

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 WRIT PETITION NO.326 OF 2021

BHARATKUMAR CHANDRAHANS SATAV

VERSUS

VANITA SOMESH SHINDE AND OTHERS

...

Advocate for Petitioners : Mr Mukul S.Kulkarni
AGP for Respondent No.3/State Mr S.N. Morampalle
Advocate for Respondent No. 1 : Ms Vanita Shinde holding for
h/f Ms Nima Suryawanshi
Advocate for Respondent No. 2 : Mr P.V Salve h/f Mr D.A. Madake

CORAM : SANDEEP V. MARNE, J.
DATE : 20TH DECEMBER, 2022

PER COURT :

1. Heard.
2. By this petition, petitioner, who is then practicing advocate has challenged order dated 06.06.2019 passed by the District Judge-1, Kopergaon not permitting him to appear as an advocate on behalf of the respondent in appeal and terminating his vakalatnama. The direction is issued relying on the Rule 7 of the Bar Council of India Rules which reads thus -

8. In the result, on this short ground, we allow the petition and strike down the whole of the said Rule 7 as being violative of Article 14 of the Constitution. The Rule is made absolute accordingly with costs.

9. In view of the above order in the main petition, there will be no orders in Civil application No. 2623 of 1978.

3. Petitioner had joined judicial service on the post of District Judge and the Additional Sessions Judge in the year 1992 but has resigned in the same year and has been practicing since the year 1992 till passing of the impugned order dated 06.06.2019. It is submitted that though petitioner is not insistent on appearing in Misc. Civil Appeal No. 16/2017, petitioner apprehends that the order will come in the way of he practicing in all the District Courts or Courts subordinate thereto.

4. Reliance is placed on the decision of the Single Judge of the Gujrat High Court in ***Praful Ambalal Patel Vs. Badansingh Ramsingh Rajput, R/Special Civil Application No. 10113/2019 decided on 07.02.2020*** in which Rule 7 has been held to have been prospectively. It is held in paragraph in 21 as under :-

21. Ordinarily, substantive laws would have prospective effect whereas procedural laws would apply retrospectively (meaning thereby that it shall come into effect from the past date so that the question of retrospective operation would arise in substantive law only), unless otherwise intended by the legislature. Retrospective operation also is not to be given to the statute unless an intention to that effect is unambiguously made out. Here, this court is dealing with the rules where it has not expressly specified in this regard. Again, the amended rule has a direct bearing on right to profess and the same cannot be termed as procedural. Being substantive, unless specified, it cannot C/SCA/10113/2019 ORDER apply retrospectively. The amended rule does not provide for any retrospective effect.

5. In the present case, petitioner has been practicing as an advocate since the year 1992. The amendment to the Rule introduced in the year 2008 cannot have the effect of withdrawal of right of practice on advocate already on rolls to practice before District Court and subordinate

Courts. The amendment is held to be prospective in nature.

6. Therefore, the order dated 06.06.2019 passed by the District Judge -1, Kopargaon is set aside.

7. The writ petition is accordingly allowed.

[SANDEEP V. MARNE, J.]

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