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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th February, 2019.

+ **CS(OS) 3324/2014**

DEEPA BHURE & ORS Plaintiffs

Through: Mr. Hemant Mehla, Advocate
(9810270050) and petitioner in
person.

Mr. C.S. Rathoor and Mr. Athar
Alam, Advocates for Mr. P.K.
Chauhan,.

versus

JAI KISHAN & ANR Defendant

Through: Defendants in person.
Mr. Rizwan, Advocate with Mr.
Jitender Malik, S.I. for SHO (Saket)
(M: 9643349576).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit for partition has been filed by Smt. Deepa Bhure – wife of Late Sh. Jagveer Singh and her two minor sons. Late Sh. Rattan Singh, who died on 31st March, 2014 had two sons, namely, Sh. Jagveer Singh and Sh. Jai Kishan- Defendant No.1. Sh. Jagveer Singh passed away and the Plaintiff has sought partition, rendition of accounts and recovery from her brother in law - Sh. Jai Kishan and her mother-in-law – Smt. Bala Devi.

2. The suit was initially listed on 7th November, 2014 on which date an ad interim order was granted directing the Defendants to maintain *status quo*.

3. The Plaintiff had engaged Mr. P.K. Chauhan, Advocate as her counsel. Preliminary decree was passed in the suit on 7th September, 2018.

On 15th January, 2019, an application was moved by the Plaintiff being I.A.404/2019 in which she made the following averments:

- That she had engaged Mr. P.K. Chauhan as her counsel;
- That she withdrew his services and requested him not to appear in any of her cases;
- That he had with him various blank signed cheques which he had taken as security for his professional fee;
- Despite instructing Mr. Chauhan not to appear in her cases, he appeared before the Mediation Centre;
- Though, she had paid the agreed fee and requested him to return the blank signed cheques, she apprehended that Mr. Chauhan may misappropriate the said blank signed cheques lying with him;
- That the counsel applied for certified copies of an order and also filed an I.A. without the consent of the Plaintiff.

4. Considering the nature of allegations, notice was issued to Mr. P.K. Chauhan, Advocate on 15th January, 2019. On 13th February, 2019 the statements of Mr. P.K. Chauhan and the Plaintiff were recorded. The same read as under:

“Statement of Mr. P. K. Chauhan (Advocate), S/o Shri Kailash Singh Chauhan, aged 43 years R/o 17E/716, Konark Enclave, Vasundhara, Ghaziabad and also at Chamber No.555, Saket Court, New Delhi. (M:9811106422)

On S.A.

I met the Plaintiff - Ms. Deepa Bhure in August, 2017. She was introduced to me by my earlier clients Mr. Jayant Nagpal and Mr. Nitish, one of whom is a

friend of the Plaintiff. She wanted to file 4-5 cases and the total agreed fee was Rs.41 lakhs. I have handled various cases for her including two criminal cases filed in Saket Court, the present suit for partition, one dispute relating to the Gurgaon property and several matters for recovery of rental amounts of more than Rs.2 crores for the period 2014 to 2017. Excluding the expenses of Rs.2.5 lakhs, I have received a fee of Rs.11 to Rs.12 lakhs entirely through cheques. She gave a total of 14-15 cheques to me and all of them were filled up by Plaintiff herself. All the cheques were encashed in September and December, 2017 after requisite permission of the Plaintiff. She represented to me that she did not have the financial capacity to pay and on receiving the rental amounts, she will pay my fee. The amount of fee was settled in the presence of Mr. Jayant Nagpal and Mr. Nitish. The Plaintiff had to pay a total fee of Rs.41 lakhs to me. On 3rd November, 2018, the Plaintiff had visited my chamber and she informed me that she is agreeable to the draft settlement and she asked me to pursue the same with the Defendants. The Defendants paid me a sum of Rs.2.5 lakhs at the time of entering into the settlement which I accepted with the Plaintiff's permission. On 12th December, 2018, the settlement was entered into between the parties. The draft Settlement agreement was sent to the Plaintiff and to the Defendants' counsel. Both parties were ready to enter into the settlement including the payment of my outstanding fee i.e. Rs.32 lakhs. On 15th December, 2018, the Plaintiff informed me that she wishes to change the counsel. She did not pay my outstanding fee of Rs.32 lakhs. I had seven cheques with me i.e. five cheques of Rs.5 lakhs each, one cheque for Rs.2 lakhs and one cheque for Rs.50,000/-. All these cheques were filled by the Plaintiff and given to me. I completed my work and informed the Plaintiff and presented the above cheques on 14th December, 2018 and thereafter in the bank after informing the Plaintiff.

