

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018

Delivered on : 22.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.1149 of 2009

&

M.P.No.1 of 2009

1.Angayarkanni

2.Anandha Sabari

...Petitioners

Vs

1.Mr.N.Ponnuswami

2.N.Kandasamy

3.Smt.Nagarathinam

4.Dr.Arumugam

5.M.Venkatachalam

6.Smt.Deivanai Ammal

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7.Thiru.R.Vellingiri

8.Smt.Nachammal

9.Thiru.V.Balamurugan

10.Thiru.Nallathambi

11.Smt.N.Muthulakshmi

12.Thiru.N.Murugesan

13.M/s.S.K.P.Medicals
Door No.1770,
Ramanathapuram Trichy Salai,
Coimbatore – 641 045

14.M/s.Hotel Chola
Door No.1768,
Ramanathapuram Trichy Salai,
Coimbatore – 641 045

15.M/s.Arasan Sheet Covers
Door No.1769,
Ramanathapuram Trichy Salai,
Coimbatore – 641 045

16.M/s.Uma Bakery
Door No.1767,
Ramanathapuram Trichy Salai,
Coimbatore – 641 045

17.M/s.Masani Ammal rice Mandi
Police Garthakandasamy Gounder,
Ramanathapuram,
Coimbatore – 641 045

18.M/s.Elite Wines
Police Garthankandasamy Gounder,
Ramanathapuram,
Coimbatore – 641 046

19.Thiru.Parthian

20.Thiru.Gauthaman

21.Thiru.Ilango

22.Smt.Annapoorani

23.Thiru.Paramasivam

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.532 of 2008 in O.S.No.43 of 2004 on the file of the Additional District Judge, Fast Tract Court No:I, Coimbatore.

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For Petitioners : Mr.R.Prem Narayanan

For Respondent 1 : Mr.B.Vijaya Kumar

For Respondents 4, 7 to 12,
14, 15, 22 & 23: No Appearance

For Respondents 2, 3, 5, 6,
13 & 16 to 21: Not ready in Notice

ORDER

"Law is no trade, briefs no merchandise"

This quote is fast receding to oblivion. Today we are faced with falling standards in the profession where an unscrupulous few have started commercialising this noble profession and professional ethics have taken a back seat.

सत्यमेव जयते

2. An advocate is a vital part of the justice dispensation system. In addition to being a professional he is also an officer of the Court. His conduct therefore should not only be impeccable but above reproach. He is expected to follow the

norms of professional ethics and try and protect the interests of his client in relation to whom he occupies a position of trust.

3.The case of hand is a classic case of this fall in standards and the indignation that is displayed by a member of this noble profession who believes and asserts that he has been deprived of his share in the subject matter which he claims was his agreed fee.

4.This Civil Revision Petition has been filed invoking the superintending jurisdiction of this Court under Article 227 of the Constitution of India challenging the application filed by their erstwhile counsel for direction that the revision petitioners and Power Agent should deposit a sum of Rs.56,15,000/- to the account of the Court before an order of the termination of his vakalat and accepting the vakalat of the 1st respondent or before hearing the arguments.

5.The brief resume of the facts preceeding the filing of I.A.No.532 of 2008 which is the petition which is the subject matter of the revision is stated herein below:

The suit O.S.No.43 of 2004 has been filed by the petitioners herein against respondent Nos.2 to 21 herein for a partition and separate possession of the suit schedule properties (The pleadings are not being extracted as they are irrelevant for the disposal of the above Civil Revision Petition). The petitioners had engaged the services of the 1st respondent to file the suit. The 1st respondent had demanded and got his fee and only then he had filed the suit into Court. Thereafter, certain misunderstandings arose with the 1st respondent constraining the petitioners to request the 1st respondent to return the brief along with a vakalat endorsing his "No Objection" for the petitioners engaging another counsel. The 1st respondent had returned the papers giving a consent for a change and the subsequent counsel Mr.K.Krishnamoorthy had also filed his vakalat and has been

taking care of the suit. At this juncture the 1st respondent had come forward with the petition, subject matter of the revision.

6.The petition I.A.No.532 of 2008 has been filed with the following cause title which is being extracted below to show how a learned member of the bar with considerable experience to his credit is seeking to bend the legal process by showing the counsels appearing for the parties as respondents.

