

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8083 OF 2014

Ms. Amruta Sanjay Khot ... Petitioner

versus

Mr. Sanjay Rantej Khot ...Respondent

Mr. Hitesh P. Vyas, for the Petitioner.

Mr. Sanjay Bhojwani, for the Respondent.

CORAM : SMT. BHARATI H. DANGRE, J

DATE : 16th MARCH, 2018.

P.C. :-

1. By the present Petition, the Petitioner – wife has assailed the order passed by the Judge, Family Court, on 24th May, 2014, thereby rejecting the application filed by the Petitioner (Respondent in P.A.No.441 of 2013), praying that Advocate Mr. Bhojwani be restrained from appearing in the present matter on behalf of the Respondent.

The Petition for divorce came to be filed by the Respondent – husband in the Family Court at Bandra on the

ground of cruelty. The said proceeding came to be transferred to the Family Court, Pune, in the year 2013. The Petitioner – wife is the Respondent in the said petition. It is her grievance that during the pendency of the said petition, she had sought relief under the Protection of Women from Domestic Violence Act, 2005, and in connection with the said proceedings, she had a discussion in regards to her matrimonial dispute with one Mr. Sanjay Bhojwani, an Advocate. According to her, he is a common friend of the Petitioner and the Respondent. In view of this acquaintance, the contention of the Petitioner is that she discussed the entire issue with the said Advocate, who even advised her about the steps to be taken in defending the matter, so also he became actively involved in the matter, which was pending before the Judicial Magistrate, First Class.

It is the case of the Petitioner that inspite of the said Advocate being briefed by her, she was surprised that the said Counsel filed an appearance on behalf of the Respondent – husband. According to her, that was impermissible in view of the facts that he was made aware of her stand initiated in the proceedings, between the parties and the Petitioner herself had divulged certain crucial aspects of the matter to him and

according to her, his appearance on behalf of the Respondent would prejudice her claim and therefore she moved an application before the learned Family Court. Along with the said application she had placed on record the WhatsApp conversions between the Petitioner and Advocate Mr. Bhojwani which reflect exhaustive exchange of communication between the two. The said application was opposed by the original Petitioner by filing a reply to the said application and it is claimed that the said application filed is fake in its entirety and the contents of the application are alleged to be vexatious. It is also alleged that the application is not maintainable on the ground that the Respondent cannot seek orders against an Advocate. The reply, further, states that the Advocate for the Petitioner and the Respondent had only one friend in common at the point of time being Mr. Xerxes Bharucha, but lying as in relationship with Respondent but had one point of time the Respondent and said Mr. Bharucha shared a very intimate relationship. It is denied that the Advocate for the Petitioner had attended the proceedings between the parties before the Judicial Magistrate, First Class, along with the Respondent's Advocate on five occasions. It is stated that the Advocate for

the Petitioner filed his appearance on behalf of the Petitioner being the Respondent in proceeding bearing Miscellaneous Application No.706 of 2011 before the Judicial Magistrate, First Class, on 25th June, 2013 by filing a joint Vakalatnama with the existing Advocate on record for the Respondent. All the other allegations made in the application about advising the Petitioner – wife were specifically denied. The printout of the total communication between the Advocate for the Petitioner and the Respondent were also placed on record to suggest that at no point of time there was no privileged communication in respect of the matter between the parties.

2. On consideration of the said application and the reply, the learned Judge, Family Court, perused the WhatsApp messages placed on record. The learned Judge, Family Court specifically referred to the WhatsApp message history and also referred to the certified copy of roznama in Criminal Miscellaneous Application No.706 of 2011, pending before the Court of Judicial Magistrate, First Class, Pune, Vakalatnama filed on behalf of the Petitioner and the print out from the District Court, Pune, website of Criminal Appeal No.499 of 2013. The learned Judge, Family Court, based on this

communication on record and recorded a finding that Mr. Bhojwani has filed the Vakalatnama representing Petitioner – husband on 10th October, 2013, and he had also filed the Vakalatnama representing the husband in Criminal Miscellaneous Application No.706 of 2011 in the Court of Judicial Magistrate, First Class, Pune, on 25th June, 2013, and he is also representing the husband in Criminal Appeal No.499 of 2013 since 11th November, 2013. The Respondent – wife had filed her appearance in November, 2013. Based on the said chronology of the events, the Judge, Family Court, concludes that the Respondent – wife was aware that the husband had engaged Mr. Bhojwani to represent him in all the matters and therefore her contention that she was surprised when he appeared for the first time in the matter on 10th October, 2013, cannot be said to be sure revelation of facts. The Court also observes that it is obvious that in her matter he had appointed learned Advocate Mr. Kulkarni and in transfer appeal she had appointed Mr. Kulkarni and Mr. Vyas. In this backdrop, it cannot be belief that she was advised by Advocate Mr. Bhojwani and accordingly she instructed him to act as her Advocate. On perusal of WhatsApp messages recording, filed

by the both the parties, the Court conclude that it do not find any conversion advising Respondent by Mr. Bharucha regarding her matter. In any contingency, it is a choice of the Counsel to represent a party and it is a relationship of trust and since Advocate Mr. Bhojwani is representing the Petitioner – husband in all the proceedings, neither the Family Court nor this Court can restrain him from discharging his duties towards his client on whose behalf he has filed Vakalatnama. The lawyer owes duty to the client nonetheless he owes duty to the Court, however, also he owes duty to the opposite party to act with fairs. There is some exchange of conversion in personal capacity between the Respondent – wife and Advocate Mr. Bhojwani could not have been said to be affect his interest and duty towards client i.e. the husband, whom he was representing.

3. In any contingency, the norms of professional ethics bind a Counsel to act fairly to see to it that he does not cause any hindrance in the process of administration of justice and as the Family Court has rightly observed that he did not owe any duty towards the Respondent and it is not the case of his client that he indulged into any act to his detriment since he has

filed his Vakalatnama on behalf of the Respondent – husband. There is no allegation of any dereliction of duty or acting in a manner against the interest of the client and, in such circumstances, no perversity can be noted in the order passed by the Family Court and the order is upheld.

4. The Writ Petition is dismissed.

[SMT. BHARATI H. DANGRE, J]