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COLLECTOR OF SALES TAX, BOMBAY v. MORARJI PADAMSI

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opinion not be a safe guide at all nor would it be a proper canon of construction.

In our opinion, therefore, the transferor continues to be liable to pay the tax in respect of the periods during which he carried on the business and incurred the liability to pay sales tax. Although two questions have been submitted to us, Mr. Seervai has only argued one, viz. question (*1*), and we answer that question in the negative. The assessee to pay the costs.

Same answer for the same reasons in Reference No. 8 of 1956.

As both the references were heard together there will be one order for costs.

Answer accordingly.

H. R. G.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

In Re : J. C GANDHI.*

1956
June 29

Bombay Pleaders' Act (Act XVII of 1920) Sch. III—Pleaders—Professional Misconduct—Pleaders' fees in Suit for accounts—Agreement between pleader and client that the minimum Pleader's fees in the client's suit for accounts would be Rs. 250, whether client fails or succeeds and 25 per cent of the amount found due at the foot of the accounts—Decree for Rs. 20,045-12-0—Pleaders' suit to recover Rs. 5,011-9-0 on the basis of the agreement—Whether pleader guilty of professional misconduct—Whether fees claimed exhorbitant or unconsionable—Principles for fixing quantum of fees.

A pleader who enters into an agreement with his client that he should receive as his fees 25 per cent of the amount which may be found due and decreed in a suit for accounts is not guilty of professional misconduct inasmuch as in a suit for accounts a pleader may make his fees dependent upon the result of the suit.

In re Gauba,[1] *In re Bhandara,*[2] distinguished.

Bai Meherbai v. *Maganchand,* [3] relied on.

The lawyer owes a duty not only to himself but to the society; in charging fees he must remember that he must not exact fees which necessity compels a client to pay though it may be beyond his capacity.

Anandalwan v. *Judges of the High Court at Madras,*[4] *George Taylor* v. *Elizabeth Bemiss,*[5] referred to.

CIVIL Reference under the Bombay Pleaders' Act made by V. R. Shah Esquire, District Judge, Broach.

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*Civil Reference No. 5 of 1956.

1. (1954) 56 Bom. L. R. 838, 1220, s. c.
2. (1901)3 Bom. L. R. 102.
3. (1904) 29 Bom. 229.
4. (1930) 32 Bom. L. R. 876.
5. (1884) 110 U. S. 42, 28 Law Ed. 64.

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The facts are sufficiently stated in the Judgment.

H. M. Choksi, Government Pleader for the Referor.

S. M. Shah with *B. R. Shah,* for the pleader.

Chagla C. J.—This is a reference made to us by the District Judge of Broach under the Bombay Pleaders' Act. He has come to the conclusion that the pleader concerned has committed professional misconduct in his capacity as a pleader. The learned District Judge came to this conclusion on certain facts which were established before him. It appears that the pleader was employed by one Sakerlal Ramjibhai in a suit which he had filed, suit No. 187 of 1945, against the Gujarat Gur Supply Co. The suit was for accounts, the Plaintiff contending that the defendant was his agent and had failed to account for the transactions which had taken place in the course of the agency. A preliminary decree was passed in that suit in favour of the plaintiff and on November 29, 1949 a final decree was passed when a sum of Rs. 20,045-12-0 was found due by the defendant to the plaintiff. The decree also provided for the taxed costs of the Plaintiff's pleader which were taxed at Rs. 534. The pleader filed a suit, being suit No. 146 of 1952, to recover from the plaintiff a sum of Rs. 5,011-9-0 on the allegation that there was an agreement with regard to his fees between him and the plaintiff and under this agreement this amount was due. The agreement that was pleaded by the pleader in the suit was that the client had agreed to pay to him a minimum fee of Rs. 250 and a further fee of an amount calculated at the rate of 25 per cent of the amount found due to the client at the foot of the accounts taken by the Court. Further, the amount calculated at 25 per cent was to be paid to the pleader within one month of the date of the final decree passed by the Court. The trial Court raised a preliminary issue as to whether this agreement was against public policy. It held that it was and dismissed the suit. The pleader went in appeal to the District Court and the learned District Judge confirmed the decision of the trial Court. The pleader preferred a second appeal to this Court which appeal is still pending. In the meanwhile the client made an application to the learned District Judge to proceed against the pleader on the ground that he was guilty of improper conduct. The learned District Judge held the necessary inquiry and has made the reference to us which has now come up for hearing.