The Plaintiff issued stop payment instruction for all the cheques. I, thereafter, issued her a notice under Section 138 of the Negotiable Instruments Act and filed a complaint in the Karkardooma Courts. In the said complaint, the Court has summoned the Plaintiff on 8th April, 2019. I have made this statement voluntarily without any force or coercion.

Statement of Plaintiff – Ms. Deepa Bhure W/o Late Shri Jagveer Singh, aged 34 years R/o D-1, Ambika Apartments, Gali No.4, Western Marg, Saidullajab Extension, Delhi-30. (M:9205815785)

On S.A.

I have filed the present suit against my brother-in-law - Mr. Jai Kishan and mother-in-law - Smt. Bala Devi seeking partition. I along with my children have settled my disputes with the Defendants. I state that the settlement has been entered into by our free will and without any coercion.

I had engaged Mr. P. K. Chauhan, Advocate as my lawyer in September, 2017. One of my friends had recommended his name as a lawyer for filing my case. He had quoted a sum of Rs.14 lakhs for handling two cases i.e. 1) complaint filed under Domestic Violence Act, which was later dismissed and 2) present suit for partition. Apart from the sum of Rs.14 lakhs, he said that he would charge a sum of Rs.50,000/- per application. I initially paid a sum of Rs.50,000/- by bank transfer and then he asked for Rs.1.5 lakhs in cash, which I have paid to him. At the initial stage itself, he had taken 15-16 cheques from me as security for the professional fee to be paid. One of the lands, owned by my husband, was occupied by the Post Office and the rental amount was due from the postal authorities. The said amount was credited in my bank account in 2017. The total sum of Rs.16 lakhs was received from the postal authorities, out of which more

than Rs.8 lakhs was taken by Mr. P. K. Chauhan by encashing the cheques after putting the amount, name and date in the cheques in one go. Even prior to that, he had encashed several blank cheques, which I had given to him after putting the name, date and amount. Since I did not have the money initially, these cheques were given to him as security. Apart from this, I received the amount of Rs.3 lakhs in my account from Falcon factory, which was also in the name of my husband. Out of the said amount of Rs.3 lakhs, Mr. P. K. Chauhan took Rs.1.5 lakhs by presenting and encashing cheques. The total amount of Rs.16,25,000/- has been taken by Mr. P. K. Chauhan in this manner by filling the details in all the cheques and encashing the said amounts. I had agreed to pay his fee, but however, when the cheques started getting encashed, I asked for return of the cheques. At the time of payment to the Local Commissioner also, I did not have any money. The Local Commissioner was appointed on 19th November, 2018 and a sum of Rs.37,500/- was to be paid to the Commissioner. Mr. P. K. Chauhan took the amount of Rs.50,000/- from me and then credited my account with Rs.37,500/- for paying the Local Commissioner. I can produce my bank statements in support of the statement made by me above. I have made this statement voluntarily without any force or coercion.”

5. After the recordal of the above statements, the following orders were passed on 13th February, 2019:

“I.A. 404/2019

2. In this application, the Plaintiff has averred that she withdrew the services of Mr. P. K. Chauhan, Advocate and requested him not to appear in proceedings where he was representing her and also requested him to return the blank signed cheques, which were in his custody. Plaintiff has also brought to the notice of this

Court that despite this, Mr. P. K. Chauhan applied for certified copies of the orders vide diary no.11839 /2018 and also filed an application on her behalf. Considering the nature of allegations in the application, notice was issued to Mr. P. K. Chauhan, Advocate for appearance today.

