

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

**NOTICE OF MOTION NO. 793 OF 2013
WITH
CHAMBER ORDER NO. 175 OF 2016
IN
NOTICE OF MOTION NO. 793 OF 2013
IN
SUIT NO. 350 OF 2013**

Ankur V. Purohit and Anr. .. Plaintiff
Vs.
Abha John Matthan & John Mathew Matthan .. Defendants

None for plaintiff.

Mr.Karl Tamboly i/b Tyabaji Dayabhai for respondent in CHOL/175/2016.

Mr.Sanjay Jaina/w. Mr. Manthan Wnadkat i/b S.G. Lakhani for defendant nos.1 and 2.

**CORAM : K.R.SHRIRAM, J.
DATE : 20TH APRIL, 2017**

P.C.

1 This chamber order No.175 of 2016 is taken out by the plaintiff for discharge of the plaintiff's earlier advocate Tyabaji Dayabhai. Mr.Tamboly appearing for Tyabaji Dayabhai states that the advocate has already handed over all the papers to the plaintiff but the Advocates are certainly entitled to reasonable fees and according to Mr.Tamboly, the invoice raised is reasonable. Mr.Tamboly also states that not only the advocates' fees, even counsels' fees have not been paid because of which the Advocates are facing

difficulty instructing counsels because of this one party. Mr.Tamboly also submitted that the plaintiff has all the while been assuring that the invoices will be paid but never paid. Mr.Tamboly relied upon an unreported judgment of this Court in **Arvind N. Savani Vs. Maganlal Savani & Ors.**¹.

Paragraphs 9, 10, 12, and 26 of the said judgment read as under :

9 *The firm has not exercised lien over any papers. All the papers are stated to have been taken away by Defendant No.1. Hence, the question is only of the obligation of the firm not to resist discharge. A firm who charges an exorbitant fee, which the client cannot and will not pay, certainly cannot resist its discharge, if the client desires to change his Solicitor. It is then that the judgment of the Supreme Court would be applied.*

10 *However, a Solicitor is entitled to charge his fees. This would be the fees that he would command and not only demand. This would, therefore, be all reasonable fees charged from time to time as per his standing. Those fees would have to be paid. The moral obligation of the Solicitor does not grant a licence to the client to discard his Solicitor at will after he has devoted his time, effort and skill and put in hours of work for which he has charged his client. Such client would be allowed to obtain discharge only upon payment of just fees of the Solicitor. It is in that regard that the Solicitor has drawn my attention to the Gujarat High Court judgment in the case of Alokik Trading and Investment Pvt. Ltd. & 3 Ors Vs. C.R. Iyyer 2000(1) GLR 495. It shows how the Court has a dual duty – to protect a litigant who desires to change the Advocate and to protect the Advocate for payment of his just fees and not relegate him to filing a separate suit. The right of discharge must, therefore, complement the right to fees.*

11 *Defendant No.1 sought the court's permission to be assisted by an advocate. Though the firm had not been discharged, he was allowed to be represented in this application by another advocate. His advocate has been heard. The firm through its counsel showed the court the law with regard to obtaining discharge. The position of facts and law between the parties must be first considered.*

12 *This Court cannot go in to the arithmetical calculation of the amount of fees charged by the firm and paid or left unpaid by the client*

1 CHOL/559/2012 IN S/1839/1988 pronounced on 10.09.2012 (unreported)

to determine the amount of fees due and payable. However, a letter of the firm dated 11th December, 1996 sending their Bill of Costs has been relied upon by both the parties and has been shown to the Court. This bill is in respect of above suit. It refers to 179.5 hours of work of the firm from 1988 to 1996 and the corresponding fee charged for such hours of work. It further shows fees of various counsel. It is not disputed that those counsel had appeared for defendant No.1 at various stages in the suit. The bill of 1996 has not been disputed. The bill is for Rs.8.05 lacs. It gives credit for sum of Rs.2.10 lacs. The balance due and payable is shown to be Rs.5.95 lacs. After the bill was received admittedly Rs.2 lacs have been paid. In certain further correspondence relied upon by defendant No.1 he claims that the Senior partner of the firm agreed to settle the dispute if he withdrew certain allegations he made in his letter dated 8th July, 1998. Defendant No.1 accordingly withdrew the letter written to the firm. Thereafter he paid the settled amount of Rs.11,000/ to the firm by cheque. That amount has not been credited.

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26 Though the institution of solicitors has been abolished, the requirement of leave of the Court under Order 3 Rule 4(2) of CPC has not been amended. Though the solicitor's costs need not be taxed, leave of the Court which is required to be granted is upon similar principles. Hence the reasonable costs of the solicitor would have to be paid or would have to be shown to have been paid by the client who seeks to appoint another solicitor or advocate so that the Court may grant leave to do so and discharge the solicitor or advocate. Similarly under the rules of the original side of the High Court the discharge may be granted upon the terms and conditions as may be deemed to be proper.

I am in respectful agreement with the judgement.

2 Therefore, upon the plaintiff's paying the fees of the advocates including the fees of the counsel, as stated in the Table at page 23 of the affidavit in reply, the advocates Tayabji Dayabhai will stand discharged.

3 The Chamber order disposed accordingly.

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4 Nobody is appearing for the plaintiff.

5 Mr.Jain appearing for the defendants states that the plaintiff did not press for ad-interim relief after filing the notice of motion. Mr.Jain also states that defendant no.2 has filed Probate Petition bearing No.1450 of 2013 in which he has disclosed all the assets which would form part of the estate. Mr.Jain, on instructions, states that the defendant nos. 1 and 2 have no intention to dispose of, create third party rights or part with possession of the assets which would form part of the estate as disclosed in the Probate Petition.

6 In view of the above statement made by Mr.Jain, which is accepted by this Court, the notice of motion stands disposed.

7 Mr.Jain states that both the defendants have filed written statement in the suit.

8 The suit, therefore, be listed for issues on 20th June 2017. In the meanwhile, parties shall file their respective affidavits of documents, complete discovery and inspection and also exchange statements of

admission and denial with reasons for denial.

9 On the next date, if the plaintiff does not go ahead with the suit, the suit may be dismissed for want of prosecution.

(K.R. SHRIRAM, J.)