



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Order reserved on : 01 May 2024**
Order pronounced on: 02 July 2024

+ C.R.P. 53/2024

ATMASTCO LTD Petitioner
Through: Mr. Vishal Bakshi, Mr. Sushant
Singh and Mr. P.K. Shukla,
Advs.
versus

MANDEEP KALRA Respondent
Through: Ms. Chitrangada Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

1. The petitioner-revisionist, who is the defendant in a suit instituted by the respondent/plaintiff, has preferred the present civil revision petition under Section 115 of the Code of Civil Procedure Code, 1908 assailing the Impugned Order dated 05.08.2023 passed by the Learned Additional District Judge, Patiala House Courts, Delhi¹ dismissing its application under Order VII Rule 11 CPC filed in CS No. 92/2022 titled as “*Mandeep Kalra v. Atmastco Ltd. & Ors.*” on the ground that the “services” rendered by an advocate cannot fall under Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015².

FACTUAL BACKGROUND:

2. Briefly stated, the respondent/plaintiff Mr. Mandeep Kalra has instituted a suit against the petitioner/defendant company seeking

¹ Trial Court

² CC Act



recovery of outstanding Legal and Professional Fees on account of legal representation and services offered to the petitioner/defendant to the tune of Rs. 18,56,511/- along with *pendente lite* interest @2% per month from the date on which the right to receive the payment accrued until realisation.

3. Upon perusal of the plaint, the following facts and circumstances have come up for consideration before this Court:

- a) In 2017, the petitioner/defendant retained the professional services of the Respondent/plaintiff as legal counsel and representative of the petitioner/defendant company before the Supreme Court of India.
- b) Subsequently, the Respondent/plaintiff started duly representing the petitioner/defendant in legal proceedings pending against the petitioner/defendant company and accordingly issued proforma invoices upon the petitioner/defendant for services rendered, however the petitioner/defendant defaulted in paying the respondent/plaintiff despite multiple reminders and assurances.
- c) Thereafter, the petitioner/defendant unilaterally terminated the retainership agreement between the parties and claimed that it stood terminated in December 2019, as opposed to the version of the respondent/plaintiff who alleges that it did not stand terminated until 29.05.2020.
- d) Due to the refusal of the petitioner/defendant to pay the outstanding retainership fee to the respondent/plaintiff, the respondent/plaintiff was constrained to file the above referenced civil suit bearing CS No. 92/2022 seeking recovery of outstanding Legal and Professional Fees on account of legal representation and services offered to the petitioner/defendant.

4. On being served with summons for settlement of issues, the petitioner/defendant company has raised a preliminary objection as to the maintainability of the suit on the ground that the dispute raised by the respondent/plaintiff is a 'commercial dispute' governed to be adjudicated under the Commercial Courts Act, 2015 in as much as the relationship between the defendant company and petitioner constituted



an '*agreement for provision of services*' falling within the scope of Section 2(1)(c)(xviii) of the CC Act.

5. Accordingly, the petitioner/defendant company filed an application under Order VII Rule 11 of the CPC before the learned trial court for dismissal of the civil suit on the ground that the trial court, being a regular civil court, is barred by the CC Act from exercising jurisdiction over the said dispute alleged to be commercial in nature, and secondly on the ground of non-adherence to the mandatory provision of pre-institution mediation under Section 12A of the CC Act.

IMPUGNED ORDER DATED 05.08.2023:

6. Based on the pleadings and oral arguments advanced by the rival parties, the learned Trial Court dismissed the application under Order VII Rule 11 CPC filed by the petitioner/defendant company.

7. Relying upon the decisions rendered in **Chairman MP Electricity Board v. Shiv Narayan³**, **V. Shashidharan v. Peter⁴**, **Lalit Bhasin v. The Appellate Authority⁵**, **BN Magon v. South Delhi Municipal Corporation⁶**, **Arup Sarkar Vs. CESC Ltd. & Ors.⁷**, the learned trial court observed that services rendered by a lawyer to his/her client cannot be termed to be a commercial activity falling within the ambit of Section 2 (1)(c)(xviii) of the CC Act.