"IN THE COURT OF THE FAST TRACK COURT NO. COIMBATORE.

O.S.NO.43 Of 2004

I.A.NO.532 Of 2008

1.Angayyarkani

2.Anandha Sabari

through their Registered Power of Attorney

P.R.Shanmugam

...Petitioners/Plaintiffs

Advocates No.Ponnusamy BA BL.,

*NOG2 Gem Building,
18 Arts College Road,
Coimbatore 641 018.*

//Versus//

1.Angayarkanni

2.Anandasabari by Power Agent

P.R.Shanmugam

Advocate, K.Krishnamoorthy,

27 M Gayathri Complex,

Huzur Road, Coimbatore 18

3.N.Kandasamy

..Exparte

4.Smt.Nagarathinam

5.Dr.Arumugam .- Advocate Selvaraj.

6.M.Venkatachalam (Died)

7.Smt.Deivanai Ammal

Advocate A.P.Jayachandran

8.Thiru.R.Vellingiri

9.Smt.Nachammal – Advocate T.Vivekanandan

10.Thiru.V.Balamurugan

11.Thiru.Nallathambi

12.Smt.N.Muthulakshmi

13.Thiru.N.Murugesan

14.M/s.S.K.P.Medicals (SA.K.Nawaz Advocate)

15.M/s.Hotel Chola

16.M/s.Arasan Sheet Covers (Gowri Shankar Advocate)

17.M/s.Uma Bakery

18.M/s.Masani Ammal rice Mandi - Exparte

19.M/s.Elite Wines
(Tenants in Ist schedule since vacated
hence exonerated)

20.Thiru.Parthian

21.Thiru.Gauthaman (Tenants in IInd item since vacated

22.Thiru.Ilango and to be exonerated)

23.Smt.Annapoorani (4th Defendant's heir and legal heirs/
V.K.Hyderkan. Advocate)

24.Thiru.Paramasivam

(Purchased from 5th and 10th defendants)

Advocate Gowrishankar

*..Defendants/
Respondents."*

7.The revision petitioners have been shown both as the petitioners 1 and 2 as well as respondents 1 and 2 with the petitioner's Advocate shown as N.Ponnusamy, the 1st respondent herein and Mr.K.Krishnamoorthy being described as the counsel for respondent Nos.1 and 2 who are also the revision petitioners. Infact the 1st respondent has given details of all the Advocates appearing on behalf of the other respondents. It is not known as to how the Additional District Judge, Fast Track Court No:1, Coimbatore has numbered the said petition.

8.The basis on which the 1st respondent moved this petition is as follows:

(a)That he was engaged by the Power Agent of the revision petitioners.

(b)The case being of a complicated and difficult nature the Power Agent who was aware of the practice of the 1st respondent of getting fees at 10% fixed the 1st respondent fee at 12.5% and personally guaranteed the payment.

(c)Power Agent fixed the value of the suit properties at Rs.31,20,900/-. Senior fees was fixed at Rs.42,71,250/- and 1/3rd of this amount was fixed as junior fees.

(d)The suit 2nd item of property was occupied by respondents No.19 to 21. They have not paid the rents for several years and since the Court fee for claiming arrears was exorbitant the future mesne profits alone was prayed for. This strategy worked as the Tenants handed over possession to the revision petitioners after the revision petitioners waived all arrears of rent.

(e)The suit 2nd item of property could therefore be sold for a sum of Rs.18,00,000/- per cent and for 23 cents the total sale consideration was Rs.4,14,00,000/- and only half the price as per guideline value was shown in the sale deed and cheque received

for that sum and the balance was paid by cash.

(f)Power Agent promised to pay the 1st respondent Rs.42,01,125/- and a Junior fees of Rs.14,03,750/- totally a sum of Rs.56,15,000/- within a fortnight. However, the promise was observed in the breach.

(g)On 18.11.2008 the Power Agent came and requested the 1st respondent to return the bundle and assured that he would get the money and pay it to the 1st respondent. However, the vakalat filed by 1st respondent proved the collusion between the revision petitioners and their Power Agent.

(h)Order III Rule 4 of the Code of Civil Procedure states that except with the leave of Court the authority of a pleader cannot be determined.