3. Mr. Sumanta De, Advocate appears for Mr. P. K. Chauhan, Advocate to whom notice was issued on the last date.

4. Ld. Counsel for the Plaintiff has pointed out that the Plaintiff has filed a complaint with the SHO P.S. Saket setting out various allegations including the fact that Mr. P. K. Chauhan had misused the blank cheques of the Plaintiff, which were lying in his custody as security. He submits that even in the past, a complaint was made by one Mr. Ashok Chaudhary to the SHO P.S. Farsh Bazar, East District, Delhi alleging various acts of forgery. It is his submission that Mr. P. K. Chauhan has not only illegally encashed various cheques of the Plaintiff, which were lying with him, but has also accepted money from the Defendants under the excuse of getting the matter settled.

5. Considering the nature of allegations, statements of the Defendant Nos. 1 and 2 as also the Plaintiff have been recorded. Statement of Mr. P.K. Chauhan has also been recorded.

6. After the statements of the Plaintiff and the Defendants were recorded by this Court, Mr. Sumanta De, Ld. Counsel submits before this Court that he, no longer, wishes to represent Mr. P. K. Chauhan. He further submits that the facts, as have been revealed in the statements of the Plaintiff and the Defendants recorded today, were not disclosed by Mr. Chauhan to him at any point of time. Mr. Sumanta De, Advocate is, accordingly, discharged.

7. Mr. P. K. Chauhan submits that he has filed a complaint under Section 138 Negotiable Instruments Act, 1881 against the Plaintiff as he had deposited

some cheques issued by the Plaintiff, qua which the Plaintiff had issued 'stop payment' instructions. Mr. P. K. Chauhan, Advocate who is present in person, submits that the complaint made by Mr. Ashok Chaudhary has also been settled in the Karkardooma Courts. Mr. Chauhan has also handed over the draft settlement dated 17th November, 2018, which was negotiated by him and was agreeable to both the parties. He further submits that he has filed a criminal complaint against the Plaintiff and her new counsel - Mr. Hemant Mehla, Advocate before the Saket police station.

8. Allegations raised by the Plaintiff and the facts, which have been revealed from the statements, are of extremely serious nature. Considering the overall facts and circumstances, before passing any further orders in this matter, it is deemed appropriate to summon the records of the complaint filed under Section 138 by Mr. P. K. Chauhan against the Plaintiff, in the Karkardooma Courts. Let the entire record of the said complaints i.e. complaint case nos.327/2019, 328/2019, 400/2019 pending in the Court of Shri Rakesh Kumar Singh, Ld. MM, Karkardooma Courts, be summoned by special messenger for the next date.

9. Copies of the three complaints, two filed in Saket Police Station and the third by Mr. Ashok Choudhary, and the draft deed of settlement dated 17th November, 2018 are taken on record.

10. SHO P.S. Saket is directed to file a status report with regard to the two complaints i.e. (1) by Ms. Deepa Bhure against Mr. P. K. Chauhan and (2) the complaint filed by Mr. P. K. Chauhan against Ms. Deepa Bhure and Mr. Hemant Mehla. SHO will depute a senior official on 15th February, 2019 with the said status report. Copy of this order be sent to SHO PS Saket.

11. Plaintiff and Mr. P. K. Chauhan to produce their respective bank statements in respect of fees paid

and received, on the next date.

12. List on 15th February, 2019.”

6. Today, the files of the complaints under Section 138 filed by Mr. P.K. Chauhan against the Plaintiff have been perused. Apart from the above complaints under Section 138, a criminal complaint was also filed by Mr. P.K. Chauhan against the Plaintiff and her newly engaged counsel - Mr. Hemant Mehla in the Saket PS. Thereafter the Plaintiff also filed a complaint against Mr. Chauhan in the Saket PS. Thus, there are 3 criminal complaints under Section 138, one complaint by the counsel against his client as also her newly engaged lawyer and finally another complaint with the police by the client against her counsel.