What has been urged by the Government Pleader in support of the reference is that this agreement entitled the pleader to receive remuneration which is wholly dependent upon the result of the litigation. If the plaintiff's suit were to be dismissed, apart from the minimum fee of Rs. 250 the pleader would not receive anything at all. If a decree was passed in favour of the plaintiff, then the fees of the pleader would depend upon the quantum of the amount decreed in favour of the plaintiff. According to the Government Pleader, it is now settled law that

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when a pleader charges fees on the basis of the result of a litigation, such conduct on the part of the pleader amounts to professional misconduct or improper conduct. In support of this contention reliance is placed on the recent decision of this Court reported in (*In re K. L. Gauba*),[6] which was affirmed by the Supreme Court in *In re* "G". In that case Mr. Justice Gajendragadkar and Mr. Justice Vyas laid down that where an advocate agrees with his client to accept as his fees or professional remuneration a specified share in the subject-matter of the litigation upon the successful issue of such litigation, the conduct of the advocate in entering into such agreement amounts to professional misconduct. In that case the advocate had entered into an agreement with his client that he would get from the client 50 per cent of the amount recovered by his client from the opponent, and the advocate contended before the Court that under s. 3 of the Legal Practitioners (Fees Recovery) Act it was open to him to charge any fees which he thought proper. The contention was that the quantum of fees was a matter of contract between the lawyer and the client and the Court had no authority or power to interfere with that contract. That argument was rejected by this Court and the Court pointed out that there was no complete freedom of contract as between the lawyer and his client. Every contract was subject to the provisions of s. 23 of the Contract Act and that section had equal application to a contract entered into between a lawyer and his client and if the contract between the lawyer and the client was opposed to public policy that contract could not be given effect to, and the Court held that in that particular case the contract was against public policy and therefore the contract was not enforceable, and the advocate having entered into a contract which was against public policy was guilty of professional misconduct. When the matter went to the Supreme Court the learned Judges of the Supreme Court upheld the decision of the High Court, but on a much simpler and broader ground. They took the view that every lawyer was bound by principles of professional ethics and he could not enter into any contract which contravened any principle or tenet of these ethics, and therefore the Court came to the conclusion that in entering into this agreement if the advocate had failed to conform to the traditions and standards of the profession the lawyer would be guilty of professional misconduct irrespective of any question of the contract being bad on the ground of public policy. Therefore, in every case which we have to consider where a pleader has entered into an agreement with his client with regard to the payment of fees, what we have to consider is whether in entering into that agreement he has departed from the traditions and standards which the legal profession expects from him. If he has violated any principle or tenet of professional ethics, then the Court will come to the conclusion that he has entered into an agreement with regard

6. (1954) 56 Bom. L. R. 383 at p.1220.

to the fees to be paid to him by his client which violates the standards of the profession and therefore he is guilty of professional misconduct.