(i)That he has granted consent as per the provisions of Rule 20 A of the Civil Rules of practice believing the words of the Power Agent who is still the client of the 1st respondent.

9.On receiving the summons in the above matter the

revision petitioners, have moved this Court invoking the Superintending Jurisdiction of this Court under Article 227 of the Constitution of India. The main grounds on which the jurisdiction of this Court has been invoked are as follows:

(a) That the 1st respondent has received his entire fees and returned the brief along with his consent to the revision petitioners for appointing another counsel.

(b) That the counsel who has been subsequently engaged by the revision petitioners has filed his vakalat and the same has been taken on record with the leave of the Court.

(c) Having accepted the vakalat of the subsequent counsel the learned Additional District Judge has committed a grave error in entertaining the impugned petition and posting the same for enquiry.

(d) The very format in which the 1st respondent has moved the petition has been questioned as the revision petitioners are described both as the petitioners as well as the 1st and 2nd respondents. That apart the counsels appearing for the various

respondents have also been shown a respondents.

(e) That the 1st Respondent has not alleged any irregularity in the appointment of the subsequent counsel and on the contrary even in his petition has accepted that Rule 20 A of the Civil rule of Practices have been followed.

10. Mr. R. Prem Narayanan, learned counsel appearing on behalf of the petitioners would submit that the very petition is defective since the format in which it has been filed is not the prescribed format and that the counsels appearing for parties have also been arrayed as respondents. That apart he would argue that if the 1st respondent has any grievance about his fees having not been paid his remedy is only by way of a separate suit and not in the form of filing a petition in a proceedings in which he is no longer the counsel. He would further argue that it is the case of the revision petitioners that the entire fees had been paid and only thereafter the 1st respondent has returned the brief along with his "No Objection" for them to engage another

counsel. Therefore in all respects having unconditionally returned the brief it does not lie in the mouth of the 1st respondent to now come forward with this petition. He would further submit that the suit itself has been dismissed on merits. He would also rely upon the following citations:

(i)A Judgment in **B.Sunitha Vs. State of Telangana and others** reported in **AIR 2017 SC 5727**

(ii)A Judgment in **Aditya Narayan Singh Vs. State Election Commission and others** reported in **MANU/UP/0488/2003 = 2003 (4) AWC 3384 ALL**

(iii)A Judgment of the Andhra Pradesh High Court dated 19.06.2013 in **Gayathri Projects Ltd Vs. State of Andhra Pradesh**.

(iv)The Judgment of the Division Bench of the Karnataka High Court dated 02.12.2016 in the matter

*of Karnataka Power Transmission Corporation Ltd. Vs.
M.Rajasekar and others.*

11.Per contra, Mr.Vijayakumar, learned Counsel appearing for the 1st respondent would contend that the petition filed under Order III Rule 4 of the Code of Civil Procedure is maintainable since the vakalat of the 1st respondent was yet to be terminated as the petitioners had not obtained the leave of the Court. That apart, since the 1st respondent cannot exercise a lien on the brief he is left with no other alternative except to file the impugned petition to ensure payment. He also questioned the maintainability of the revision. He had cited the following Judgments in support of his arguments.

*(i)AIR 1987 [A.P] 254 = CD7 1986 APAC 124 –
Damodaran Agarwal Vs. R.Badrilal*

(ii)AIR 2000 SC 2912 - R.D.Saxena Vs. Balaram

Prasad Sharma

(iii)2009 (1) LW 596 – B.Suresh Babu Vs. Nithya

12.Heard both sides. The issue on hand revolves around the right of an Advocate/counsel to claim fees from his erstwhile client after returning the papers alongwith his "No Objection" for the client to engage a new counsel and also as to whether he can move an application in the very same case where he has returned the brief.

13.Before discussing this issue it is necessary to extract a few provisions of the Code of Civil Procedure and the Civil Rules of Practise as well as the Legal Practitioners Fee Rules.

Order III Rule 4 of the Code of Civil Procedure reads as follows:

*"[4. Appointment of pleader-
(1) No pleader shall act for any person in any Court,*

unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

[Explanation.-For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,-

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.]”

