

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 26.07.2019
ORDERS PRONOUNCED ON : 30.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.995 OF 2019
AND CMP NO.6581 OF 2019

Pharamond Dit D'Costa Antoine ... Petitioner

Vs.

1.T.Gandhi Das
2.Eric Pharamond Dit D'Costa
3.Layla Pharmond Dit D'Costa
4.Jean Michel Pharmond Dit D'Costa ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the Original Petition No.55 of 2017 filed by the first respondent against the petitioner and the 2nd to 4th respondents pending on the file of the learned Principal District Judge, Puducherry.

For Petitioner : Mr.R.Sreedhar

For Respondent-1 : Mr.T.Gandhi Das
Party-in-person

ORDER

The present Civil Revision Petition has been preferred to strike off the Original Petition filed in O.P.No.55 of 2017 by the first respondent against the petitioner and the respondents 2 to 4 on the file of Principal District Judge, Pondicherry.

2. The short facts leading to the case is as follows:

(i) The first respondent was engaged to conduct the Motor Accident Claims Original Petition before the Principal Sub Court, Pondicherry for the death of the petitioner's wife in a road accident that had happened on 05.09.2000 at ECR, Pondicherry. The Motor Accident Claims Tribunal (Principal Sub Court) Pondicherry awarded compensation of Rs.64,27,000/- with cost on 13.06.2006.

(ii) The appeal preferred by the Oriental Insurance Company Ltd., against the award of compensation before this Court vide CMA No.3771 of 2008 was dismissed on 02.09.2010 and the Special Leave Petition preferred before the Hon'ble Supreme Court was also dismissed on

21.04.2011.

(iii) The first respondent, who is an Advocate by profession was engaged by the petitioner to conduct his case. Even after the dismissal of S.L.P., he failed to get the compensation awarded by the Tribunal, and was also delaying the steps to get the disbursement. Since the petitioner lost faith in the first respondent, he sought for change of vakalat. But the first respondent refused to give change of vakalat and therefore, after issuing notice of revocation of vakalat, an interlocutory application was filed in I.A.No.67 of 2013. The said application was allowed on 12.02.2013 and thereafter, the petitioner engaged a different counsel. However, the first respondent continued to demand exorbitant fee from the petitioner as under:

<i>Sl.No.</i>	<i>Bill Date</i>	<i>Bill Amount</i>	<i>Description</i>
1	02.07.2012	Rs.28,995/-	Advocate Fees for MACTOP No.590/2000 @ 30% of the award amount with interest & costs
2	30.10.2012	Rs.995/-	Balance fees for MACTOP No.590/2000
3	08.03.2013	Rs.46,30,584/-	Advocate fees for MACTOP No.591/2000 @ 30% of the award amount with interest & costs
4	08.03.2013	Rs.9,00,000/-	Advocate Fees for filing appeal before High Court
5	08.03.2013	Rs.10,00,000/-	Fees for appearing for 8th Respondent
6	08.03.2013	Rs.10,000/-	Fees for drafting Power of Attorney given to U.Chandrasekaran
7	08.03.2013	Rs.25,000/-	Fees for obtaining documents in Sub-Divisional

<i>Sl.No.</i>	<i>Bill Date</i>	<i>Bill Amount</i>	<i>Description</i>
			Magistrate, Vanur
8	08.03.2013	Rs.20,000/-	Fees for filing Caveats
	TOTAL	Rs.66,15,574/-	

(iv) Since the petitioner revoked the vakalat and failed to pay the fee demanded, the first respondent filed three suits viz., O.S.No.797 of 2013, O.S.No.967 of 2013 and S.C.No.1 of 2013 for recovery of a sum of Rs.66,15,574/-. The petitioner immediately lodged a complaint to the Bar Council of Tamil Nadu and Puducherry against the first respondent, which was taken on file as D.C.C.No.24/2013. Before the Bar Council, parties have arrived at a compromise to settle the dispute by which they agreed to pay and receive a sum of Rs.10,00,000/- as advocate fee. In accordance with the compromise, the first respondent received a sum of Rs.10,00,000/- towards full and final settlement. The petitioner made payments in four installments and the Memorandum of Compromise was signed on 13.04.2014 after receiving the payment made towards full and final settlement. Subsequently, complaint given to Bar Council of Tamil Nadu and Puducherry as well as the suits filed by the first respondent were all withdrawn by respective parties.

(v) After receiving the sum of Rs.10,00,000/- towards full and

final settlement of professional fee, the first respondent filed a suit for recovery of Rs.72,01,713/-, being his professional fee. Curiously, he filed the above suit as indigent person and filed an original petition in O.P.No.55 of 2017, which is sought to be struck off in the present revision as one of abuse of process of law.

