

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

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WRIT PETITION NO. 2073 OF 2017

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MURLIDHAR EKNATH RISHIPATHAK
VERSUS
SMT SNEHALATA SANJEEV KULKARNI AND OTHERS.

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Advocate for Petitioner : Mr Patil Milind
Advocate for Respondents 1-4 : Mr P.M. Shah Senior
Counsel I/B. Mr Kulkarni Sanket S.
Mr Gawali Amol K. Advocate For R/3

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CORAM : V.K. JADHAV, J.

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Reserved on : November 30, 2017
Pronounced on : December 19, 2017

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COURT'S ORDER :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the order passed below Exh.27 in Final Decree No.3/2015 dated 17.08.2016 by the Civil Judge S.D., Kopargaon, the original applicant approached to this Court by filing present writ petition.
3. Brief facts, giving rise to the present writ petition are as under :-
 - a] Respondent No.7 herein had instituted a Special Civil Suit No.45/1999 for partition, declaration and

injunction and also for declaration about will-deed allegedly executed by deceased Shantabai and for other declarations in respect of the suit property and also for injunction against the real sisters/defendant nos. 1 to 3. After due contest, the learned Civil Judge, S.D. Kopergaon, by judgment and decree dated 5.10.2011 partly decreed the suit as detailed in the decree. Being aggrieved by the same, respondent no.7 herein/original plaintiff preferred a R.C.A. No.80/2012 and the learned District Judge-1, Kopergaon by judgment and order dated 1.4.2014 though dismissed the appeal with costs, modified the decree of the trial court to certain extent as detailed in the order.

b] In terms of the preliminary decree passed by the Trial Court and confirmed by the District Court with certain modifications, respondent nos. 1 to 4 herein filed a Final Decree Application No.3/2015 before the Civil Judge S.,D., Kopergaon. Pending the said final decree application No.3/2015, the petitioner/original opponent No.1 in final decree application no.3/2015 filed the application exh.27 contending therein that,

respondent no.5 herein/original opponent no.3 in final decree application no.3/2015 be restrained from participating in the proceedings for the reason that, respondent No.5/original opponent no.3 is the husband of applicant No.4 Sou. Snehalata in final decree application no.3/2015 and in terms of the provisions of Rule 9 of the Advocates Act, 1961, an Advocate should not act or plead in any manner in which he is himself pecuniary interested. It has been also contended in the application exh.27 that, in terms of Rule 13 Chapter 2 and 5 and 6 of the Bar Council of India Rules, opponent no.3 cannot participate in the proceedings. It has been also alleged in the application Exh.27 that, original opponent no.3 is indirect beneficiary of the benefits received from his wife/original applicant no.4 and further he has also disposed of some disputed properties and his wife is also taking decision as per his advice. It has been also contended in the application that, present petitioner has also filed a complaint against original opponent no.3 with the Bar Council of Maharashtra and Goa, which is pending and some other criminal case on that count are also pending. Original

opponent No.3 has strongly resisted the application by filing his say at exh.38. It has been contended that, though he is the husband of the original applicant no.4, he was an Advocate of original applicants since filing of the suit. By making allegations of misappropriation against him, he came to be impleaded as a party in the suit without seeking any relief against him. The applicant no.4 who happened to be his wife is having every right in the properties of her parents and original opponent no.3 has no concern with the same nor ascertaining his rights in any manner. Original dispute is between four sisters. Properties are being partitioned through the Court Commissioner. The application is not tenable for want of provisions. Complaint filed against him is pending before Bar Council and thus the application is not tenable on this ground also.

4. Learned Civil Judge S.D. Kopargaon by his impugned order dated 17.8.2016 rejected the application and further directed the original opponent no.3 to appear without the robe of an Advocate while appearing in his personal capacity as opponent no.3. Hence, this

writ petition.

5. Learned counsel appearing for the petitioner submits that, respondent no.5/original opponent no.3 is taking disadvantage of his status as a practicing Advocate in the Court at Kopargaon. Learned counsel submits that, being aggrieved by the judgment and decree passed by the Trial Court, respondent no.7 herein who is original plaintiff preferred R.C.A. No.80/2012 and defendants in the suit did not prefer to challenge the decree by which their counter claim was specifically rejected. By judgment and order dated 1.4.2014 the learned District Judge not only dismissed the appeal, but also allowed the counterclaim of the respondents no. 1 to 3 in absence of an appeal or cross objection to challenge the decree of dismissal of their claim. Thus, in the appeal preferred by original plaintiff, she is relegated to a position, worst, than if she would not have preferred the appeal. Learned counsel submits that, in the proceedings of the RCA No.80/2012, respondent No.4/original opponent no.3 has also appeared for himself as well as on behalf of

other respondents excluding the present petitioner, as their counsel. In view of the modified decree passed in RCA No.80/2012, respondents no. 1 to 4 herein have filed an application for final decree in the nature of Final Decree Application No.3/2015 and in the said proceedings, respondent No.5 herein/original opponent No.3 is also shown as respondent and he is appearing as an Advocate for the respondents 1 to 4 herein. Thus, the petitioner is constrained to file an application Exh.27 for directions to respondent No.5 herein not to represent the original applicants in the proceedings of the final decree application no.3/2015 and also not to participate in the proceedings as an Advocate. However, the learned Judge of the Trial Court has rejected the said application by simply directing respondent No.5 that he should not appear in robe while arguing the matter in his personal capacity.

6. Learned counsel further submits that, in terms of the Extract of Enrollment Rules, Standards of Professional Conduct and Etiquette framed by the Bar Council of Maharashtra and Goa Advocate shall not

influence the decision of the Court by illegal or improper means and further he should not act or plead in any manner in which he himself pecuniarily interested. Further, an Advocate should not accept a brief or appear in a case in which he has reason to believe that, he would be a witness and if being engaged in a case, it becomes apparent that he is a witness on material question of fact, he should not continue to appear as an Advocate, if he can retire without jeopardizing his clients interest.

