act is not the sole repository of the rights of a lawyer in this country. As early as in 1886 the Bombay High Court in *Devkabai v. Jefferson* ILR 10 Bom 248, held that the solicitor had a lien for his costs on any funds or sum of money recovered for, or which became payable to his client. This view was accepted in *Tyabji, Dayabhai and Co. Vs. Jetha Devji and Co.*, , *Basudeo Ramgovind v. Vachha and Co.* AIR 1955 Bom. 162, and *Matubhai Jameitram and Another Vs. The Custodian of Evacuee Property, Bombay*,

18. Though the right of lien relates to law of contracts, if a dispute arises between the client and the legal practitioner, the High standards of the profession demand that when the moneys of the client come into the possession of an Advocate, otherwise than as earmarked fees, he has to treat himself as in the position of a trustee for his client. Even if he has a lien on such money, he should not appropriate the same towards his fees without the consent of his client or without an order of the Court see *In Re: Shri "M", An Advocate of The Supreme Court of India*,

19. On a review of the authorities we hold that a legal practitioner is entitled to a lien on the records and property recovered by his efforts in order to protect; his right to recover his fees and costs from his client. If the engagement of a legal practitioner is terminated before the disposal of the litigation and the Court is called upon to fix the fees payable to the Advocate the first aspect to be examined is whether the Advocate discharged the client or the client discharged the Advocate. In case the Advocate discharges the client, he will be entitled to the actual costs incurred by him and reasonable fees depending on the nature of work done by him till the date of discharge. In case the client discharges the Advocate on the ground of misconduct on the part of the Advocate, if the misconduct is proved before Court, the Advocate will be entitled to his actual costs and his fees will have to be fixed by Court after taking into consideration the work done by the Advocate as well as the damages, if any, suffered by the client on account of the Advocate's misconduct. But in the absence of misconduct on the part of the Advocate, normally the client is not entitled to sanction of the Court for change of the Advocate without paying his full fees. However, if there are special circumstances the Court may take into consideration those circumstances and fix a lesser fee. This is the view adopted by the Madras High Court in *A.V. Sundaramurthy Chettiar Vs. S. Muthiah Mudaliar and Another*, Andhra Pradesh High Court in *Babui Radhika Debi Vs. Ramasray Prasad Chowdhry and Others*, and the Patna High Court in *Babui Radhika Debi Vs. Ramasray Prasad Chowdhry and Others*, .

20. There are some differences in the fees payable on the trial side and the fees payable on the execution side. Under Rule 18 of the Rules regarding fees payable to Advocates, in appeals from original decrees in the High Court, the fee shall be on the same scale as in the trial Court. Rule 6 of the Rules provides for the fees in Original Suits before the Subordinate Courts. The fee payable in execution petitions is one-third in contested and one-fourth in uncontested cases of the fee allowable under Rule 6 (See Rule 10). Therefore, it is only reasonable to hold that if the execution proceedings did not reach the stage of settlement of proclamation, one-third of the execution fees provided under Rule 10 is to be granted. If the proclamation is settled, the Advocate is entitled to one-half the execution fees as per Rule 10. In case sale has been conducted, the Advocate is entitled to full fees. If the sale proclamation is settled and the work till the conduct of sale is completed, the Court may fix a reasonable fee between one-half fee and full fee.

21. In the petitions before us the concerned Advocate is a fairly senior Advocate. He is aged 77 years. He was the Advocate of Bank of Cochin Limited from 1942 onwards. After that Bank's amalgamation with the State Bank of India in 1985 his engagement was continued till 1993. Throughout he was discharging his duties as an Advocate without any complaint from the Bank. There is no allegation much less proof of any misconduct on the part of the Advocate. In these cases the Advocate has not discharged his client. The client is proposing to discharge the Advocate. In these appeals there was prolonged enquiry over the petitions filed by the respective Appellants for permission to file the appeals as indigent persons. The Advocate had to appear on behalf of the Bank in those proceedings also. Those petitions were allowed only in 1991. Even thereafter the engagement of the Advocate continued till 1993. Now when the appeals are ready for hearing the Bank is proposing to abandon the Advocate. On 27th September 1991 the reasons stated in Ext. R-4 letter for changing the vakalath were the nearness of the branch to the new Advocate's office and also with a view to consolidate all the cases relating to the loan account with a single Advocate. We are not informed as to how many cases were filed in respect of that account. Usually one suit is filed in respect of one loan account. Needless to say that the reasons stated in Ext. R-4 were not at all sufficient to change a long standing arrangement. In Ext. R-1 letter dated 2nd June 1993 the reason stated was a policy decision to engage Advocates from the panel of State Bank of India. There are no reasons for not including the name of the Advocate who was conducting the Bank's litigation for over 52 years in the panel of Advocates. We have noted the difference in approach in Exts. R-4 and R-1 only to highlight the point that there were no serious grounds to terminate the engagement of the Advocate in the midst of these appeals and other proceedings. This is more so because the very same Advocate had conducted the suits from which these appeals arise and succeeded in getting decrees in favour of the Bank. In fixing his fees these aspects will also have to be taken into account.

22. Throughout his long period of engagement the Advocate was being paid his fees according to the Advocates' fees Rules. From this it can be taken that there is an implied agreement by the Bank that the Advocate will be paid his fees according to the Rules, in every case, we may also observe that the Advocate had the legitimate expectation to get his full fee in every matter entrusted to him like suits, appeals or execution petitions, as and when he was engaged in those proceedings. We may further observe that the correspondence shows that when the Bank wanted to terminate the engagement of the Advocate the Advocate requested for a discussion for settlement of his fees. That request was not accepted by the Bank. Instead of that the matter was brought before this Court.

23. From a consideration of the facts and circumstances detailed above, we do not find any reason to disagree with the rulings reported in *Babui Radhika Debi Vs. Ramasray Prasad Chowdhry and Others*, and *A.V. Sundaramurthy Chettiar Vs. S. Muthiah Mudaliar and Another*, in which the respective Courts ordered payment of full fees to the concerned Advocates. We do not find any reason to

reduce the fees to any extent. Therefore, we hold that the Advocate is entitled to full fees in these appeals. Leave is granted to the Bank to determine the appointment of the Advocate on condition that the Bank pays full fees as per the Advocates' Fees Rules in both these appeals, to the Advocate. The Bank will also pay the cost of the Advocate in these petitions. Advocate's fee Rs. 3,000.