A distinction was sought to be made by Mr. Shah between the case which Mr. Justice Gajendragadkar and Mr. Justice Vyas decided and the case before us. It is said by Mr. Shah that the case which that Division Bench was considering was a case where the lawyer had stipulated to receive a certain share in the actual recovery made by the client, and Mr. Shah says that whenever there is such an agreement it is clear that the lawyer is guilty of professional misconduct. But Mr. Shah says that in this case the agreement is not to share in the recovery. The fees of the lawyer do not depend upon whether the plaintiff recovered the amount of the decree or not. As a matter of fact, the agreement provides that the amount of the fees are to be paid within one month from the date of the final decree, and therefore according to Mr. Shah the principle in *In re Gauba's* case does not apply to this case. We refuse to accept that contention. The principle laid down by Mr. Justice Gajendragadkar and Mr. Justice Vyas and which was confirmed by the Supreme Court is much wider and much more important than its actual application to the facts which were before the Court. The principle that was laid down was that it is essential in the interests of administration of justice and in the interests of the legal profession itself that the lawyer must, while conducting the litigation of his client, observe a certain objectivity and detachment which are necessary for the proper conduct of the litigation and if the lawyer becomes interested in the result of the litigation he loses both his objectivity and his detachment. He puts himself in the same position as the litigant and although formally appearing as a lawyer and arguing for his client, for all practical purposes he is no better than and no different from the litigant himself. If that is the true principle to be deduced from that decision, that principle applies whether a lawyer contracts with his client to receive a certain percentage of the money actually recovered in the litigation or contracts with his client to recover a certain percentage of the decretal amount. In both cases it can be said that the lawyer is interested in the litigation. His fees depend upon the result of the litigation. In a sense also he is speculating on the litigation because it is uncertain whether he would get any fees, and if he would get fees what the quantum of the fees would be. It may be said that ordinarily a lawyer should fix his fees at the time when he is engaged by his client. He would know the work which he would have to do for his client and he can charge the fees according to what the law permits on taxation or higher fees if he thinks that his status at the Bar or the complexity of the case demand that he should charge a higher fee. But ordinarily it must always be improper for a lawyer to leave the determination of the fees till the conclusion of the litigation or to leave the determination of the

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fees dependent upon how the litigation fares. If we were to apply that principle to the facts of this case, at first blush it may appear that the pleader has no answer to the charge that was levelled against him and, as the learned District Judge holds has been proved, except for the minimum amount of Rs. 250 he has not fixed the amount of his fees when he was engaged by his client. He was not sure at all as to whether he would get any additional fees beside the sum of Rs. 250 because if the suit was dismissed he would get nothing more. Even if the suit was decreed he did not know what his fees would be because it would depend upon the quantum of the decretal amount. Therefore, in undertaking this litigation it may be said that he was speculating as to what remuneration he would get at the end of the litigation, and he also allowed himself to be interested in the result of the litigation because his remuneration would depend upon the success or failure of the litigation.

But in this particular case we are dealing with a litigation which is of a peculiar character and with regard to which the law has made special provision. When we turn to the Pleaders Act, Schedule III contains the rules for computing the pleader's fee and the fees are computed *ad valorem* on the value of the subject-matter in dispute. In most suits that are filed the subject-matter is known and can be valued and the pleader knows what fees he will get when the bill of costs is taxed. But when we are dealing with a suit for accounts, the subject-matter in a sense is not known or ascertained till the decree is passed. Before the decree is passed the subject-matter of the suit is the accountability of the defendant and for the purpose of Court-fees a party is entitled to put any artificial value on the relief that he is claiming in the suit, and the Court-fees Act itself provides that when the decree is passed in favour of the plaintiff he must pay the proper Court-fees which would have been payable if he had filed the suit for the amount for which it was decreed. But as far as the pleader is concerned, he gets his fees taxed also on the amount of the decree that is passed in the suit for taking accounts. His fees cannot be taxed otherwise because at the date when the suit is filed there is no indication as to what relief the plaintiff would get. The plaintiff's suit may be dismissed or the plaintiff may get a decree for an amount which could only be determined by the Court after the accounts are taken, and therefore it may be said that whereas in other suits the subject-matter is known at the date when the suit is filed, in a suit for accounts the subject matter is determined by the result of the suit. A curious result is brought about that in a suit for accounts the pleader's fees are made entirely dependent upon the result of the litigation. If the suit is dismissed he would get only the minimum fees provided by the Act, and if the suit is decreed his *ad valorem* fees would depend upon the amount of the decree. This is one of those rare cases where the pleader does not know when the litigation starts

