

C.S. VENKATASUBRAMANIAN

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v.

STATE BANK OF INDIA

NOVEMBER 21, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

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*Code of Civil Procedure, 1908 :*

*Or. 3. R. 4(2)—Change of advocate—Application for—Advocate working against interests of client—Client asking for "No objection Certificate" to engage another counsel—Advocate insisting on payment of fee and refusing to give consent—Application for change of advocate with leave of Court—Held, courts below were right in holding that advocate was not entitled to fee as a matter of right—Counsel cannot insist on fees as a condition to give consent—Conduct of Counsel led to loss of confidence in him by client—Client entitled to change the counsel—Appellant advocate is directed to give unconditional consent to change the counsel—Respondent client would pay over to the appellant one fourth of the scheduled fees under Tamil Nadu Legal Practitioners' Fees Rules 1973; Practice and Procedure; Civil Rules of Practice and Circular Orders (Vol. I) (as applicable in Tamil Nadu)—R. 20-A; Tamil Nadu Legal Practitioners' Fees Rule, 1973.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15418 of 1996.

From the Judgment and Order dated 29.3.96 of the Madras High Court in C.R.P. No. 711 of 1996.

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F.S. Nariman, Ashok Sagar and Ms. Punita Singh for the Appellant.

R. Mohan and V.G. Pragasam for the Respondent.

The following Order of the Court was delivered :

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Leave granted.

We have heard learned counsel on both sides.

The appellant is an Advocate, appearing for the State Bank of India as its counsel, he filed the suit, viz., O.S. No. 8/1985 on the file of Sub-

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A Court, Coimbatore to recover a sum of Rs. 2.42 crores and odd against RMT Drill (P) Ltd. and its partners. It is not in dispute that the appellant had issued a Public notice in which he had claimed that C.V. Ramaswami son of Venkatasubba Naidu and others had lost the title deeds and that they intended to alienate the land described in the original sale deed No. 669 dated February 21, 1972 and invited objections. It is not in dispute that the said persons had hypothecated the properties covered by the sale deed with the respondent-Bank and had deposited the title deeds with the respondents and that the appellant had knowledge of it as counsel of the Bank having been engaged in that title suit with the Bank. Obviously, therefore, after going through the publication, the respondents lost confidence in the appellant who had acted against the interest of the Bank. So, the officers had asked him to give "No Objection Certificate" so as to enable them to engage another Counsel. Though they were right in saying that he was not diligently appearing on behalf of the Bank in the suit, without imputing motives to the appellant, he had taken advantage of it. That led the appellant to claim his fees. He insisted that until the fees are paid he would decline to appear and refuse to give consent necessitating the Bank to file petition to revoke power and permission to engage another counsel.

E It would appear that he also insisted upon an apology from the officer by writing the letter. In the circumstances stated above, the officer rightly had not given any apology. The question is : whether the Court should have given a conditional leave to the counsel to appear on behalf of the respondent-Bank for conducting the suit. Shri F.S. Nariman, learned senior counsel for the appellant contended that under Order III, Rule 4(2), F CPC read with Rule 20-A of the Civil Rules of Practice it is open to the parties either to change the counsel or engage a new counsel with the consent or with the leave of the Court. Until the leave is granted, the consent who entered appearance on behalf of the parties is entitled to remain on record. As a condition for his withdrawal from record and giving consent to another counsel to appear on behalf of the respondent-Bank, G the appellant is entitled to insist upon payment of the fees. That was not acceded to by the trial Court and in the revision the High Court in the impugned order in CRP No. 711/96 dated March 29, 1996 has confirmed the order of the Subordinate Judge. Until the proceedings are concluded the appellant has no right to collect the fees as a matter of course. We find H no force in the contention of Shri Nariman. The appellant cannot insist

payment of fee as a condition to give consent. The conduct of the counsel led to loss of confidence in him by the respondent. Therefore, the respondent-Bank is entitled to change the counsel. But in view of the facts and circumstances that the respondent had lost faith and confidence in the appellant to the successful conduct of the suit, they necessarily had to change the Advocate and the appellant had wrongly refused to give consent. The Court was right that he is not entitled to payment of the fees as a matter of right. The appellant cannot insist upon the payment of the fees until the proceedings are concluded. He may be left free to recover the same from the respondent.

However, we think that in view of the fact that admittedly the appellant had done the work till the settlement of the issues and also he led the evidence on behalf of the Bank partly and that the trial of the suit on behalf of the Bank was partly concluded, on the facts and circumstances, we think that one-fourth of the scheduled fees under the Tamil Nadu Legal Practitioners' Fees Rules, 1973 may be just and proper. Therefore, the respondent is directed to give unconditional consent to engage the Advocate. Equally, the respondent is directed to pay over one-fourth of the scheduled fees to the appellant. It is not a pre-condition to give his consent. We have adopted this course to avoid multiplicity of proceedings.

The appeal is accordingly disposed of. No costs.

R.P.

Appeal disposed of.