7. A perusal of the statements given by the Plaintiff and Mr. P.K. Chauhan, Advocate as also the complaints under Section 138 reveals that it is the case of the Plaintiff that she had engaged Mr. Chauhan as her counsel in September, 2017. He had quoted a fee of Rs.14 lakhs, initially. As she did not have the requisite funds, she had paid a sum of Rs.2 lakhs, partly in cash and partly by bank transfer. At that stage itself, Mr. Chauhan had taken several cheques from the Plaintiff. It is the Plaintiff's case that the said cheques were only signed by her and were otherwise blank. Whenever amounts were received in her bank account from the tenants to whom notices were issued, Mr. P.K. Chauhan withdrew several amounts on various occasions without informing her. It is her case that in this manner a total sum of Rs.16,25,000/- stands paid to Mr. Chauhan. She had asked him to return the blank cheques, which were not returned to her.

8. On the other hand, it was the stand of Mr. Chauhan that he had quoted a fee of Rs.41 lakhs for handling various cases for the Plaintiff. He admitted

having received a fee of Rs.11 lakhs to Rs.12 lakhs, excluding expenses. He also admitted to having received a total of 14 to 15 cheques from her. He disputed the fact that they were blank cheques and stated that the Plaintiff herself had signed the said cheques and the same were encashed after obtaining permission of the Plaintiff.

9. Since she had agreed to pay a total fee of Rs.41 lakhs and there was an outstanding fee of Rs.32 lakhs, he presented/deposited seven cheques - five cheques of Rs.5 lakhs each, one cheque for Rs.2 lakhs and one cheque for Rs.50,000/- in the bank. According to him, all the cheques were filled by the Plaintiff. He claimed that the cheques were presented on 14th December, 2018 in the bank after intimating the Plaintiff. However, since the Plaintiff issued stop payment instructions in respect of all the cheques and the cheques were dishonored, he preferred three complaints under Section 138 of the Negotiable Instruments Act, 1881 against the Plaintiff. The Trial Court had taken cognizance of the same and summoned the Plaintiff on 8th April, 2019.

10. A perusal of the three complaints filed under Section 138 shows that the files contain the original cheques with the following details:

Cheque No.	Date of return memo of cheque	Amount	Particulars	All Drawn On
186844 dated 4.12.18	20 th December, 2018	Rs.5,00,000/-	Payment stopped by Drawer	Yes Bank Ltd., Chattarpur, New Delhi.
186848 dated 28.11.18	20 th December, 2018	Rs.5,00,000/-	Payment stopped by Drawer	
186843	19 th	Rs.5,00,000/-	Payment	

dated 30.11.18	December, 2018		stopped by Drawer	
186842 dated 30.11.18	19 th December, 2018	Rs.5,00,000/-	Payment stopped by Drawer	
772969 dated 15.10.18	15 th December, 2018	Rs.50,000/-	Drawer's signature Differs	
186845 dated 19.11.18	20 th December, 2018	Rs.5,00,000/-	Payment stopped by Drawer	
186847 dated 4.12.18	15 th December, 2018	Rs.2,00,000/-	Payment stopped by Drawer	

11. The above cheques clearly show that though they bear different dates of October, November and December of 2018, all of them were presented and dishonored after 14th December, 2018, by which time the Plaintiff had withdrawn the services of her counsel Mr. P.K. Chauhan. Today, Mr. C.S. Rathore and Mr. Athar Alam appear for Mr. P.K. Chauhan and submit that their client is willing to tender an unconditional apology to the Court and is also willing to withdraw all the complaints filed by him against the Plaintiff.

