

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
AND
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.15103 of 2019 and
W.M.P.No.15084 of 2019

Mr.M.V. Santharaman

... Petitioner

Vs.

1. The Bar Council of Tamil Nadu & Puducherry,
By its Secretary, Bar Council Building,
High Court campus, Chennai 600 104.
2. The Registrar,
The Disciplinary committee No.XIV
The Bar council of Tamilnadu & Puducherry,
High Court Campus, Chennai 600 104.
3. Bar Council of India,
represented by its Secretary,
No.21, House Avenue Institutional Area,
Near Bal Bhavan, New Delhi - 110 002.
4. M.V.Renuka,
5. R.Visaka,
6. A.M.Rajeswari @ Rajalakshmi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 3rd respondent to expeditiously consider the stay application dated 20.05.2019 filed by the petitioner under Section 40(1) of the Advocate's Act, 1961, filed along with the appeal under Section 37 of the Advocate's Act, 1961 vide Appeal No.R.167 of 2019.

For Petitioners: Ms.A.L.Ganthimathi for M/s.C.K.Sathish
For Respondents: Mr.M.Fakkim Mohideen,
Standing Counsel for RR-1 and 2

ORDER

(The Order of the Court was made by N.SATHISH KUMAR.J,)

The Writ Petition is filed praying for issuance of a Writ of Mandamus to direct the third respondent to expeditiously consider the stay application dated 20.05.2019 filed by the petitioner under Section 40(1) of the Advocates Act, 1961, filed along with the appeal under Section 37 of the Advocates Act, 1961 vide Appeal No.R.167 of 2019.

- 2.It is the case of the petitioner that the fourth respondent is his erstwhile client for whom he had appeared 20 years ago in a partition suit in O.S.No.500 of 1993 on the file of the Principal District Munsif Court, Kumbakonam. Subsequently, the learned Principal Sub-Court, Kumbakonam (Scheme Court), in the year 2003, on an unanimous recommendation of the Trustees of one Aramani Raman Chettiar Chathiram Trust, had appointed the petitioner as Counsel to defend the rights and interest of the said Public Trust and since then, the petitioner is diligently protecting the rights of the Trust before Courts of Law and assisting the Trustees of the said Trust to do various charitable activities upon obtaining proper permission from the Scheme Court.
- 3.It is the further case of the petitioner that in connection with the abovesaid Trust matter, the father of the fourth respondent originally filed C.R.P.(MD).No.2151 of 2014 before the Madurai Bench of this Court, challenging the order passed by the trial Court, directing him to pay huge sum of money to the Trust. Upon his demise, the fourth respondent herein was brought on record and the petitioner herein had appeared for the above Trust and succeeded in getting the order from the Court directing the fourth respondent and others persons to pay the above Trust a sum of about Rs.39 lakhs.
- 4.While things stood thus, the respondent Nos.4 to 6, on 02.08.2017, have filed a complaint against the petitioner before the first respondent by enclosing three documents along with the said complaint and alleged that the petitioner had created forgery sale agreement with S.Packiayanathan who filed the Specific Performance Act suit against the defendants John and Arokiyasamy and also annexed the documents, the decree copy of O.S.No.500 of 1993, the Lok Adalat Award dated 07.08.2014 and the plaint copy in O.S.No.190 of 2017. The respondents 4 to 6 have also alleged in the said complaint that the petitioner had

appeared in O.S.No.43 of 2014 and had assisted the parties therein to grab the land belonging to them. They have also alleged in the complaint that the suit filed by them in O.S.No.190 of 2017 before the Principal District Munsif Court, Kumbakonam, to cancel the decree passed in O.S.No.43 of 2014 and the same is pending.

5.It is also stated by the petitioner that the first respondent, upon receipt of the complaint, had referred the matter to the second respondent for enquiry. During the enquiry of the complaint before the second respondent, the respondent Nos.4 to 6 have made out a new case contrary to the complaint made before the first respondent and they chose to abandon the complaint dated 02.08.2017 given by them before the first respondent. They never marked the said complaint in the proceedings at all. The second respondent found the petitioner guilty of professional misconduct and by order dated 30.04.2019, the second respondent had suspended the petitioner from practising as an Advocate for a period of five years from the date of receipt of a copy of the order and also imposed fine of Rs.50,000/- to be paid to the first respondent, failing which, to suffer suspension of the practice for further period of one year after completion of five years of suspension. The first respondent had communicated to the petitioner the above order by letter dated 06.05.2019 and directed the petitioner to surrender his original Enrolment Certificate and the Identity Card issued by the first respondent within three days of the receipt of the said communication. The petitioner received the said communication on 10.05.2019 and paid the fine amount of Rs.50,000/- on 14.05.2019.