8. It is pertinent to note that while rejecting the contentions of the petitioner/defendant, the learned trial court held as under:

³ (2005) 7 SCC 283

⁴ MANU/ SC/0022/1984

⁵ MANU/DE/0796/2010

⁶ MANU/DE/0176/2015



“4.9 Though Ld counsel for the defendant relied upon The State of Orissa Vs. Sudhanshu Shekhar Misra AIR 1968 SC 647 and Davinder Singh Vs. State of Punjab MANU/SC/0697/2010 to contend that a judgment should be treated as an authority only for what it actually decides, however, the authorities as discussed above unambiguously and unequivocally clinches the issue and puts to rest the controversy as regards the nature of activity carried out by a lawyer. **The work of an advocate cannot be said to be of a commercial character. While undoubtedly the judgments, as discussed above, are not on the Commercial Courts Act, 2015 but that by itself is no reason to conclude that these authorities do not apply to the interpretation of Section 2 (c) (xviii). The term ‘services’ has to be read in the context of the other sub clauses which pertain to commercial activities. An interpretation cannot be given which would bring a dispute relating to an activity of a non-commercial character within the ambit of the term commercial dispute.**

4.10 Though Ld. counsel for the defendant, while relying upon notification dated 28.06.2017 issued by the Ministry of Finance, Government of India, argued that the fact GST is being paid on services provided by advocates brings the services rendered by an advocate within the ambit of commercial activity, however, I find no merits in his arguments.

4.11 The notification relied upon by the Ld. Counsel shows that GST is payable by recipients of the service under a reverse charge mechanism, in cases where services have been provided by advocates. **Advocates, as service providers, do not pay GST except where certain specified conditions are met. In any event, what is relevant is the nature of the service and whether a dispute in connection with the service can be said to be a commercial dispute. In view of the nature of the legal profession, a dispute in respect of unpaid legal fees of an advocate cannot be said to be a commercial dispute.** Reliance may also be placed upon the law laid down in B.V. Suhhaiah Vs. Andhra Bank and ors MANU/TL/0166/2022, Andhra Bank (Now Union Bank of India Vs. B.V. Subbaiah and ors MANU/SCOR/67631/2022 and Arvinder Singh and ors Vs. Lal Pathlabs Pvt. Ltd and ors MANU/DE/0936/2015.”

[EMPHASIS SUPLIED]

⁷ MANU/WB/0208/2020



SUBMISSIONS ON BEHALF OF THE PARTIES

9. The impugned order has been assailed by the petitioner/defendant firstly on the ground that the learned Trial Court did not appreciate that the respondent/plaintiff has filed a “*Recovery Suit for Money Decree for breach of contract, i.e., Retainership Agreement*” which makes it patently clear that the dispute between the parties arises out of an “*agreement (Retainership Agreement) for provision of services (Legal Services)*” falling under Section 2(1)(c)(xviii) of the CC Act i.e. “*agreements for sale of goods or provision of services*”.

10. Interestingly, another contention raised by the petitioner/defendant is that just like the State or its agencies do not carry out any “commercial activities” as such, but a dispute arising out of such non-commercial activities still falls under the scope of the CC Act by virtue of the Explanation clause of Section 2(1)(c) of the CC Act, in a similar fashion, the dispute arising out of the services involved in the present petition should also be deemed to be “commercial” in nature even though it arose in the course of a non-commercial activity. To further substantiate its argument, the petitioner relied upon the decision of this Court in *Mohit Saraf vs Rajiv K Luthra*⁸ to demonstrate that even though lawyers do not carry out commercial activity but when two lawyers enter into partnership agreement and a dispute arises out of such a partnership agreement, then such dispute has been held to be a “commercial dispute” within

⁸ O.M.P. (I) (COMM) 339/2020



the CC Act by this Court, even though it does not arise out of commercial activity.