12. Accordingly, statement of Mr. P. K. Chauhan was recorded today. The same reads as under:

“Statement of Mr. P. K. Chauhan (Advocate) Enrl. No.D/617/2003, S/o Shri Kailash Singh Chauhan, R/o 17E/716, Konark Enclave, Vasundhara, Ghaziabad and also at Chamber No.555, Saket Court, New Delhi. (M:9811106422)

On S.A.

I have heard the statement of Ms. Deepa Bhure. I firstly tender an unconditional apology to the Court.

Further to my statement dated 13th February 2019, I undertake to withdraw the criminal complaint filed by me against Ms. Deepa Bhure. I further undertake to withdraw the complaints in CC Nos. 400/19, 327/19 and 328/19 filed under section 138 of the Negotiable Instruments Act, pending in the Court of Chief Metropolitan Magistrate, Karkardooma Courts, filed by me against Ms. Bhure. I further agree and undertake that I shall not claim any other outstanding fee or make further monetary demands from the Plaintiff in respect of the services rendered by me to her.

I further state that in lieu of Rs.2.5 lacs received by me from the Defendants, I had returned five cheques of Rs.50,000/- each to Ms. Deepa Bhure. I had accepted the said amount from the Defendants with the permission of the Plaintiff. I undertake not to cause any harassment to the Plaintiff in any manner. I tender unconditional apology to the Court.”

13. The Plaintiff has also made the following statement:

“Statement of Plaintiff – Ms. Deepa Bhure W/o Late Shri Jagveer Singh, aged 34 years R/o D-1, Ambika Apartments, Gali No.4, Western Marg, Saidullajab Extension, Delhi-30. (M:9205815785)

On SA

I have seen all the seven original cheques shown to me, the details of whereof are as under:-

<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>	<i>All Drawn On</i>
186844	04.12.2018	Rs.5,00,000/-	Yes Bank Ltd., Chattarpur, New Delhi.
186848	28.11.2018	Rs.5,00,000/-	
186843	30.11.2018	Rs.5,00,000/-	
186842	30.11.2018	Rs.5,00,000/-	
772969	15.10.2018	Rs.50,000/-	
186845	19.11.2018	Rs.5,00,000/-	
186847	04.12.2018	Rs.2,00,000/-	

All the above cheques are signed by me. However, the name of the payee and the amount, both in words and numbers, are not in my handwriting. I had issued all these cheques in August, 2017 to Mr. P. K. Chauhan. The cheques, which have been shown to me, were all signed blank cheques. The said cheques were given by me along with more cheques as security for the professional fees of Mr. P. K. Chauhan. They were not filled when I gave them. Only some cheques were filled by me, which have been already encashed by him. The above cheques were not filled by me. If Mr. Chauhan withdraws the complaints he has made against me both to the police authorities as also the complaints filed under Section 138 of Negotiable Instruments Act, I undertake to withdraw the all complaints filed by me against Mr. P. K. Chauhan.”

14. Today, SI Jitender Malik has appeared with his counsel from the Saket PS and has produced the files. It is submitted on his behalf that the complaints filed by both sides, i.e. complaint dated 15th December, 2018 filed by the Plaintiff and complaint dated 29th December, 2018 filed by Mr. P.K. Chauhan, are under investigation and that Mr. Chauhan has been asked to submit some documents.

15. All the above facts reveal a completely sorry state of affairs inasmuch as a counsel has filed criminal complaints against his own client, leading to the client approaching the Court with various allegations against the counsel.

16. One fact is clear from the statements made by both the counsel and the client, i.e. that several cheques were accepted by the counsel as security for his professional fee. Apart from taking the cheques, he has also clearly presented the same in the bank after his services were withdrawn by the Plaintiff. The facts in the present case are demonstrative of the misconduct that could be indulged in by lawyers against litigants, including in the

manner of collection of fees, practices adopted to recover fees etc., While it may be true that litigants may not pay the agreed fees to lawyers, the same cannot justify conduct of taking blank cheques as security for fees and encashing the same without the permission of the client. Such practice clearly constitutes professional misconduct to say the least. The filing of criminal complaints against a client due to alleged non-recovery of fees, is the final straw. Mr. P. K. Chauhan has tendered an unconditional apology to the Court and has undertaken to withdraw all the complaints filed by him including complaints filed under the Negotiable Instruments Act, 1881. In view of the apology tendered and the undertaking to withdraw the criminal complaints, this Court is not inclined to take any action against the counsel.

