

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.775 of 2019
&
C.M.P.Nos.5106 & 5108 of 2019

T.Umeswaran

...Petitioner

Vs

1.Chinnaraju

2.Sellan

3.Baskaran

4.Theerthagiri

5.Pugazhmangai

6.Raja

7.Mariammal

8.Sekar

9.Selliammal

10.Neethi

11.Vanaja



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12.Rahul

13.Baby

14.Girija

15.Geetha

16.Meera

17.Madhavan

18.Pazhanivelu

19.Rajeswari

20.Muniammal

21.Mohan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.11.2018 passed in I.A.No.70 of 2018 in L.A.O.P.No.5 of 2000 by the learned Subordinate Judge, Dharmapuri.

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For Petitioner : Mr.Arun Anbumani

For Respondents : Mr.S.Kolandasamy

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Subordinate Judge, Dharmapuri, in I.A.No.70 of 2018 in L.A.O.P.No.5 of 2000.

2.This is a case where the counsel who had conducted the case right from the stage of reference under Section 18 right upto the passing of the Judgement in L.A.O.P.No.5 of 2000, has not been paid his fees as agreed vide document No.3, which is a letter dated 09.08.2003, which has been signed by the respondents 1, 2, 3 and 4 under whom the present respondents claim. The brief facts necessary to dispose of the above Civil Revision Petition are as follows:

3.The revision petitioner an Advocate by profession is practising in the District of Dharmapuri. In the course of his professional duties he had entered appearance for the respondents in conducting their case in L.A.O.P.No.5 of 2000. It appears that originally the L.A.O.P.No.5 of 2000 was filed by fifteen claimants (The legal representatives of some of them are now arrayed as the respondents).

4.The learned Subordinate Judge, Dharmapuri had enhanced the award on the Section 18 reference and this was taken up on appeal by the state before this Honourable Court. The first appeal was allowed by this Honourable Court by modifying the value of land enhanced by the reference by reducing 10% towards development charges.

5.After the disposal of the first appeal the revision petitioner had filed an execution petition on behalf of the claimants before the Additional District Court, Dharmapuri, which is subsequently transferred to the Subordinate Court, Dharmapuri. After conducting the execution petition for over five years, with requisite steps being initiated by the revision petitioner as counsel for the claimants, the Special Tahsildar had deposited the award amount into the Court.

6.Meanwhile some of the claimants had died and the legal heirs were brought on record and steps in this regard had been undertaken by the revision petitioner. The revision petitioner had also initiated steps to file cheque petitions under Rules 162 to 166 of the Civil Rules of Practice to withdraw the awarded amount deposited by the Special Tahsildar and all the claimants had signed necessary affidavits,

petitions etc.,

7. At this juncture, disputes arose between the revision petitioner and the male members of the claimants since the male members, according, to the revision petitioner were reluctant to have the female members sign affidavits which gave raise to suspicion in the mind of the revision petitioner. The revision petitioner insisted upon cheque petitions being filed individually and had also insisted upon the production of the Adhar Card, etc., so as to ensure that there was no impersonation in the matter of obtaining the awarded amount.

8. In fact the revision petitioner had received a letter from one of the respondents stating that her amount after deducting his fees should be given directly to her. The respondents 1, 2, 4 and 6 were not very comfortable with this arrangement and in order to overcome this insistence by the revision petitioner they had, without obtaining the consent of the revision petitioner and without settling fees agreed to paid, forwarded a memo dated 09.03.2018, which was filed into Court through different Advocates that they were filing the Vakalat on behalf of the 4th respondent herein. The Court returned the Vakalat

stating that the previous counsel had not given consent.

9. Thereafter, on coming to know about this memo the revision petitioner had objected to the said memo stating that his vakalat was still valid as he had not given his consent. This was followed by the filing of the application by the respondents which is the subject matter of the present revision, seeking leave to the Court to change the Advocate. The learned Subordinate Judge, Dharmapuri allowed the said application and challenging the same the revision petitioner is before this Court.

10. This Court had directed all the parties to be present before the Court on 11.03.2019. At that point of time the respondents were represented by another counsel. The parties/respondents had all appeared and on making enquiries with the women members, they have clearly stated that it was only a sum of Rs.70,000/- that was paid to the counsel and the counsel was helping them for over 20 years with the said case (This fact is denied by the revision petitioner who claims that he has not received any fees). The ladies would also acknowledge the document No.3, letter dated 09.08.2003.