11. Thirdly, it is contended by the petitioner/defendant that the Id. Trial court erred in relying upon the judgments cited by the respondent/plaintiff, in ignorance of the law laid down by the apex Court in *Secundrabad Club and Ors. Vs. C.I.T.-V and Ors*⁹ qua importance of contextual interpretation of judgments rendered by the higher courts.

12. Lastly, it is submitted by the petitioner/defendant that the term “services” used in Section 2(1)(c)(xviii) of the CC Act should be given an unrestricted interpretation since the doctrine of *ejusdem generis* is inapplicable in the present case in view of the fact that there is no distinct genus discernible from the language of Section 2 (1)(c) of the CC Act.

13. *Per contra*, learned counsel for the respondent/plaintiff has challenged all the pleas espoused by the petitioner/defendant by submitting that the petitioner/defendant is posited upon the misconceived and erroneous understanding that the above referenced suit is a suit for recovery arising out of a “commercial dispute”. It is also pointed out that the scope of revisional powers of this Court is very narrow and the present case requires no exercise of such powers since no jurisdictional error is manifest in the impugned order.

ANALYSIS & DECISION

14. I have bestowed my anxious consideration to the vociferous submissions advanced by the learned counsels for the rival parties at



the Bar and I have also gone through the relevant material on the record of the case including the case law cited.

15. Upon perusal of the provision relied upon by the learned counsel appearing for the petitioner/defendant, it is noticed that a dispute arising out of an agreement for **sale of goods or provision of services** will qualify to be a “commercial dispute” that is exclusively triable by the Commercial Courts. In the instant case, though the parties did not reduce the terms of the engagement or retainerhip into writing but evidently there were broad verbal acknowledgements, therefore, the question would be whether such agreement could be termed as one *relating to provision of services* falling within the clause referred to above so as to confer jurisdiction upon the Commercial Court to adjudicate the said suit.

16. At the outset, the plea advanced by the learned counsel for the petitioner/revisionist that a suit for recovery of legal fees for the ‘services rendered by advocates/lawyers’ would be a ‘commercial dispute’ within the meaning of Section 2 (1) (c) (xviii) of the CC Act deserves to be out-rightly rejected. First things first, a careful perusal of the pleadings would *prima facie* show that the professional services of the respondent/plaintiff have been engaged by the petitioner/defendant over a period of time for giving legal representation and voice to the petitioner/defendant in hearings before the Supreme Court as also other judicial as well as quasi-judicial forums. At the cost of repetition, though there has been no formal ‘retainerhip agreement’ executed between the parties, if the

⁹ MANU/SC/0894/2023



avermments of the respondent/plaintiff are believed at this stage of the matter, the terms of engagement as also the scales of professional/legal fees to be charged had been orally approved and acknowledged by the petitioner-defendant. The dispute arising out of the nature of services that were envisaged to be rendered by the respondent/plaintiff could never be termed as a ‘commercial dispute or a ‘dispute between a master and servant’ or in the nature of a “contract of service” as understood in the legal jurisprudence.

17. There is no gainsaying that the primary aim and object of the Commercial Courts Act, as can be deciphered from its Statement of Objects and Reasons, is to provide speedy disposal of high value commercial disputes in order to reduce the pendency of cases. The relevant portion of the Statement of Objects and Reasons reads as under:

“The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and questions of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.”

18. There is also no gainsaying that Section 2(1)(c) of the CC Act enumerates different kinds of commercial contracts and transactions which have to be construed in a plain grammatical manner in order to ascertain whether the same are commercial disputes. The crux of the matter is that the expression “provision of services” in Section 2(1)(c)(xviii) of the CC Act is used disjunctively from the expression



“sale of goods” but the overall theme and its purport is that it would mean to be a ‘provision of services’ when used in the realm of commerce.

