

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN  
AND  
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P. No. 6463 of 2019  
&  
W.M.P. No. 7276 of 2019

K.B. Gopalakannan ..Petitioner  
Vs.

1. The Registrar,  
Disciplinary Committee,  
Bar Council of Tamil Nadu and  
Puducherry,  
High Court Building,  
Chennai - 104.

2. P. Saravanan ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records relating to the impugned D.C.C. No. 321 of 2018 in Resolution No. 625 of 2018 dated 28.09.2018 pending on the file of the first respondent and quash the same as the same is arbitrary, illegal and non est in the eyes of law.

For Petitioner :: Mr.Subramanian for  
M/s. Dass & Viswa Associates

For Respondent :: Mr.J. Pothiraj for R1  
Mr.M. Ravi for R2

O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)

An advocate has come before this Court challenging the disciplinary proceedings initiated against him at the instance of the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent.

2. The case of the 2<sup>nd</sup> respondent is that he filed Guardian O.P. in GOP No. 10 of 2015 before the Principal District Court,Krishnagiri seeking the custody of his two minor

children from his estranged wife. Initially, though the petition was filed through some other advocate, subsequently, by change of vakalath, the aforesaid case was handed over to the petitioner. Since the wife of the 2<sup>nd</sup> respondent was set exparte in GOP No. 10 of 2015, the learned Principal District Judge, Krishnagiri, passed an ex parte decree in favour of the 2<sup>nd</sup> respondent. Subsequently, a criminal original petition was filed by the 2<sup>nd</sup> respondent before this Court which was closed by directing the 2<sup>nd</sup> respondent to pay maintenance of Rs.10,000/- to his wife and children. Later on, on the request made by the 2<sup>nd</sup> respondent, this Court modified the maintenance amount to be paid only for a period of 10 months and the parties were directed to work out their remedy before appropriate forum. In the meanwhile, the wife of the 2<sup>nd</sup> respondent filed two applications, one for setting aside the ex parte order in GOP No. 10 of 2015 and the other to condone the delay in filing the set aside petition. The learned Principal District Judge, Krishnagiri, by order dated 08.09.2016, allowed both the applications and accordingly, the GOP was restored. Further, the case was posted on 11.04.2017 for enquiry as last chance after several adjournments. Though the petitioner, as the counsel for the 2<sup>nd</sup> respondent, had already prepared proof affidavit in chief examination of the 2<sup>nd</sup> respondent along with the petition to receive additional documents, the 2<sup>nd</sup> respondent did not turn up on that day and the learned Principal District Judge, Krishnagiri, dismissed the case for default, eventhough the petitioner sought time stating that the 2<sup>nd</sup> respondent was not feeling well. Though an application to restore the GOP was filed before the Court on 29.04.2017, the same was not prosecuted properly and numbered. Aggrieved over that, the 2<sup>nd</sup> respondent filed a complaint against the petitioner contending that the petitioner deliberately allowed the matter to be dismissed for default on 11.04.2017 and that he did not file the proof affidavit already prepared on 18.01.2017 deliberately and thereby committed professional misconduct. The said complaint has been taken on file by the first respondent and disciplinary proceedings have been initiated in D.C.C. No. 321 of 2018 by the Disciplinary Committee No.5. Notice has been issued in the said proceedingsto the petitioner and the said proceedings are being challenged before this Court.

3. Heard Mr.Subramanian, learned counsel for the petitioner, Mr.J. Pothiraj, learned counsel for the 1<sup>st</sup> respondent and Mr.M. Ravi learned counsel for the 2<sup>nd</sup> respondent.

4. It is evident from the facts that GOP was dismissed for default on 11.04.2017 and a petition was also filed for restoration. A perusal of the restoration petition filed by the petitioner would show that proper reasonings have been given as to why the 2<sup>nd</sup> respondent could not be present before the Court on 11.04.2017. However, the learned Principal District

Judge, Krishnagiri, had returned the restoration petition on various occasions. Thereafter only, the 2<sup>nd</sup> respondent got change of vakalath from the petitioner and engaged some other counsel. It is represented by the learned counsel for the petitioner that after getting change of vakalath, the restoration petition was numbered and it was allowed and the main petition, namely, GOP No. 10/2015 is pending for disposal.

5. In view of the subsequent development, this Court is of the view that the disciplinary proceedings initiated against the petitioner are unnecessary. It is proved before this Court that the petitioner took earnest steps to file a restoration petition immediately and it could not be numbered because of the returns made by the learned Principal District Judge, Krishnagiri. When the 2<sup>nd</sup> respondent was not present, it is left to the discretion of the Trial Court either to grant time or to dismiss the petition for default. In this case, the learned Principal District Judge, Krishnagiri, was not inclined to grant time and dismissed the petition for default for which the petitioner cannot be held responsible. In view of that, the impugned order is set aside and the writ petition is allowed. However, the petitioner is warned to be careful while taking up cases in future and to prosecute them with diligence. No costs. Connected W.M.P. is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Nv

To

1. The Registrar,  
Disciplinary Committee,  
Bar Council of Tamil Nadu and  
Puducherry, High Court Building,  
Chennai - 104.

+1cc to Mr.Dass and Viswa Association, Advocate, S.R.No.99509  
+1cc to Mr.M.Ravi, Advocate, S.R.No. 99786

W.P. No. 6463 of 2019

RGN(CO)  
GN(27/02/2020)