as to what his fees will be. He may have to work very hard for his client in the preparation of the suit, in the conduct of the suit he may have to appear before the Commissioner appointed for the taking of accounts, the accounts may be lengthy, the accounts may be complicated, and yet if after all the work that he has done the suit were to be dismissed he would only be entitled to the minimum fee prescribed in the Pleaders' Act. On the other hand, the suit may be simple, it may not require special services from the pleader, and yet if a decree is passed in favour of his client for a large amount he would be entitled to substantial fees on the *ad valorem* basis. Of course, it may be said that taxation under the Pleaders' Act is not as it is on the Original Side of this High Court on the *quantum meruit* basis; costs payable to the pleader are regulated *ad valorem* on the value of the subject-matter. But the distinction between a suit for accounts and other suits, as has already been pointed out, is that whereas in the one case the subject-matter is known and ascertained and the pleader's fees are taxed on the value of that subject-matter, irrespective of what the decision in the suit might be; in the case of a suit for accounts the subject-matter is not ascertained till the decision is reached and the fees of the pleader depend upon the result of the litigation.

Now, in view of this position with regard to a suit for accounts, can it be said that the present agreement entered into by the pleader constitutes professional misconduct on his part? If the pleader had agreed to take from the client his taxed costs, undoubtedly he would have been within his rights. If he had agreed with his client to take double or treble the taxed costs the Government Pleader concedes that the pleader would have been equally within his rights, apart from the question, which we will later discuss, about the fees being excessive or exorbitant. Is there then any difference in principle between a pleader agreeing to take from his client twice or thrice the taxed costs and his agreeing with his client to take from him a percentage of the decretal amount? If the principle which has got to be applied is that the pleader should not be interested in the result of a litigation, then that principle applies whether the pleader agrees to take taxed costs or more than the taxed costs, or whether he agrees to take a percentage of the decretal amount. The situation is identical in both the cases. Even if he is getting the taxed costs, under the law he is in the same position as he is under the present agreement. Therefore, we have reached this conclusion that the law itself permits as an exception in a suit for accounts, where the subject-matter is not ascertained and where the subject-matter is to be ascertained as a result of the decree to be passed in the suit, that the pleader should make his fees dependent upon the result of the litigation. In our opinion, it is unfortunate that there should even be this exception to the general rule we have laid down, but we see the practical difficulty of not permitting this exception. It would be very difficult

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for pleaders to value the subject-matter in a suit for accounts at the time when the plaint is put on the file.

In *Bai Meherbai* v. *Maganchand.*[7] Sir Lawrence Jenkins, C. J. delivered a rather important judgment in favour of the lawyers where he pointed out that a vakil's fee should be calculated on the amount of the actual value of the property, the subject-matter of the suit, and not on the amount of the claim as estimated for the purposes of the payment of Court-fees, and the learned Chief Justice further stated that the real as well as the Court-fee value should be stated on every plaint and memorandum of appeal, and in case of dispute an issue should be raised as to the real value. Now, in this case for the purpose of Court-fees the claim has been valued at Rs. 5. But how is the lawyer to state on the plaint the amount of the actual value of the property being the subject-matter of the suit? As already stated, the subject-matter of the suit is accounts and the value of the subject-matter can only be ascertained when accounts have been taken and the amount is ascertained which the defendant is liable to pay. Therefore, it may be said in one sense that in a suit for accounts the decree constitutes the basis for the ascertainment of the fees payable to the lawyer, and that is the only basis on which fees can be ascertained. If that is the only basis, then it is open to the lawyer to contract with his client that he would charge fees on a certain percentage in respect of that basis. The percentage may be a percentage allowed on taxation; the percentage may be a percentage higher than that allowed on taxation; and the most that can be said in this case is that the pleader has contracted to charge his client a much higher percentage on the basis of the decree than would be permissible to him on taxation.