19. At this juncture, it would be apposite to refer to a recent decision in the matter of **Bar of Indian Lawyers through its President v. D.K. Gandhi PS National Institute of Communicable Diseases**¹⁰, wherein the Supreme Court considered the issue as to whether the “professional services” rendered by Advocates could fall within the meaning of term ‘service’ contained in Section 2(1)(o) of the Consumer Protection Act, 1986 and in Section 2(42) of the same Act, and it was held as under:

“15. There was not a whisper in the statement of objects and reasons either of the CP Act, 1986 or 2019 to include the Professions or the Services provided by the Professionals like Advocates, Doctors etc. within the purview of the Act. It is very well accepted proposition of the fact that Professionals could not be called Businessmen or Traders, nor Clients or Patients be called Consumers. It is also required to be borne in mind that the terms ‘business’ or ‘trade’ having a commercial aspect involved, could not be used interchangeably with the term ‘Profession’ which normally would involve some branch of learning or science. Profession as such would require knowledge of an advanced type in a given field of learning or science, or learning gained by a prolonged course of specialized study. As per Black’s Law Dictionary, 11th Edition, “Profession” means “a vocation requiring advanced education and training; especially one of the three traditional Professions- Law, Medicine and the Ministry.” “Professional” means “someone who belongs to a learned profession or whose occupation requires a high level of training and proficiency.”

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18. In view of the above, a “Profession” would require advanced education and training in some branch of learning or science. The nature of work is also skilled and specialised one, substantial part of which would be mental rather than manual. Therefore, having

¹⁰ Civil Appeal No. 2646 of 2009 decided on May 14, 2024



regard to the nature of work of a professional, which requires high level of education, training and proficiency and which involves skilled and specialized kind of mental work, operating in the specialized spheres, where achieving success would depend upon many other factors beyond a man's control, a Professional cannot be treated equally or at par with a Businessman or a Trader or a Service provider of products or goods as contemplated in the CP Act. Similarly, the services rendered by a Businessman or a Trader to the consumers with regard to his goods or products cannot be equated with the Services provided by a Professional to his clients with regard to his specialized branch of profession. The legislative draftsmen are presumed to know the law and there is no good reason to assume that the legislature intended to include the Professions or the Professionals or the services provided by the professionals within the ambit of the CP Act. Any interpretation of the Preamble or the scheme of the Act for construing 'Profession' as 'Business' or 'Trade'; or 'Professional' as 'service provider' would be extending the scope of the Act which was not intended, rather would have a counter productive effect. We are therefore of the considered opinion that the very purpose and object of the CP Act 1986 as re-enacted in 2019 was to provide protection to the consumers from the unfair trade practices and unethical business practices only. There is nothing on record to suggest that the Legislature ever intended to include the Professions or the Professionals within the purview of the Act.

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25. This takes us to the next question. Even if, it is held that the CP Act applies to the "Professions" and the "Professionals," the next question that falls for our consideration is whether the Legal Profession is *sui generis* or is different from the other Profession, particularly from the Medical Profession because the NCDRC in the impugned order has relied upon the decision in case of **Indian Medical Association vs. V.P. Shantha** (supra) for bringing the Advocates within the purview of the CP Act.

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31. The next question that falls for our consideration is whether a service hired or availed of an Advocate could be said to be the service under a "contract of personal service?"

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38. The question as to whether a given relationship should be classified as a contract 'for services' as opposed to a contract 'of service' [i.e. contract 'of personal service'] is a vexed question of



law and is incapable of being answered with exactitude without reference to the underlying facts in any given case. This Court *in Dharangadhra Chemical Works Ltd. vs. State of Saurashtra and Others*¹⁰, recognized this position of law and held that “the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer”. In the words of Fletcher Moulton, L.J. at P.549 in *Simmons v. Heath Laundry Company* [(1924) 1 KB 762] which were cited with approval in *Dharangadhra Chemical Works Ltd.* (supra):

“In my opinion it is impossible to lay down any rule of law distinguishing the one from the other. It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service.”