17. The standards of professional conduct and etiquette which are prescribed in the Bar Council of India Rules do not lay down any guidelines for charging of fee by lawyers. The Rules which perfunctorily deal with fee charged by advocates are the Bar Council of India Rules. Part VI provide for 'Rules Governing Advocates'. Chapter II therein titled 'Standards of Professional Conduct and Etiquette' prescribe in Section II 'Duty to Client' the. Rules 11 and 20 of the said Section II read as under:

"11. An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

20. An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof."

18. There is a severe gap/lacuna in the Rules which could lead to harassment and frustration to litigants, as has happened in the present case. In order to ensure that there is some regulation of the manner of charging professional fee by advocates and also for providing a Forum to air grievances of the litigants, there is an urgent need to frame some guidelines/rules. It is accordingly directed as under:

(A) Bar Council of India is directed to consider framing Guidelines prescribing the manner of charging professional fees by lawyers. The said Guidelines may broadly address the following issues:

- Manner of determining the fee consistent with the standing in the Bar, as prescribed in Rule 11;
- Manner of determining the fee consistent with the nature of the case, as prescribed in Rule 11;
- Reasonable fee that can be charged by lawyers, especially from individual litigants and whether some broad parameters should be prescribed;
- Reduction of the fee agreement in writing in some form;
- Charging of professional fees in kind and whether the same is permissible;
- Issuance of receipts upon accepting the professional fees and whether the same ought to be mandatory;
- Insistence of payment of fees in cash beyond the prescribed limits in law;
- Demanding and accepting security in any form, for professional fee and whether the same is permissible;

- Permitted modes of recovery of outstanding fees from litigants;

(B) Bar Council of India is directed to consider creation of a resolution mechanism including appointment of an external Ombudsman to deal with any complaints from litigants in respect of professional fees charged or practices adopted. Timelines for resolution of such complaints may also be prescribed.

19. The original complaint case files are sent back to the Metropolitan Magistrate for closing the same, as the same have been withdrawn today by the Complainant Mr. P. K. Chauhan. The original records of these complaints shall, however, be retained by the District & Sessions Judge, East, Karkardooma Courts Complex in a sealed cover. The files of the said complaints be transmitted to the District & Sessions Judge, East, Karkardooma Courts Complex, for appropriate action including for listing the same before the appropriate court for closure of the complaints.

20. Mr. Jitender Malik, S.I. PS Saket, is present with the status report. All the three complaints filed by the Plaintiff and Mr. P.K. Chauhan have been withdrawn. The said files shall be closed.

21. The disputes in the suit have been settled. The settlement agreement dated 31st January, 2019 is on record. The statements of the parties have already been recorded. The parties shall be bound in the terms of the settlement recorded in the agreement. The settlement terms which are contained in paragraphs A to R shall form part of the decree.

22. Defendant No. 1 has brought today a sum of Rs. 8,00,000/- by way of cheque no. 101892, dated 28th February, 2019 drawn at Bank of India, Sangam Vihar, New Delhi. The original cheques have been handed over to the plaintiff, Ms. Deepa Bhure. The remaining payment shall be made by the

Defendants to the Plaintiff strictly in terms of the settlement agreement. The suit is disposed of in the above terms.

23. Bar Council of India to report on the action taken in terms of this order within a period of six months from the receipt of the order. Copies of today's order, orders dated 15th January, 2019, 13th February, 2019 and 15th February, 2019 along with the statements recorded therein be sent to the Chairman, Bar Council of India.

24. List on 23rd September, 2019.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 15, 2019

MR/Rahul

(Corrected and released on 22nd February, 2019)