The Government Pleader relied on the very early decision of this Court which has formed the basis of most decisions with regard to lawyer's fees that have been decided subsequently, and that is the judgment reported in (*In re Bhandara*),[8] and the observations which are relied upon are the observations which appear at the foot of the judgment at p. 113. These observations are clearly obiter, but they have received the respect of the Bar and the Bench which any observations of Sir Lawrence Jenkins are entitled to, and what the learned Chief Justice said was:

"The condition and exigencies of a mofussil business may justify procedure on the part of an advocate which would receive no countenance in the Presidency towns; but (to allude to one matter the papers disclose) I consider that for an advocate of this Court to stipulate for, or receive, a remuneration proportioned to the results of litigation or a claim whether in the form of a share in the subject-matter, a percentage, or otherwise, is highly reprehensible....."

7. (1904) 29 Bom. 229.

8. (1901) 3 Bom. L. R. 102.

What the Government Pleader says is that in this case the pleader received a remuneration proportioned to the results of the litigation. Strictly the Government Pleader is right, but when the law itself in a suit for accounts permits a remuneration to the pleader which is proportioned to the results of the litigation, how can it possibly be said that a private agreement increasing the remuneration based on the same principle constitutes professional misconduct on the part of the lawyer?

We have also to consider the question whether on the face of it the amount charged by the pleader constitutes the agreement into an extortionate or unconscionable agreement. Mr. Shah has attempted to argue that a lawyer is entitled to charge any fee he thinks proper. His contention is that as far as the fees of a lawyer are concerned they are entirely a matter of contract; that a lawyer is entitled to estimate the value of his services which is to be rendered to his client and charge accordingly. In our opinion that view is not consistent with the highest traditions of the profession. It must be borne in mind that a lawyer is practising an honourable profession and is not engaging in a business. It is entirely wrong to look upon a lawyer as a person standing in the market place selling his wares. A businessman sells his goods to make profit and the mercenary motive may well be the dominant motive in the activities he carries on. In the case of the lawyer the dominant motive is assisting the administration of justice. He represents his client in order to help the Court in discovering the truth and vindicating justice. He is entitled to charge proper fees but it should not appear that the fees he is charging are extortionate or he is taking advantage of the difficulties of the client who requires his services. The lawyer must always remember that in its origin a person practising the profession never charged any fees at all. The Barrister's gown has still got a contrivance at the back which enabled the grateful client to put gold mohurs in the receptacle unbeknown to the lawyer. Even today a Barrister cannot sue for his fees. All this shows that the making of money is only incidental to the professional activities of a lawyer. The main purpose is to help the Courts in seeing that justice is properly administered. In our India of today every institution in order to survive must serve a social purpose. The Bar serves an extremely important social purpose. It is precisely because of this that the lawyer owes a duty not only to himself but to society, and in charging fees he must remember that he must not exact fees which necessity compels the client to pay and which may be beyond his capacity. Now, we are not suggesting for a moment that the only fees that a lawyer should charge are the fees allowable on taxation, but by allowing certain fees on taxation the Legislature has clearly indicated what in its opinion is the reasonable remuneration that a lawyer should receive. The taxed costs are the costs which the losing

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party has to pay to the successful party. But the principle underlying costs is that they should constitute an indemnity in favour of the successful party in respect of expenses legitimately undertaken by him in the conduct of the litigation. Therefore, we cannot wholly ignore rules of taxation in determining whether the fees charged by a lawyer are proper or not.

Mr. Shah relied on a decision of the Privy Council for what seems to us a very extraordinary proposition that charging heavy fees by a lawyer charging even extortionate or unconscionable fees can never constitute misconduct. When we look at the Privy Council decision it is clear that the Privy Council has not laid down any such extraordinary proposition. The decision relied on is reported in *Anandalwan* v. *Judges of the High Court at Madras.*[9] The passage on which reliance is placed is at p. 881:

> "The size of the fees in relation to the work done or the work undertaken may be open to criticism, but it cannot, in their Lordships' opinion, amount of itself to gross professional misconduct....."