6.It is further alleged by the petitioner that since 11.05.2019 and 12.05.2019 being Saturday and Sunday, on 13.05.2019, the petitioner filed an application for stay under Section 40(2) of the Advocates Act before the second respondent by paying necessary fees and the said application was not processed by the first respondent and upon enquiry, the petitioner learnt that in view of summer vacation, the Disciplinary Committee of the first respondent is not functioning. Hence, the petitioner gave an application dated 14.05.2019 to the Special Committee managing the affairs of the first respondent to pass appropriate order to enable the petitioner to move the stay application filed by the petitioner under Section 40(2) of the Advocates Act. The said application is yet to be considered by the first respondent.

7.It is further stated by the petitioner that on 20.05.2019, the petitioner filed an appeal under Section 37 of the Advocates Act, vide R.No.167, before the third respondent/Bar Council of India, New Delhi. Since the first respondent did not process the stay application filed in D.C.C.No.274 of 2019, the petitioner is constrained to file a stay application under Section 40(1) of the Advocates Act. The petitioner learnt from his counsel by his e-mail, dated 27.05.2019 that the officer-in-charge of numbering and listing the matter before the Disciplinary Committee of the third respondent/Bar Council of India, is on leave for 15 days. From his counsel, the petitioner also came to know that the Disciplinary Committee of the third respondent is not having their regular sitting and the next date of hearing is also not exactly known. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

8.Upon hearing the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents 1 and 2, and considering the facts and circumstances of the case, without going into the merits of the matter, this Court directs the third respondent to consider the stay application of the petitioner, dated 20.05.2019 filed by the petitioner under Section 40(1) of the Advocates Act, filed along with the appeal under Section 37 of the Advocates Act, vide Appeal No.R.167 of 2019, and pass appropriate orders and dispose of the stay application on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

9.With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

cs/srn

To

1.The Secretary

Bar Council of Tamil Nadu & Puducherry,
Bar Council Building,
High Court campus, Chennai 600 104.

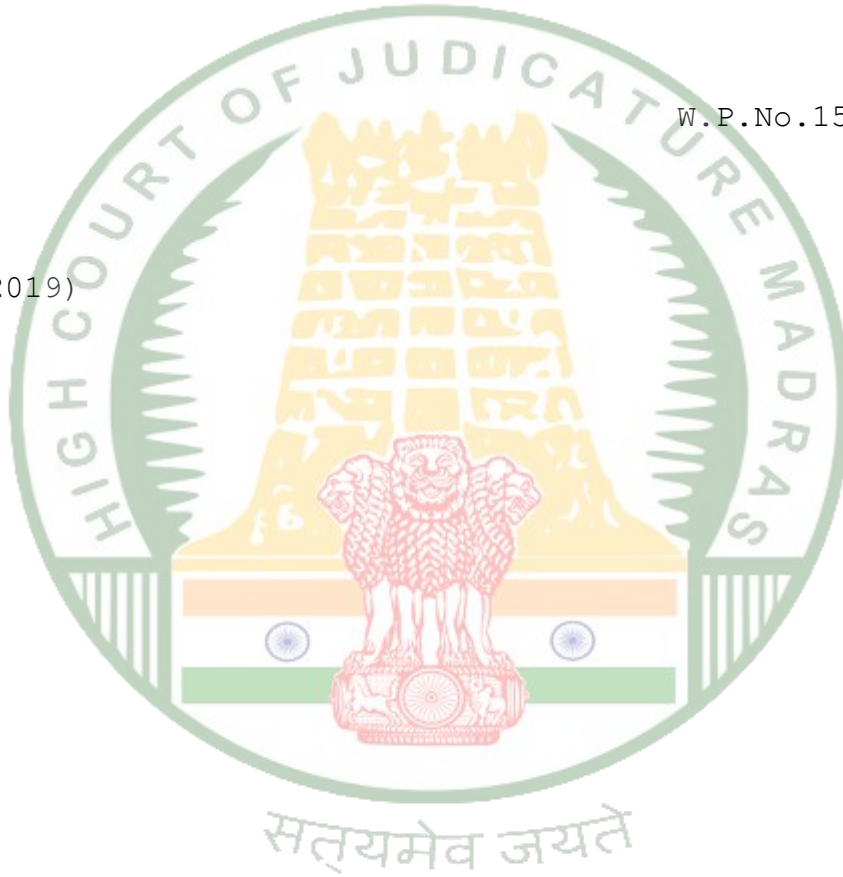
2. The Registrar,
The Disciplinary committee No.XIV
The Bar council of Tamilnadu & Puducherry,
High Court Campus, Chennai 600 104.

3. The Secretary, Bar Council of India,
No.21, House Avenue Institutional Area,
Near Bal Bhavan, New Delhi - 110 002.

+1 CC to Mr.C.S.K.Sathish, Advocate sr 44360.

W.P.No.15103 of 2019

RJI (CO)
SP(03/06/2019)



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