3. Controverting the above facts, the first respondent/ Advocate filed his written arguments, which reads as under and sought for dismissal of the above Civil Revision Petition.

**"WRITTEN ARGUMENT OF T.GANDHI DAS
FIRST RESPONDENT**

**I. Legal Crystal Citation:
legalcystal.com/945919**

A pleader Vs. the Judges of the High Court of Madras Quote: The size of the fees in relation to the work done or the work undertaken may be open to criticism, but it cannot, in their Lordship opinion, amount of itself to gross professional misconduct.

**II. Advocacy & Professional Ethics by
K.Gururaja Chari, 2003 Wadhwa & Company
Page 10, Quote:** A pleader who has not been paid by the client his remuneration can file a suit for the

recovery of the fee agreed upon or by way of quantum meruit under

I am the First Respondent herein:

1) In CMP No.6581/2019 in CRP (PD) No.995/2019. I have filed the counter affidavit on 25.06.2019.

2) I am the petitioner in the following petitions.

(i) CMP No.13656 of 2019 in CRP (PD) No.995/2019 for the relief of vacating the stay.

(ii) CMP No.14840/2019 for the relief of striking the pleadings.

(iii) CMP Filing No.82855/2019 for the relief of dismissing the CRP No.995/2019 as not maintainable in law.

3) I submit that I am practicing Lawyer having enrolled with Bar Council of Tamil Nadu & Pondicherry with enrollment No.466/2000, since 12.04.2000. I have been asked by the Petitioner and entrusted the claim case in MACTOP No.590/2000 and MACTOP No.591/2000 on the file of Principal Sub Judge, Puducherry and I have been contracted in the capacity of Champertor by the Petitioner.

4) I further submit that the Petitioner herein had filed the complaint before Bar Council of Tamil Nadu & Pondicherry in complaint No.316 of 2017 and same is pending before the Disciplinary Committee in DCC No.16/2019 and the Petitioner had suppressed the fact before this Hon'ble Court and the above petition is hit by double jeopardy.

5) I further submit that I am shocked to learn that I have been coined as cheat and house grabber imputing, defaming me before this Hon'ble Court. I am having the service of advocacy without any stains for the past 20 years of practice while so for the personnel benefits of the Petitioner / Petitioner has sworn the false affidavit before this Hon'ble Court and defamed me with imputation thus to create false documents before this Hon'ble Court.

6) I further submit the Petitioner had contended in the above affidavit before the High Court Quote in Para 2. I submit that the money suit has been filed by my own advocate against me claiming exorbitant professional fees from me and my family for filing a Motor accident case on death of my wife and for injuries sustained by me - Un quote, following text Quote: 21..... (Line 1) I submit that the first respondent had already cheated me and my family and received Rs.10 lakhs and due to

the fear (Line 5) The first respondent is planning to grab my property, planning to grab my house in Puducherry and he had taken out an application for attachment before Judgment. 21..... (Line 8) The First respondent is very much aware of the entire facts and planning to grab my house and I have been Para 23 (line 8) continuously harassed and cheated by the first respondent who was my erstwhile advocate - un-quote.

7. I further submit being coined me as a cheat I have to loose my practice since a criminal is not admitted by the Bar Council of Tamil Nadu and Puducherry to practice as an advocate and therefore this Hon'ble Court may be pleased to strike the pleadings which are unnecessary scandalous, frivolous and vexatious otherwise I will be put into irreparable loss and difficulties and thus pass orders to strike the scandalous pleadings in the interest of justice.

8) I further submit I have issued a legal notice dated 28.03.2019 to the Petitioner and Respondents 2 to 4 in this matter and the Petitioner received and acknowledged the same via post and had not came forward to tender apology for the imputation caused and hence I have no other alternative except to file complaint before the Chief Judicial Magistrate, Puducherry for legal remedy under section 191, 192, 193, 499 & 500

IPC.

9) I further submit as per treaty of cession the union territory state of Puducherry was given more sops by the central government though the acts of Indian Government extended by Parliament Acts Certain acts and provisions had not extended till date such as (1) State Financial Corporation of India, (2) Money Lenders Act etc. The Puducherry Government has the separate Court Fees Act and no Advocate Fees Rules. The Legal Practitioners Fee Rules 1973 High Court Fee Rules of 1956 are enacted for the benefits of Advocates practicing in the State of Tamil Nadu and no such rule was enacted for the Union Territorial State of Puducherry.

10) I further submit that under article 227(3) of Indian Constitution where it speaks about the fees determined by the High Court and no such rules have been enacted by the High Court with the prior approval of the Lt. Governor / President of India for enacting that the Advocate Fees and therefore no such order was produced by the Petitioner before this Hon'ble High Court.