Therefore, all that their Lordships were laying down was that the size of the fees by itself or of itself cannot be a ground for holding that the lawyer who should charge those fees was guilty of professional misconduct. But if other circumstances establish that the lawyer was extorting fees or under the circumstances the fees charged became unconscionable, then surely it could not be said that the lawyer who got fees in such a manner was not guilty of professional misconduct.

Mr. Shah relied also on two American cases for the same proposition, but in our opinion neither of these two cases supports his contention. The first is the case reported in *George Taylor* v. *Elizabeth Bemiss.*[10] In that case 50 per cent of the claim was held not to be extortionate fee for the lawyer. But this result was arrived at by the Supreme Court in America on the finding that the attorney exercised no influence in adjusting the amount, but it was voluntarily offered, and he paid out of it large amounts to other counsel. This very decision shows that if these factors were not present the Supreme Court may have taken the view that 50 per cent was extortionate. In any view of the case, it is clear that the Supreme Court has jurisdiction in a proper case to hold that the fees charged by a lawyer are extortionate fees. The other case is reported in *Nutt* v. *Knut.*[11] In that case the lawyer stipulated to his client to receive 33-1/3 per cent of the amount allowed on the claim, and the Supreme Court held that "such an agreement did not give the attorney any interest or share in the claim itself, nor any interest in the particular money paid over to the claimant by the government.

9. (1930) 32 Bom. L. R. 876. 10. (1884) 110 U. S. 42, 28 Law Ed. 64.

11. (1906) 200 W. S. 12, 50 Law Edn. 348.

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It only established an agreed basis for any settlement that might be made, after the allowance and payment of the claim, as to the attorney's compensation." This is exactly the view we are taking in this case. The agreement we are considering is an agreed basis for the settlement of the lawyer's fees, the basis being the decree which might ultimately be passed. But that decision is more on the question of the propriety of the agreement itself rather than on the question of the quantum of fees.

In this particular case we have been told by the pleader in his affidavit that the duration of the suit was about four years; that during this period the pleader personally appeared and pleaded before the Court and the Commissioner on about 55 different dates. In addition to this the pleader and his clerks attended the Court's offices many times to pay process fees, to get processes issued, to make inquiries about their service, to give addresses, to have affidavits affirmed, and for such other miscellaneous work necessary in connection with the suit, and the pleader points out that he had to do single handed all the work in the suit that is usually done in Bombay both by a solicitor's office and counsel. Now, we do not find any allegation by the client that the quantum as such is extortionate or unconscionable. The only two issues that the client has raised in the suit were with regard to the factum of the agreement, as the client denied such an agreement was entered into, and as to the enforceability of the agreement, and the trial Court so far has only tried the preliminary issue as to the enforceability of the agreement. The pleader applied for an amendment to sue for the amount on the basis of *quantum meruit*, that amendment was rejected, and the question of the rejection is still the subject-matter of the second appeal pending before the Court. Therefore, we cannot say on the record before us that the amount charged by the pleader is extortionate or unconscionable. If we could have said so we would have had no hesitation in holding that the pleader was guilty of professional misconduct. It may be said in fairness to the pleader that by his counsel Mr. Shah he has agreed that whatever the result of the litigation between him and his client may be, he would under no circumstance charge his client more than Rs. 2,000. Therefore, even if he proves the agreement, and under the agreement he is entitled to Rs. 5,011-9-0, he will not take from his client more than the sum of Rs. 2,000.

Under the circumstances, we are of the opinion that it could not be said in this case that the pleader is guilty of professional misconduct. We will therefore make no order on the reference. No order as to costs.

Order accordingly.

G. N. V.