Rule 20A of the Civil Rules of Practice reads as follows:

"20A. Additional Counsel:-

An advocate or pleader proposing to file an appearance in a suit, appeal or other proceedings in which there is already an advocate or pleader or where the consent of such advocate or pleader is refused, unless he obtains the special permission of the Court."

Rule 3(2) (vii) of the Legal Practitioners Fees Rules reads as follows:

"3(2)(vii) if the amount or value exceeds Rs.3,00,000-00 on Rs.3,00,000-00 as above and on the remainder at 1 percent."

14.A conjoint reading of Order III Rule 4(1) and (2) of the Code of Civil Procedure provides that no pleader can act on behalf of any person unless he has a written authorisation and such an appointment is in force until determined in the following manner.

- (i) With the leave of the Court by a writing signed by the client/pleader as the case may be and filed in Court; or
- (ii) Until the client or pleader dies; or
- (iii) Until all proceedings, in the suit have come to an end so far as the client is concerned.

15. From a reading of the above it is clear that as regards contingency (i) when a document signed by the pleader is filed into Court viz., a vakalat signed by the earlier pleader endorsing his consent for a change of counsel, the acceptance of this vakalat by the Court would imply that the leave of the Court has been obtained. This is further elaborated in Rule 20 A of the Civil Rules of Practice which clearly lays down that where an additional

counsel proposes to enter appearance either in a suit/appeal or other proceedings he can do so only with the written consent of the advocate already on record and where the learned counsel refuses he can do so only with the special permission of the Court.

16. The case on hand does not come under the category of refusal to grant consent but is a case where the erstwhile learned counsel had given his consent and the subsequent counsel had filed his vakalat along with the necessary consent of the 1st respondent and the same had been accepted by the Court and the subsequent counsel was granted leave to appear on behalf of the revision petitioners and he has also started arguing in the case. Once such leave is granted the earlier counsel has no further interest whatsoever in the pending lis. His remedy in case of any unpaid fees is only to file a separate proceeding. In cases where the earlier pleader refuses to give his consent the client's remedy is to file an application before Court to terminate

the appointment and in such cases the pleader can only put across his reasons for not giving the consent and if there is a dispute with reference to the payment of fees the concerned Court cannot go into such a dispute.

17. The Judgment in Damodardass Agarwal [**AIR 1987 AP 258**] which was also relied upon by the 1st respondent has been considered and distinguished by the Division Bench of the Allahabad High Court in the case of **Aditya Narayan Singh Vs. State Election Commission**. The Bench has held as follows:

"The learned counsel for the petitioner relied upon the decision of a Division Bench of the Andhra Pradesh High Court in the case of Damodardass Agarwal and Ors. V. Badrilal and Ors., AIR 1987 AP 254 (DB), in which it was held that the leave of the Court is necessary for the client for terminating the appointment of his advocate. We respectfully disagree with the view taken in the aforesaid decision. In our opinion, the relationship between a litigant and a lawyer is purely, contractual, and it can be

terminated at any time by the litigant, and the only remedy of the lawyer for claiming the fee, etc. is to file a civil suit but he cannot insist that without leave of the Court his engagement as a lawyer cannot be terminated. In fact it would be derogatory to the noble profession of lawyers, if it is held that even if the litigant does not want to continue him as his lawyer, he cannot change his lawyer without leave of the Court. The Supreme Court in R.D.Saxena V. B.P.sharma, 2000 (4) AWC 2965 (SC):2000 (7) SCC 264, has held that refusal to return case files when demanded by the client amounts to professional misconduct."

18. In the case of **B.Sunitha Vs. The State of Telengana and others** the Honourable Supreme Court had broken down the issue on hand into 3 questions:

(a) Whether fee can be determined with reference to percentage of the decretal amount?

(b) Whether the determination of fee can be unilateral and if the client disputes the quantum of fee whether the burden to prove the contract of fee will be on the advocate or the client?

(c) Whether the professional ethics require regulation of exploitation in the matter of fee?

19. This issue arose in proceedings under Section 138 of the Negotiable Instrument Act where the cheque issued by client to the lawyer had been dishonoured and the defense of the client was that he had paid the entire fee and the advocate using his professional position had forced the client to issue the cheque and consequently there was no legally enforceable debt.

