

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 2057 of 2020

DATE OF DECISION: 04.03.2021

Amrit Lal since deceased through LRs.

...Petitioner

Versus

Harjinder Pal Singla

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. H. P. S. Ghuman, Advocate,
for the petitioner.

‘ Mr. Ashish Gupta, Advocate,
for the respondent.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

The instant revision petition has been filed through the legal heirs of Amrit Lal (since deceased), for setting aside the order dated 07.03.2020 (Annexure P-1) passed by learned Civil Judge (Junior Division), Nabha, whereby application filed by the petitioner/ defendant for discarding examination-in-chief of PW-1 Sarwinder Singh Grewal, Advocate in Civil Suit No. 490 of 2016, has been dismissed.

2. Brief facts of the case are that plaintiff/respondent filed a suit under Section 6 of the Specific Relief Act, 1963, seeking possession of the shop in question from the petitioner/defendants. At the time of adducing evidence, plaintiff/respondent tendered affidavit of Sarwinder Singh Grewal, Advocate as PW-1. The said advocate had earlier filed a suit for permanent injunction titled as “Gurbachan Kaur v. Kanta Devi”. Gurbachan Kaur was the mother of

defendant Amrit Lal(since deceased) and after the death of Gurbachan Kaur, Amrit Lal and other legal heirs were impleaded in the suit duly represented by Sh. Sarwinder Singh Grewal, Advocate. That suit was later on compromised and consequently withdrawn on 19.08.2010. Since Sarwinder Singh Grewal had represented the petitioner/defendants in that suit, as such he cannot appear as witness and depose his testimony against the petitioner/defendants. The petitioner accordingly filed an application before the learned trial Court for discarding the testimony of PW-1 Sarwinder Singh Grewal which was dismissed vide order dated 07.03.2020. Hence, the instant revision petition.

3. Learned counsel for the petitioner submits that since PW-1 Sarwinder Singh Grewal had remained counsel for the petitioner/defendants, he cannot appear as a witness against them and the same is contrary to Section 126 of the Indian Evidence Act. He further submits that his examination-in-chief tendered vide affidavit Annexure P-3 is liable to be discarded.

4. On the other hand, learned counsel for the respondent denies that any compromise in the said civil suit had ever taken place.

5. I have heard learned counsels of the parties and have gone through the case file carefully.

6. Learned counsel for the petitioner places heavy reliance on Section 126 of the Indian Evidence Act, 1872 to argue that the plaintiff/respondent could not have summoned the erstwhile lawyer of the predecessor-in-interest of the defendant to depose against him. He submits that exchange of information between the erstwhile lawyer and the client(defendant) is privileged and, therefore, the immunity envisaged under Section 126 *ibid* debars the erstwhile lawyer of the petitioner to appear as a witness against him. For ready reference Section 126 of the Indian Evidence Act, 1872 reads as under:-

"126. Professional communications:- No barrister, attorney, pleader or vakil shall at any time be permitted, unless with

his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any [illegal] purpose,

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister,[pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation:- The obligation stated in this section continues after the employment has ceased."

7. A perusal of Section 126 *ibid* indeed prohibits a lawyer from divulging any communication and/or professional information disclosed to him by his clients in the course of discharge of his professional duties, except of course where the client consents for disclosure of the information. The aforesaid position of law is albeit subject to the proviso to Section 126 *ibid* which provides that any communication made in furtherance of any purpose, not permitted in law, is not protected from disclosure. Likewise, any facts witnessed and/or observed by an advocate that any fraud has been committed is also not protected. The explanation to Section 126 *ibid* provides the immunity envisaged for the privileged information in perpetuity i.e. even after the professional relationship between the client and attorney has ceased to exist. What emerges, therefore, is that the immunity envisaged under Section 126 *ibid* is not an absolute bar on lawyer of the adversarial party for being summoned in all circumstances. Certain exemptions have been provided. Reliance in this aspect may be had to a

Division Bench judgement of the Kerala High Court rendered in ***Reshma Majeed Vs. Shameer Babu***¹ . For ready reference, relevant paras of the same are extracted herein below: -

“9. None of the decisions cited at the bar and reported in An Attorney-In re.[AIR 1925 Bombay High Court (Full Bench)], In Re. Chathukutty, [1959 KLJ 436], M/s. Marikar (Motors) Ltd., Trivandrum v. M.I.Rayikumar and Others [(AIR) 1989 KERALA 244], Sankaran V. Dr.Ambulakshan Nair (1989 (2) KLT 570), N.Yovas and another V. Immanueal Jose and others (AIR 1996, Kerala (1)) lays down that a lawyer of an opposite party cannot be summoned under any circumstances. All these decisions only said that, the professional communications made to the lawyers by their clients should not be divulged to anyone except with the consent of the party who engaged him.

10. It appears from the materials on record that, the examination of petitioner's lawyer as a witness in the present proceeding is meant for eliciting certain essential facts in disproof of allegations of fraud. The essential facts include the answers of the lawyer as to whether the client signed in her presence and she had explained to her the terms and conditions of the agreement before it was signed. The witness, in our opinion, cannot withhold such essential answers claiming privilege under Section 126 of the Act. Such information are very valuable for the decision of the matter in dispute before the Family court and can never be taken as offending the bar against disclosure of the professional communications saved by law. They do not have any bearing or relevance to the matters connected with the engagement of a lawyer for conduct of the litigation.”

8. Respectfully agreeing with the aforesaid proposition enunciated by Kerala High Court, I am of the view that in the present case no interference is called for. What is being sought here from the erstwhile lawyer is merely the factual information with regard to an alleged compromise between the parties and/or whether the said learned lawyer ever witnessed any such compromise and/or whether his client entered into compromise in his presence or signed the same etc. None of this factual information can be termed as privileged information having any trappings of the immunity envisaged under Section 126

¹ 2019 AIR (Kerala) 89

ibid. The order passed by the learned Trial Court is well reasoned and does not call for any interference by this Court in exercise of revisional jurisdiction.

9. In the parting, however, it is made clear that the learned trial Court will ensure at the time of proposed testimony of the erstwhile lawyer that any information sought from him is not in contravention of Section 126 *ibid* so as to protect the interest of his former client.

10. Disposed of.

MARCH 04, 2021
Shalini/*vivek*

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**