(Underlined portion emphasized)

20. It was thus held that the services rendered by professionals such as lawyers do not fall within the scope and ambit of the Consumer Protection Act, 1986.

21. In view of the foregoing discussion, reverting back to the instant matter, the dispute between a lawyer and his client where the former is seeking recovery of professional fees, cannot be held to be a ‘commercial dispute’. Lawyers are not ‘tradesmen’ or ‘businessmen’ as held in the case of *Bar of Indian Lawyers through its President* (supra). Lawyers and advocates are supposed to be professional legal experts and major stakeholders in the “adversarial justice delivery system” who render legal advice & services to their clients but have



larger duties as officers of the Court whenever they are engaged for providing legal representation to their clients in the Courts of law.

22. The agreement between an advocate and his/her client envisaging provisions of legal advice and services cannot be in the nature of a 'commercial dispute' since such agreement cannot even be specifically enforced. The Legal Profession is *sui generis* i.e. unique in nature and cannot be compared with any other profession. It would be relevant to refer to the observations of the Supreme Court in the matter of ***Bar of Indian Lawyer through its President (supra)***, with regard to the nature of duties performed by the advocates, which go as under:

“21. When we examine the relationship between an Advocate and his Client from this point of view, the following unique attributes become clear:

- 1) Advocates are generally perceived to be their client's agents and owe fiduciary duties to their clients.
- 2) Advocates are fastened with all the traditional duties that agents owe to their principals. For example, Advocates have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation.
- 3) Advocates are not entitled to make concessions or give any undertaking to the Court without express instructions from the Client.
- 4) It is the solemn duty of an Advocate not to transgress the authority conferred on him by his Client.
- 5) An Advocate is bound to seek appropriate instructions from the Client or his authorized agent before taking any action or making any statement or concession which may, directly or remotely, affect the legal rights of the Client.



6) The Advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore, his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

22. Thus, a considerable amount of direct control is exercised by the Client over the manner in which an Advocate renders his services during the course of his employment. All of these attributes strengthen our opinion that the services hired or availed of an Advocate would be that of a contract 'of personal service' and would therefore stand excluded from the definition of "service" contained in the section 2(42) of the CP Act, 2019. As a necessary corollary, a complaint alleging "deficiency in service" against Advocates practising Legal Profession would not be maintainable under the CP Act, 2019."

23. All said and done, evidently the CC Act has been enacted for the purpose of providing an efficacious remedy for speedy disposal of high valued commercial disputes, and its provisions should be strictly construed. In an earlier judgment passed by this Court in **M/s. Ekanek Networks Private Limited v. Aditya Mertia**¹¹, wherein a contract of service between an employer and employee came up for consideration so as to decide whether such agreement of personal service would be a 'commercial dispute' within the scope and ambit of section 2(1)(c)(xviii) of the CC Act, a note of caution was addressed by this Court to the effect that if the provisions of the CC Act are given a liberal interpretation, the object behind the constitution of the Commercial Division of Courts to fast-track the resolution of

¹¹ CRP 31/2024 decided on 28.05.2024



commercial disputes would be defeated. Thus, every other suit, which may or may not be filed before a Commercial Court, need not be levelled as a ‘commercial dispute’ and recourse has to be found in accordance with the purport and object of the statute besides the substratum of the matter.

24. In view of the foregoing discussion, unhesitatingly, this Court finds that the instant revision petition is bereft of any merits. The impugned order passed by the learned Trial Court does not suffer from any patent illegality or perversity. The present revision petition is accordingly dismissed.

25. Nothing contained herein shall be tantamount to an expression of opinion on the merits of the case.

DHARMESH SHARMA, J.

JULY 02, 2024

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