

(APPL 660 of 2014)

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (LODGING) No. 660 OF 2014
IN
NOTICE OF MOTION (L) No. 1828 OF 2014
IN
SUIT No. 2999 OF 2005**

Unique Integrated Transport &
Management Consultancies Pvt. Ltd.

....Appellant/
Org. Plaintiff
No.1

Vs.

Oriental Bank of Commerce

...Respondent
Org. Defendant

WITH

NOTICE OF MOTION (L) NO. 1828 OF 2014

Oriental Bank of Commerce

...Applicant/
Org. Defendant

In the matter between

Unique Integrated Transport &
Management Consultancies Pvt. Ltd.

....Appellant/
Org. Plaintiff

Vs.

Oriental Bank of Commerce

...Respondent
Org. Defendant

Mr. Kishan Khanna for the Appellant
Mr. Kunal Dwarkadas a/w. Ravi Goenka i/b. Goenka Law Associates
for the Respondent

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CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.

DATE : JANUARY 23, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Appellant and the learned counsel appearing on behalf of the Respondent. A preliminary objection has been raised by the learned counsel for the Respondent regarding maintainability of the appeal against the order passed by the Learned Single Judge dated 12th September, 2014. It is submitted that the said order is not a judgment and, therefore, appeal is not maintainable against the said order. Reliance is placed on the judgment of the Apex Court in the case of **Shah Babulal Khimji vs. Jayaben D. Kania and Anr. [1981 AIR 1786]**. He has also placed reliance on the judgment of the Mysore High Court in the case of **T. Venkanaa, Petitioner v. The Hon'ble High Court of Mysore by its Registrar and another, Respondents [AIR 1973 Mysore 127]** and, more particularly, on paragraph 8 of the said judgment, which reads as under:

“The Act, in our opinion, has not made any change in the matter of this practice which has been observed in its Supreme Court and in the various High Courts. Section 30 of the Act on which reliance was placed by Sri Iyengar for the petitioner confers the right on every Advocate whose name is entered in the common roll to practise throughout the territory to which the Act extends in all courts including

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the Supreme Court. Rule 12 made by the court under Section 34 of the Act prescribes the mode of dress for Advocates appearing before this court. When an Advocate whose name is entered in the common roll appears before the Court as a litigant in person he is not exercising any right under Section 30 of the Act. In the instant case no question of the right of the petitioner under the Act arose; no right conferred under the Act has been denied to him. The word 'practise' means 'the exercise of a profession'. Where an Advocate is a litigant in person he does not practise his profession and therefore he cannot be permitted to argue with his robes on from the Advocates' table. He can address the court from the same place and in the same way Venkanna was not prepared to argue at the preliminary hearing without his robes on."

2. On the other hand, the learned counsel for the Appellant has submitted that the Learned Single Judge by virtue of the said order has observed that further cross examination will not be permitted till an advocate or the duly authorized representative is appointed. He has submitted that by virtue of the said order, the right to cross examine has been taken away and, therefore, the said order affects the right of the Appellant.

3. In our view, the preliminary objection raised by the learned counsel appearing on behalf of the Respondents is without any substance. The Learned Single Judge by virtue of the said order has not permitted the Original Plaintiff No.1, who is an advocate, practicing in this Court for more than 50 years to represent the Plaintiff Nos. 2

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and 3 as an advocate. That being the position, in our view, it cannot be said that it is a procedural order. In our view, substantive right of the Appellant which is given to him under the Advocates Act, 1967 has been taken away and, therefore, it is not an order affecting the procedural right of the parties. The learned counsel for the Appellant has submitted that he wishes to withdraw all the allegations which are made in the appeal memo against the Learned Single Judge, the Respondents herein and the learned counsel learned counsel appearing on behalf of the Respondents.. This submission is accepted and those allegations which are found in the appeal memo against the Learned Single Judge, the Respondents and their advocate are expunged.

4. Brief facts are that the suit was filed by the Appellant and other plaintiffs including Dr. Khanna (Plaintiff No.3), who is a practicing advocate, practicing in this Court for more than 50 years, in the Suit filed against the Respondent Bank.

5. The Learned Single Judge has observed as under:

“2. In this suit, there is an extremely unusual circumstance. It appears that there are three Plaintiffs. The 3rd Plaintiff is Dr. K.K. Khanaa, a learned advocate of this Court himself. Dr. Khanna has nonetheless represented and continues to represent all the Plaintiffs as an Advocate. This is impermissible. He is a party in person . He is entitled to appear pro se with proper authorization from Plaintiffs Nos. 1 and 2. He cannot possibly have filed a vakalatnama for himself. Yet this is precisely what he seems to have done.

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I do not see how or why a suit can be allowed to proceed in this manner. The institution of a suit requires, under our Rules and under the Code of Civil Procedure, 1908, that it be filed by a duly appointed Advocate or a duly Authorized Representative of the Plaintiff. Dr. Khanna in this case is neither.

3. In this state of affairs, Dr. Khanna will have to take appropriate steps before the matter can proceed further. There is no question of any further cross-examination till this is resolved since evidence in this suit is common along with Suit No. 919 of 1996.”

6. In our view, the said observation is contrary to the provisions of the Advocates Act. The admitted position is that the Plaintiff No.3 is an advocate, who has filed his vakalatnama on behalf of the other two plaintiffs, who are not practicing advocates. The Learned Single Judge has observed that Plaintiff No.3 – Dr. Khanna, who is an advocate could not have filed vakalatnama for himself. Perusal of the vakalatnama indicates that the vakalatnama was signed by the Plaintiff No.3's brother who also was an advocate but during the pendency of the suit, he expired.

7. In our view, merely signing of the vakalatnama by the advocate is not a material irregularity since though he may appear for himself as litigant /Plaintiff No.3, he has a right to appear for other two Plaintiffs. Therefore, impugned order passed by the Learned Single Judge is set aside. Dr. Khanna - Plaintiff No.3 in the suit is permitted to represent the other two Plaintiffs. The ratio of the judgment of the Mysore High Court in the case **T. Venkanaa, Petitioner v. The Hon'ble High Court**

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of Mysore by its Registrar and another, Respondents (Supra.) is not applicable to the facts of the case since in the said case, the Petitioner himself was an advocate and there were no other parties in the said litigation and under these circumstances, the Mysore High Court has made observations which are found in paragraph 8. Hence, Appeal is allowed and disposed of. In view of the disposal of the Appeal, Notice of Motion filed by the Appellant/Applicant does not survive and it is accordingly disposed of.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]