20. The Bench relying on the Judgments reported in ***AIR 1954 Bom 478 – K.L.Gauba; 1955 (1) SCR 490 – In the matter of the G.A, Senior Advocate of the Supreme Court and 1979 (1) SCC 308 – V.C.Rangadurai VS. D.Gopalan*** deprecated the practise of lawyers fixing fees conditional on success of case or share in the subject matter. The Bench relied on Rule 20 of Part VI, Chapter II, Section II of the Standard of

Professional Conduct and Etiquette which reads as follows:

"An Advocate shall not stipulate for a fee, contingent on the result of litigation or argue to share the proceeds thereof."

Ultimately the Honourable Supreme Court held that if liability is disputed the advocate has to independently prove this contract.

21. This decision squarely applies to the case on hand. Therefore the petition filed by the 1st respondent cannot be gone into by way of an interlocutory application especially when the authority given to him had been terminated and a new counsel appointed with the leave of the Court.

22. That apart the 1st respondent has filed the petition on the basis that the Court has not terminated his vakalat and accepted the vakalat of the subsequent lawyer. Infact the prayer in the petition reads as follows:

"The petitioners prays that this Honourable Court be pleased to order the deposit of a sum of Rs.56,15,000/- towards the fees and cost in the accounts of the Court by the plaintiffs and their power agent before terminating the seniors and accepting the service of the 1st respondent advocate"

Therefore, the cause of action on which the petition has been filed does not exist since the 1st respondent has endorsed his consent and that vakalat has been filed into the Court by the subsequent lawyer K.Krishnamoorthy and by accepting the vakalat the Court has granted leave to determine the authority granted to the 1st respondent and accepted the authority now granted to K.Krishnamoorthy. Even when the petition was filed the cause of action for filing the petition was non-existent. It is also brought to the notice of this Court that the suit has been dismissed on merits and on account of the stay granted by this Court in I.A.No.532 of 2008 has not been disposed off.

23. The contract that the 1st respondent puts forward to claim his fees from the petitioners herein partakes the character of a Champertous Contract. Section 23 of the Contract Act clearly stipulates that a consideration or object of an agreement is unlawful if it is opposed to public policy. The term public policy does not confine to any definition. Whichever object or consideration of a contract tends to be an obstruction of justice or a violation of a statute or which is against good morals and tends to shock the conscience such a contract is against public policy and therefore void. A Division Bench of the Bombay High Court in **AIR 1954 Bom 478** in **Re:K.L.Gauba Vs. Unknown** was called upon to consider a case where an advocate had entered into an agreement with his client which appeared to be champertous and the bench took the view that the circumstances under which the agreement was entered into called for an investigation under the disciplinary jurisdiction and they therefore referred the matter to the Bar Council. A tribunal consisting of three members of the Bar Council was constituted for enquiring

into the matter. The Tribunal submitted its report accusing the advocate of Professional misconduct. This report was challenged by the said Advocate and the Division Bench held him guilty of professional misconduct and suspended him for a period of three Months. The Honourable Bench consisted of Justice Gajendragadhar (as he then was) and Justice Vyas and the Judgment was authored by his Lordship Justice Gajendragadhar who observed as follows in Paragraph 12 of the Judgment:

"It is perfectly true that the expression "public policy" is somewhat vague and the Courts should not be astute to invent newer and newer grounds of public policy. But, on the other hand, the construction of the clause "opposed to public policy" in the context of administration of justice does not present any difficulty. All agreements that obstruct or affect administration of justice would be treated as invalid under S.23 of the Indian Contract act. The agreement between a lawyer and the client is directly concerned

with the administration of justice. It is an agreement between a lawyer, who is an officer of the Court and who is given the privilege of audience by the Court, and his client, who is a suitor in Court and has a cause to be tried by the Court. If such an agreement tends either directly or indirectly to affect the administration of justice or sully its course, it would always be declared to be invalid."