11) Hence, the Petitioner has no locus standi

before this Hon'ble Court to present the petition under article 227 of constitution seeking remedy. Since the High Court of Madras having Jurisdiction on the Union Territorial State of Puducherry both the Govt. of Puducherry and High Court are silent over the fixation of fees to Advocates of Pondicherry State Jurisdiction under article 227(3) of Indian Constitution. Since the matter placed before the Principal District Judge, Pondicherry in O.P.No.55/2017, the first Respondent has the only solution to claim the fees by way of quantum meruit by virtue of Contract Act. Therefore this Hon'ble Court has to dismiss the petition C.R.P.(PD) No.995 of 2019 as Ultra vires, lack of Jurisdiction and infructuous.

12) I further submit that the Advocates Act, 1961 has no equity and provision to recover the advocate's fees from erring clients and there is no provision of law or rule to claim the fees in Pondicherry as that of in Tamil Nadu and the only option to recover fees is to proceed under Quantum Meurit. Since I have filed the suit O.P.No.55/2017 on the file of the Principal District Judge, Pondicherry and the Trial Court to decide the fees under Contract Act.

13) I further submit the Article 14 states that there should be equal protection of law and I have

not given equal protection under Article 14. The fundamental rights of this Respondent have been eroded by the acts of the petitioner herein. The Petitioner had agreed by percentage fees in writing. The petitioner being a French Citizen worked in consulate is accustomed to Champerty and thus the petitioner paid as agreed after filing civil suit against the petitioner and this First Respondent has filed fresh suit for the recovery of balance amount due.

Hence, the petition stands in infructuous, lack of jurisdiction, ultra vires of the Constitution and therefore the First Respondent prays to dismiss the petition C.R.P.(PD) No.995 of 2019 with costs. "

4. From the narration of above facts, it is crystal clear that the first respondent has demanded fees on the basis of champertor contract. In spite of opportunities given to him, he could not produce any written contract or agreement entered by him with the revision petitioner or other respondents. According to the first respondent, it is legal to get a share in the recovery, as per French System of Law.

5. Section 23 of the Indian Contract Act, 1872, reads as under:

23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or
 is of such a nature that, if permitted, it would defeat the provisions of any law; or
 is fraudulent ; or
 involves or implies, injury to the person or property of another; or
 the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

6. It is a classic case of unethical and immoral demand made by a counsel from his client. Even assuming that there is no advocate fee rules exist in Union Territory of Puducherry, the claim of fee shall be reasonable. In fact, Union Territory of Puducherry falls within the jurisdiction of Madras High Court. The High Court Rules regarding advocate fee will be applicable. Be that as it may, pertinent fact to be considered is that the first respondent in his written argument specifically admits that the petitioner paid the fees after civil suits were filed and he has

again filed the fresh civil suit for recovery of money. He has conveniently omitted to state that he had received a sum of Rs.10,00,000/- towards full and final settlement of his fees. The compromise memo entered between the parties and proof of payment are borne out by documents. On the one hand, claiming a sum of Rs.72,01,713/- against the award of compensation of Rs.64,27,000/- with interest for the death of the petitioner's wife, even in the view of a layman, would be exorbitant, unimaginable and shocking. On the other, a professional would not make any illegal claim, like the present one, that too, after withdrawing the suits pursuant to a compromise, as stated supra, borne out by records. The factum of compromise, through out the proceedings was not objected or disputed, rather it was admitted by him while arguing the matter as a party in person. He would rely on a receipt issued by him to client as proof champerty contract. Even as per the receipt, the total fee works out to Rs.5,00,000/- only. But the first respondent, having received periodical payments, has also received a sum of Rs.10,00,000/- as full and final settlement of fee. After this, if an advocate dares to file a fresh suit for a terminated contract, it shall be considered as unethical, immoral and opposed to public policy.

7. The first respondent would rely on Legal Crystal Citation that the fee size shall not be considered as a gross professional misconduct and that he is entitled to file a suit for recovering the fee agreed upon by way of quantum meruit. It is true that an advocate is entitled to fix his own fee as per his merit and reputation. Certainly, it should not be called upon to criticism. But the same shall be reasonable and informed to the client in advance, so as to enable the client to choose the lawyer or go to somebody else. Even though the first respondent states that he is entitled to file a suit for recovering the fee agreed upon, he has not come up with a clear statement what was the fee agreed upon. In the cases of motor accidents claim, the award of compensation cannot be anticipated in advance and it may not be a fixed sum. In that event, the counsel shall inform the client in advance of his case. But, in the instant case, the fee claimed by the first respondent is over and above the award of compensation. Such demand is unbecoming of a professional. As stated *supra*, it is not based on his efficiency, goodwill and smart position of the first respondent, but, based on greed and avariciousness for money.