11.The ladies would also submit that the fees has not been paid to the counsel and that without paying the fees they have now been asked by the men folk in the family to give a vakalat to the present counsel who has filed the petition, subject matter of this revision. When the matter was once again listed before this Court another lawyer had appeared and today the lawyer would submit that he leaves the decision to the Court and therefore this Court is proceeding to hear the matter.

12.From the order of the Court below, it is seen that the learned Judge has also acknowledged the fact that the counsel has not been paid any fees. Therefore the order allowing I.A.No.70 of 2018, without the professional charges being paid to the revision petitioner especially in the light of Document No.3 is erroneous. The revision petitioner having protected the interests of his client for all these years, which fact has been admitted by the respondents, must be paid his fees, more particularly, when the parties have agreed to the same and signed a contract to this effect. The respondents have also admitted that at no point of time had the revision petitioner acted against the interests of the respondents, his clients and has not acted in any

manner lowering the dignity of his profession.

13.The Court below has also observed that no document whatsoever has been filed to show the payment of any fees to the revision petitioner. As early as in the year 1944 the Division Bench of this Court in the Judgement in **A.V.Sundaramurthy Chettiar Vs. Mr.S.Muthiah Mdaliar** reported in **58 L.W. 34** had observed as follows:

"It seems to us clear from the rules and from the decisions that in the absence of misconduct on the part of the Advocate, the client is not entitled to the sanction of the Court for a change of the Advocate without making a satisfactory arrangement to pay the Advocate who has had charge of the case hitherto. The cases quoted before us on the point are: Ramaswami Chetti V. Subbu Chetti (4), Pankaj Kumar Ghosh V. Sudheer Kumar Shikdar (5) and Babui Radhika Debi V. Ramasray Prasad Chowdhury (6). In the present case, there is no shadow of an allegation against the Advocate who has had charge of the case hitherto. The client proposes to abandon him when the

case is ready for hearing."

14. The facts of this case squarely apply to the instant case on hand. The other Judgement relied upon by the counsel is the Judgement in **Arvind N.Savani Vs. Maganlal Savani and others** reported in **2012 SCC online Bom 1320**, wherein the learned Judge has observed as follows:

"24. The case of BasudeoRam Govind V. Vachha & Co. AIR 1955(4) Bom. 126 related to a solicitor seeking to proceed against the client of the opposite party with whom his client sought to settle the dispute without the assistance of the solicitor and before payment of the fees of the solicitor. Though the solicitor was held entitled to claim the amount deposited in the Court which was to the credit of the suit, he was held not entitled to proceed against the opposite party simplicitor upon the settlement of the suit by his client with the other side in the absence of collusion between the parties. In Paragraph 14 of the Judgment, to which my attention was drawn by counsel on behalf of the firm, Chief Justice Chagla enumerated the various facilities which the court granted to a solicitor as its officer; his costs could be taxed, he could get a pay order from the chamber Judge which he could be executed as a decree. The Court gave its own officer who is the solicitor 'equitable interference' by the Court. That would be the equitable jurisdiction exercised by the Court to grant leave under Order 3 Rule 4(2) of the CPC. In exercise of such equitable jurisdiction the Court may allow the solicitor to recover the fees even from opponent but only when collusion between those two parties to

deprive the solicitor of his claim of costs was seen or if the solicitor had given notice to the other party in that behalf. Upon the abolition of the dual system (which was then prevalent) the solicitor would be left with neither of these remedies. He would require to file a suit against the client to recover his costs. It is in this regard that the leave to be granted under Order 3 Rule 4(2) of the CPC would assume importance. The Court would protect its officer against his client seeking the discharge if his fees are not paid. That would be the only protection now left to a firm of advocates representing the litigant in this Court.

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.

28. Now that discharge is sought, the Court may grant leave to Defendant No.1 to determine the appointment of the firm upon payment of reasonable amount of fees remaining unpaid. As aforesaid, the Court cannot go in to detailed arithmetics of the claim. However, the claim shows the payment of counsel fees of Rs.2.85 lacs. Even if Rs.2 lacs are paid thereafter and have to be adjusted towards counsel fees, Rs.85,000/- remain admittedly due and payable for the counsel who appeared for defendant No.1 in the suit. The correspondence of defendant No.1 shows the dispute

with regard to the number of hours of work put in by firm of solicitors. Whereas the firm claimed to have put in 179.5 hours, defendant No.1 claims that the firm put in only 28.5 hours of work including conferences in the letter dated 8th July, 1997 of defendant No.1 addressed to the firm which later came to be withdrawn by him. Even that amount has not been paid. The solicitor's bill of costs shows Rs.5.20 lacs for about 180 hours. About 30 hours of work would constitute 1/6th of that amount. Even if that much work was done by solicitor it would require payment of another 85,000/- on that score. A total sum of approximately 1.70 lacs would be due and payable since 1996 and left unpaid. This computation is only upon seeing the admitted amounts unpaid and not upon what the firm has claimed. The firm would be entitled to atleast some more amount for the work done prior to December, 1996 which is not challenged.

