

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION (STAMP) NO. 1532 OF 2019**

Vinod Kantilal Vyas

.....Petitioner.

Vs.

The State of Maharashtra & Ors.

.....Respondents.

Smt. Ratna Jaiswal for the Petitioner.

Mr. C.D.Mali AGP for the Respondent No. 1-State.

Mr. Akshay Pawar i/by Vidhi P. Thaker for the Respondent Nos. 3 to 5.

CORAM : A. S. GADKARI, J.**DATE : 22nd NOVEMBER, 2019.****P.C.:-**

By the present Petition under Article 227 of the Constitution of India, the Petitioner original Defendant No.2, has impugned Order dated 23rd July, 2018 passed by the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. Suit No.33/43 of 2010 thereby, rejecting to accept on record, Vakalatnama of newly appointed Advocate of Defendant No.2.

2 Heard the learned counsel for the Petitioner, the learned counsel for the Respondent Nos. 3 to 5 and the learned AGP. Perused the entire record.

3 The record indicates that, the Petitioner had given Power of Attorney to Mr. Manoj Kantilal Vyas i.e. the Respondent No.3 to represent him and in furtherance of the said Power of attorney, the said Respondent No.3 appointed Advocate Mrs. Vimla R. Vora to espouse their cause before the Court of Small Causes at Mumbai (Bandra Branch) in the aforesaid Suit.

In due course of time, the Petitioner realized that, his case is not being properly pleaded before the Trial Court and therefore, he decided to change the Advocate. He therefore, approached Advocates Mr. H.B. Laxmipalli and Miss. Seema Tambewagh to represent him before the concerned Court. He also signed Vakalatnama in their favour on 23rd July, 2018. The Petitioner thereafter, approached Mrs. Vimla R. Vora to give her '*no objection*' to which, she denied. The concerned Advocates thereafter appeared before the learned Judge of the Small Causes Court, at Bandra and requested him to take their Vakalatnama on record. The record further indicates that, at that time, the earlier Advocate on record i.e. Mrs. Vimala R. Vora appeared in the matter and strongly opposed the appointment of new Advocates on the ground that, the new Advocates have not obtained her '*no objection*'. The Trial Court, therefore, by its impugned Order dated 23rd July, 2018 refused to accept the Vakalatnama of newly appointed Advocates.

4 By now, it is the well settled position of law that, an Advocate has no right to retain files/briefs of his client if the client does not wish to continue with the concerned Advocate. Even if the agreed fees of the Advocate is not completely paid by the litigant, then also on that ground the Advocate has no right to retain the brief with him. Refusal of Advocate to return files/brief to his client on demand, would amount to professional misconduct as contemplated under Section 35 of the Advocates Act. That, the Advocate has no lien over litigation files for his unpaid fees for the files

entrusted to him by his client. Reliance is placed on two decisions of the Supreme Court in this behalf. (i) *R.D. Saxena Vs. Balaram Prasad Sharma*, reported in AIR 2000, SC 2912 and, (ii) *New India Assurance Co. Ltd. Vs. A.K. Saxena*, reported in AIR 2004 SC 311.

5 In view thereof, the learned Trial Court has committed an error in not accepting the Vakalatnama of newly appointed Advocates by the Petitioner. The erstwhile Advocate of the Petitioner, Mrs. Vimala R. Vora, if having any grievance against the Petitioner towards her outstanding professional dues/fees, can adopt appropriate remedy for that and as has been observed by the Supreme Court, she cannot have lien over the files/brief of the Petitioner.

6 In view of the above, impugned Order dated 23rd July, 2018 is hereby quashed and set aside. The learned Judge of the Court of Small Causes at Mumbai (Bandra Branch) seized of R.A.E. Suit No.33/43 of 2010, is hereby directed to accept the Vakalantmana of the Advocate/Advocates appointed by the Petitioner of his own choice. The said Vakalatnama be accepted in the absence of '*no objection*' of the erstwhile Advocate.

Petition is accordingly allowed, in the aforesaid terms.

(A.S. GADKARI, J.)