8. The advocates are expected to act as protectors of life and personal liberty of individuals; harmony and good order of the Society. A man living without a right or liberty, is equal to a dead person. Saving lives, perhaps, is a noble task. But, making the man to walk upright in the Society; to live with personal liberty and to live with dignity, is in the hands of the advocates. That is why, advocate profession is considered nobler than the medical profession. The trust reposed by a client on his advocate is supreme and incomparable. Unlike a person left with no alternative and compelled to undergo medical treatment or compelled to execute loan documents, a client reposes his confidence with his counsel freely and voluntarily and leaves his life and liberty under his care. The counsel shall not betray the client when he approaches him with such high trust.

9. In this context, the Hon'ble Supreme Court in ***V.C.RANGADURAI VS. D.GOPALAN AND OTHERS [AIR 1979 SC 281]*** observes the nobility of the profession as under:

" 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 [Article 19](#) enables professional expertise to enjoy a privilege and the [Advocates Act](#) confers a monopoly, the goal is not assured income but commitment to the people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.

Law's nobility as a profession lasts only so long as the member maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility-a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon."

10.The Hon'ble Supreme Court in *K.L.GAUBA* [AIR 1954

BOMBAY 478] has held as under:

" 12. 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 his 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.

In dealing with such agreements we are not relying on any technical rules of maintenance and champerty; but we are, on the other hand, relying on considerations which are general in character and which are of paramount importance for the purity of the administration of justice. In this connection it must be remembered that when he enters into an agreement with his client, the lawyer is not acting merely as a citizen but is acting as an officer of the Court. An agreement by a citizen to help a litigant in his cause even by supplying him with funds would not be regarded as invalid under the Indian law unless it otherwise appears to be

extortionate, unreasonable or based on improper motives. It would not be possible for a lawyer to claim that he should be given the same liberty to finance the litigation of his client.

Mr. Gauba had to admit that If his argument as to the lawyer's freedom to enter into any contract like any other citizen was carried to its logical conclusion, he would have to say that an agreement by a lawyer to finance the litigation of his client should not be regarded as invalid. Mr. Gauba, however, hesitated to take his argument to this logical conclusion, and naturally so because there is consensus of judicial opinion in England, in America and in this country that such agreements between lawyers and their clients would be invalid. That illustrates that the contract between a lawyer and his client is not exactly similar to other contracts between citizen and citizen. This contract is inevitably concerned with the administration of justice as it is made between an officer of the Court and a suitor before the Court. That is why though under the Indian law a citizen may be at liberty to finance another's litigation in a reasonable way, the same liberty cannot be claimed by the lawyer. "

11. In the light of the above judgments of the Hon'ble Supreme Court, anything interfering with the administration of justice forbidden by law shall be an abuse of process of law. The claim of the first

respondent that he was acting in the capacity of champertor, without any proof therefor, is highly immoral, unethical and opposed to public policy of India. The second round of litigation is a sheer abuse of process of law. That too, after receiving a hefty sum, over and above the advocate fee rules, pursuant to a compromise, is illegal and unconceived of. Ironically, filing the suit as an indigent person, after all these, is the worst illegality committed by a professional advocate of having two decades of standing in the bar.

12. Considering all the above facts, I do not have any hesitation to strike off the Original Petition as prayed for. The conduct of the first respondent is unbecoming of a lawyer. He does not deserve the practice any more. If he continues to practice, it will amount to polluting the sacred system of administration of justice and the noble profession.

13. Therefore, a direction is given to Bar Council of Tamil Nadu and Pondicherry to take appropriate action against the first respondent, taking into account the misconduct committed by him as an Advocate.

14. In fine, the Original Petition No.55 of 2017 filed by the first respondent against the petitioner and respondents 2 to 4 on the file of the learned Principal District Judge, Pondicherry is struck off and the Civil Revision Petition is allowed with cost of Rs.1,00,000/- (Rupees One Lakh Only) to be recovered from the first respondent and payable to the Victim Compensation Fund maintained by Government of Pondicherry.

15. Registry is directed to send a copy of this order to the Secretary, Bar Council of Tamil Nadu and Pondicherry, High Court of Madras, Chennai- 600 104.

30.08. 2019

Index : Yes/No
Internet : Yes/No
TK

To
The Principal District Judge
Pondicherry.

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M.GOVINDARAJ, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P.(PD) NO.995 OF 2019

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30.08.2019