7. Mr. P.M.Shah, the learned Senior counsel appearing for respondent nos. 1 to 4 submits that, respondent no.5 is enrolled with the Bar Council of Maharashtra and Goa as an Advocate since 30.7.1973 and he has been appearing as an Advocate in various judicial and Quasi Judicial forums in the State of Maharashtra for past 44 years. He has never been accused of any professional misconduct nor has he been made part of any disciplinary proceedings or any other inquiry or action of similar nature save and except the frivolous complaint filed by the present petitioner in

collusion with another litigant before the Bar Council of Maharashtra and Goa in April 2016. Learned Senior Counsel submits that, by way of amended plaint, the original plaintiff has impleaded respondent No.5 Advocate herein as a party to the suit clearly as an after thought. Respondent No.5 herein had submitted their written statement to the said amendment contending therein that he has been impleaded unnecessarily as a party and he has no personal or pecuniary interest in any of the suit properties. Even, the trial court and appellate court have concurrently held that, such impleadment of respondent no.5 in the suit was unnecessary. Learned Senior Counsel submits that, pending the complaint for disciplinary action against respondent no.5 before the Bar Council of Maharashtra and Goa, respondent No.5 cannot be restrained in pursuing the proceedings on behalf of his clients in any manner. The question of pecuniary interest/professional misconduct cannot be decided by the Civil Court as the same is beyond the scope of application exh.27 and such allegations against an Advocate would require comprehensive determination of the facts. Learned

Senior Counsel further submits that, in view of the judgments of the Apex Court on this point only Professional Body i.e. the Bar Council can consider the disputes related to disciplinary misconduct of the Advocates and said Bar Council has exclusive original jurisdiction to decide the dispute with respect to the disciplinary misconduct or pecuniary interest of the Advocate.

8. Learned Senior Counsel in order to substantiate his submissions placed his reliance on the following two judgments :-

- 1. Pravin C Shah Vs. K.A.Mohd Ali and another reported in (2001) 8 Supreme Court Cases 650.**
- 2. Supreme Court Bar Association Vs. Union of India and another reported in (1998) 4 Supreme Court Cases 409.**

9. By filing an application Exh.27, the petitioner seeks to restrain respondent No.5 herein either to represent the original applicants 1 to 4 in Final Decree application No.3/2015 and also participating in the proceedings in his capacity as an Advocate. It is not

disputed that, petitioner has already initiated Disciplinary Proceedings against respondent No.5 vide complaint D.C. No.120 of 2016 in or around April, 2016 and the same is still pending.

10. In a case **Pravin C Shah Vs. K.A.Mohd Ali** (supra) the Supreme Court in paragraph No.14 of the judgment has made following observations :-

“14.By giving expression to such a proposition the Bar Council of India has obviously overlooked the legal position laid down by the Constitution Bench in Supreme Court [Bar Association vs. Union of India](#) (supra). In paragraph 57 of the decision the Bench said thus:

“57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing professional misconduct, depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the [Advocates Act, 1961](#), while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts. “

11. Further, Supreme Court in paragraph No.18 to 20

made following observations :-

“18. In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in Prayag Das vs. Civil Judge, Bulandshahr and ors. (AIR 1974 Allahabad 133) :-

The High Court has a power to regulate the appearance of advocates in courts. The right to practice and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practice in courts in various other ways, e.g. drafting and filing of pleadings and Vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of Advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility.

19. In our view, the legal position has been correctly delineated in the above statements made by the Allahabad High Court. The context for making those statements was that an advocate questioned the powers of the High Court in making dress regulations for the advocates while appearing in courts.

20. Lord Denning had observed as follows in *Hadkinson vs. Hadkinson* {1952 (2) All England Law Reports 567}: I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long

as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.”

12. In a case the Supreme Court Bar Association Versus. Union of India and another (supra) in paragraph no.57 and 58 of the judgment has made following observations :-

“57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct" depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an Advocate, by suspending his licence or by removal of his name from the roll of the State bar Council, for proven professional misconduct, vests exclusively in the statutory authorities created under the [Advocates Act, 1961](#), while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.

58. After the coming into force of the [Advocates Act, 1961](#), exclusive power for punishing an advocate for "professional misconduct " has been conferred on the concerned state Bar Council and the Bar Council of India. [That Act](#) contains a detailed and complete mechanism for suspending or revoking the licence of an

advocate for his "professional misconduct". since, the suspension or revocation of licence of an advocate has not only civil consequence but also penal consequence, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the charge is established against the Advocate in a manner prescribed by the Act and the Rules framed thereunder."

13. In the instant case, power to punish respondent No.5 herein for the proven misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961. The petitioner has already initiated disciplinary proceedings against respondent no.5 herein vide complaint D.C. No.120/2016 and the same is still pending.

14. In view of the above, I do not find any fault in the impugned order passed by the Court. Though, the trial court has directed the present respondent No.5 to appear without robe of an Advocate while appearing in his personal capacity as opponent No.3, respondent no.5 herein has not preferred to challenge the said order to that extent. In view of the same, no interference is

required in the impugned order. Consequently, writ petition is liable to be dismissed. Hence, following order.

O R D E R

1. Writ Petition is hereby dismissed.
2. In the circumstances, there shall be no order as to costs.

15. At this stage, the learned counsel for the petitioner prays for stay to this order, as the petitioner intends to challenge this order in the Supreme Court. Request stands refused.

SD/-
(**V.K. JADHAV, J.**)

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AAA/-