15. In the Judgement reported in **2000(1) GLR 495 - Alaukik Trading and Investment Vs. C.R.Iyer**, a single Judge of the Gujarat High Court after analysing the catena of decision observed as follows with reference to the clients seeking leave of the Court to discharge their counsel:

"15. On the basis of the statutory provisions of Order III Rule 4(2) of the Civil Procedure and the decisions of the various Courts as stated above, it is a well settled principle of law that engagement of an advocate on behalf of the party continues until it is determined by the advocate or

the party will have to move the Court in writing under his signature by the client or advocate, as the case may be, the advocate will be deemed to have discharged if the party or the advocate dies or the proceedings are concluded for which he was appointed. Every client is at liberty and entitled to change his advocate. But that is subject to the leave of the Court and leave is granted only on condition that the party pays the costs, fee of the advocate agreed upon before he is discharged. It is not necessary that leave will be granted only for change of the advocate, even no advocate is changed the leave of the Court is a must for dis-engagement of the advocate. Concept behind the sanction of the Court for discharge of an advocate is that the Court will consider the cause of dis-engagement and leave would be granted subject to the condition of payment of fee to the advocate. As leave of the Court is necessary for the discharge of an advocate, mere intimation to the Court that the advocate has been discharged, is not at all sufficient in law and the advocate will not be deemed to have discharged on the intimation given to the Court."

16. In the very same Judgement the other issues for consideration pertained to the fees payable to the advocate. The learned Judge after examining the law of this aspect juxtaposed with

the legal pronouncement of other Courts and the Honourable Supreme Court held as follows:

"17. On the basis of the proposition of law laid down by the different Courts as stated above, I am of the view that an advocate is an officer of the Court. The Court gives various facilities to the advocate including the facility of charging his remuneration from the client and client shall not be permitted to leave his advocate without giving the fees agreed upon and he is left to be driven to file a separate suit for recovery of his fee. He is entitled to tax his bill in the same proceedings in which he was proposed to be engaged. Further he is also entitled to tax his bills in the same proceedings for the professional work done outside the proceedings pending in the same Court and other Courts. He is not required to file a separate suit for recovery of his fees of the professional work done outside proceedings in the same Court or different Courts."

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17. In the case on hand it is further seen that agreement between the revision petitioner and his clients had been entered into when the appeal was pending on the file of this Court. Considering the fact that there is no allegations of misconduct on the part of the revision petitioner and in the light of the agreement entered into between the parties when the appeal was pending before this Court after the revision petitioner had got the award enhanced before the Trial Court and the State had gone on an appeal the order of the learned Subordinate Judge, Dharmapuri suffers from an infirmity. The learned Subordinate Judge, Dharmapuri, has overlooked these factors while passing the impugned order.