His Lordship Justice Vyas concurred and he added to the Judgment as follows:

"A country's constitution cannot function efficiently or for the orderly progress of its people unless the administration of justice is pure and efficacious, and the administration of justice cannot be pure and efficacious unless not only the judiciary but also the members of the Bar, who too are officers of the Court, do their duties and discharge their obligations in a manner absolutely above reproach or

suspicion. Now, there is no doubt that, if an advocate contracts with his client for a share in the latter's property, which is the subject-matter of litigation, and thereby transforms his character as an advocate into a character of a litigant, he departs from the etiquette and ethics of his profession. Such conduct on the part of an advocate must in its ultimate analysis strike at the very foundation of the rule of law on which the structure of the society rests, for rule of law, properly so-called, is an impossibility if advocates enter into bargains with their clients and, as a result of the bargains, cease to be advocates and become litigants themselves."

This Judgment was upheld by the Honourable Supreme Court in the decision reported in **AIR 1954 SC 557**. This has been followed in one Judgment of the Kerala High Court dated 07.09.2007 in Dr.V.A.Babu (died) and others Vs. State of Kerala Vs. others.

24. In the instant case from a reading of the affidavit filed in support of the petition it is clear that the first respondent herein has claimed a percentage of the value of the suit property as his fees which squarely assumes the character of Champertous Contract and therefore liable to be rejected. This fee has been fixed since the 1st respondent has assured the revision petitioners of success.

25. The 1st respondent had also questioned the invocation of the Jurisdiction of this Court under Article 227 of the Constitution of India and had relied on the Judgment of this Court reported in **2009 (1) LW 596**. In this Judgment the revision was dismissed on the ground that no final order had been passed and only notice had been ordered and further the petitions were legally maintainable. Therefore this Court has to look into the maintainability of the Civil Revision Petition under Article 227 of the Constitution of India.

26.The Honourable supreme Court in its Judgment reported in **AIR 1984 SC 1401 – State of U.P. Vs. District Judge, Unnao and others** had observed that Article 227 and Article 226 were devised to advance justice and not to thwart it.

27.In the decision reported in **AIR 1954 (SC) 215 – Waryam Singh and another Vs. Amarnath and another**, the Honourable Supreme Court has clearly held that the powers under Act 227 has to be exercised most sparingly and used only to keep the subordinate Courts within the bounds of their authorities.

28.The instant case is a clear case of abuse of process of law. The 1st respondent having given his consent to the appointment of a subsequent counsel and that counsel having appeared on behalf of the revision petitioners after obtaining the leave of the Court, in the form of the Court accepting his vakalat,

the filing of the impugned petition is nothing but an abuse of process of Court and a petition filed to harass the revision petitioners. A mere perusal of the affidavit filed in support of the petition would clearly prove that the very cause of action pleaded is non-existent.

29. Justice R. Banumathi (as her Lordship then was) in the decision reported in **(2004) Cri.L.J 443 - C.Manohar Vs. B.R.Poornima** had observed as follows:

"The case in hand is an example of the present day trend of the legal profession. Legal profession is essentially service oriented. Ancestor of today's lawyers was no more than a spokesperson, who rendered his services to the needy members of the society, by putting forth their case before the authorities. Their services were rendered without regard to remuneration received or to be received. With the growth of litigation, legal profession became

a full time occupation. The trend of the legal profession has changed ... profession has almost become a trade. There is no more service orientation.

12.The relationship between the lawyer and the client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him for the same reasons. Considering the relationship between the lawyer and the client and the present day trend in the profession"

30.In **V.C.Rangadurai Vs. D.Gopalan and others** reported in **AIR 1979 SC 281** the Honourable Supreme Court had this to say of the Legal Profession.

"Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory though) leave much to be desired, if viewed as a profession for the people. When the constitution under Art 19 enables professional expertise to enjoy a

privilege and the Advocates Act confess a monopoly, the goal is not assured income but commitment to the people who hunger, privation and hamstringing human rights need the advocacy of the profession to change the existing order into a Human tomorrow".

31. The 1st respondent who is a member of this legal profession openly proclaims that he is here not for the nobility of the profession but as a trade meant for commercial exploitation. This is evident from the very tenor of the affidavit filed in support of the petition. In paragraph 4 the 1st respondent would state as follows:

"The case being very complicated and difficult the said Power agent being known very well of my practice of getting fees at 10% he told that a fees of 12.5% being fixed and will be paid after argument. He also guaranteed the payment by himself personally."

32.It is also seen from the plaint that the value of the revision petitioners 2/3rd share is Rs.2,82,66,000/-. Even assuming that the fee was fixed at 10%, the fees works out only to a sum of Rs.28,26,200/- and not Rs.42,71,250/- as claimed. Even if the same is calculated at 12.5% it only works out to a sum of Rs.35,33,250/-. It is therefore evident that the 1st respondent is trying to establish a speculative claim. The 1st respondent has reduced the status of the noble profession to that of a commercial venture. A lawyer discharging his profession and assignment has a duty to his client, a duty to the opponent, a duty to the Court, a duty to the Society at large and a duty to himself. It needs a degree of probity and poise. This Court is therefore left with no other alternative except to exercise its Jurisdiction under Article 227 of the Constitution of India to strike of the petition in I.A.No.532 of 2008 in O.S.NO.43 of 2004 on the file of the Additional District Judge, Fast Track Court No:I, Coimbatore.

Further the 1st respondent has clearly abused the process of Court by filing a petition on frivolous grounds. If senior members of the Bar who are the beacon light for the future generations of lawyers were to abuse the process of Court it would set a bad example. The Courts cannot sit back and watch this abuse of the Courts Jurisdiction and therefore deems it fit to impose costs of Rs.25,000/- on the 1st respondent which sum he shall pay to the District Legal Services Authority, Coimbatore within a period of 2 weeks from the date of this Order. Consequently, connected miscellaneous petition is closed.

22.11.2018

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Index : Yes/No

Speaking order/non-speaking order

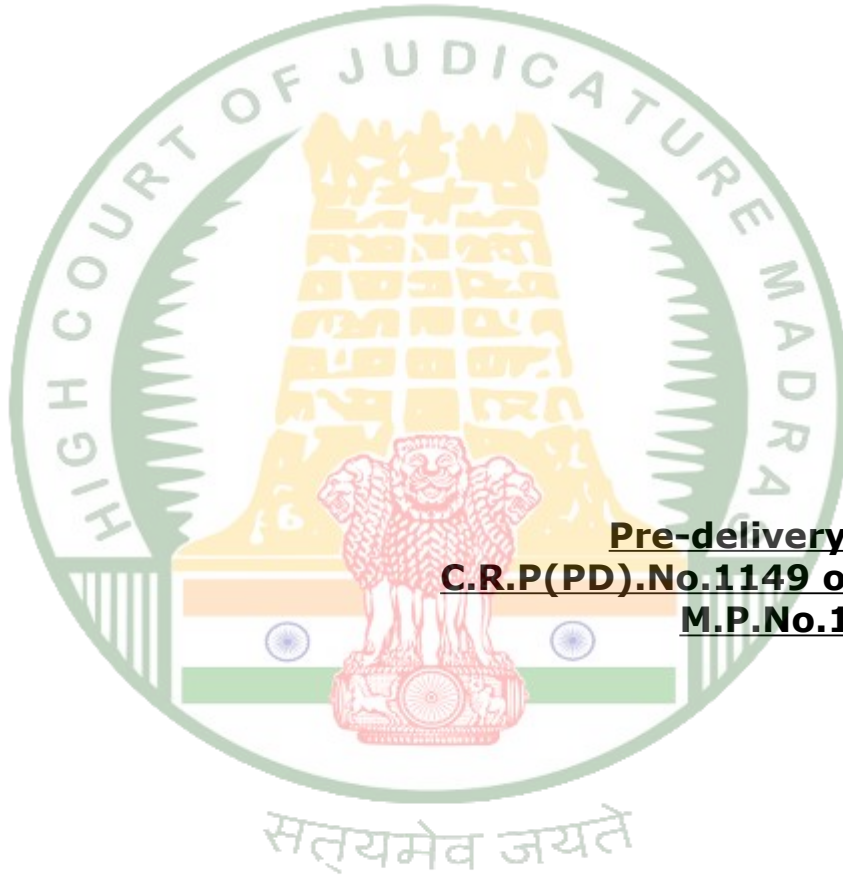
To

The Additional District Judge,
Fast Tract Court No:I,
Coimbatore.

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P.T.ASHA, J.,

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Pre-delivery order in
C.R.P(PD).No.1149 of 2009 &
M.P.No.1 of 2009

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