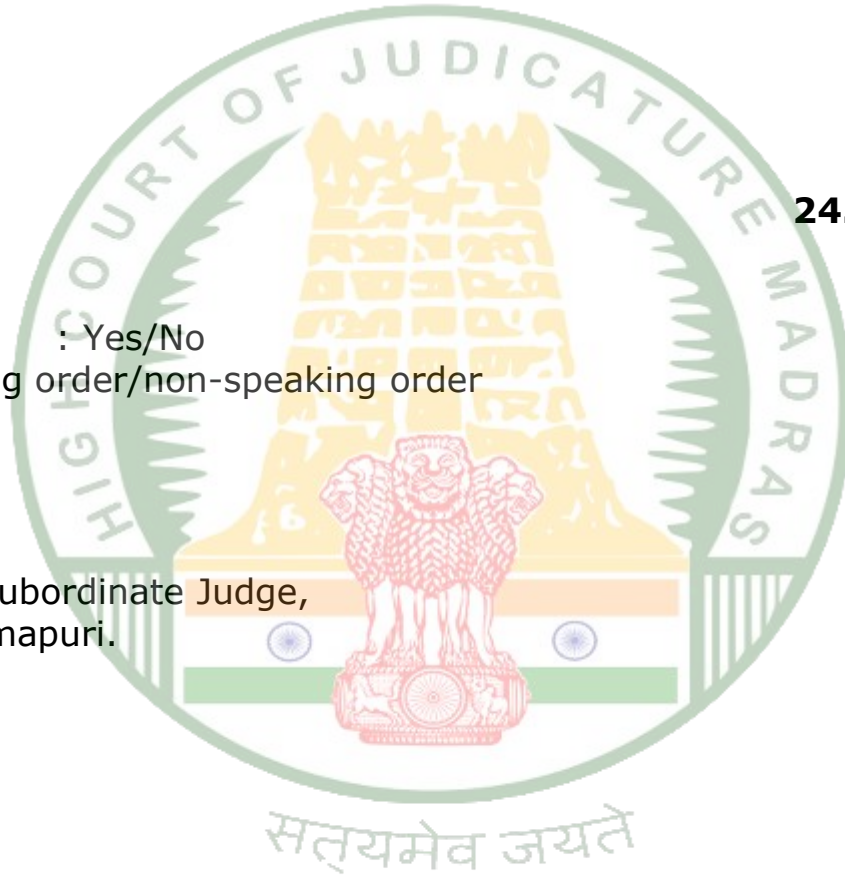
18. In the light of the above Judgements, this Court is of the opinion that till the dues of the counsel is settled the respondents cannot insist upon the revision petitioner giving his consent for appointing a new lawyer and a new counsel cannot be permitted to represent the respondents without such consent. However it is made clear that in cases where consent is given the lawyer cannot insist upon his dues being paid before the newly appointed lawyer could proceed with the case.

The Civil Revision Petition is allowed on the above lines. There shall be no order as to costs. Consequently connected Civil Miscellaneous Petitions are also closed.

24.04.2019

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Index : Yes/No
Speaking order/non-speaking order

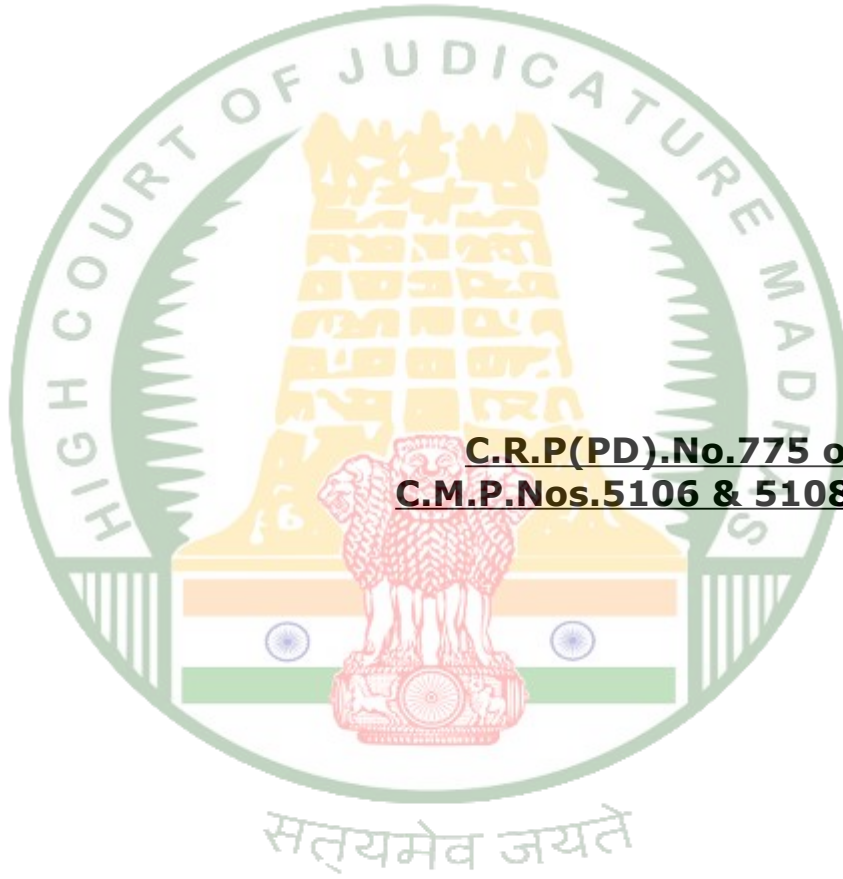
To,
1.The Subordinate Judge,
Dharmapuri.



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P.T.ASHA, J.,

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