

KABC010213042024



**I IN THE COURT OF THE XXXVIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE, AT BENGALURU (CCH-39)**

**Present : Smt. A.M. NALINI KUMARI, B.A.L, LL.M, PGD in IR & PM,
C/c. XXXVIII Addl. City Civil & Sessions Judge,
Bengaluru.**

DATED THIS THE 15th DAY OF JULY 2026

O.S.No. 5872/2024

Plaintiff : REVANNA H G

-Vs.

Defendants : KARTHIK B S & ANOTHER

ORDERS ON I.A. No. 3

The Defendant No.1 has filed this Application under Order VII Rule 11(a) & (d) of C.P.C seeking rejection of plaint.

2. The defendant has sought for rejection of the plaint on the ground that, plaintiff is an Advocate by profession and has filed a suit for recovery of money as against his client, for recovery of a sum of Rs.2,45,00,000/- from the defendant no.1. It is the case of the

defendant no.1 that, plaintiff had conducted a partition suit and on the ground that, the suit was liable to be dismissed and contrary to the Law laid down by the Hon'ble Apex Court, wherein it is held that Advocates cannot claim percentage like real estate agents. And thereby the defendant has sought for rejection of the plaint.

3. It is also the case of the defendant that Plaintiff has made unjust claim for recovery of the fees which is imaginary exorbitant and that there was a fiduciary relationship between the plaintiff and defendant herein, which came to be misused by the plaintiff. And the plaintiff has imposed financial threat upon the defendant no.1 and also contended that the claim of the plaintiff is against the Law laid down by the Hon'ble Apex Court in the matter of Mr.G reported in 1979(I) SC page 308 and also in the case of B.Sunitha V/s State of Telangana and others reported in 2018(I)SCC page 368. It is further contend by the defendant that the Plaintiff being an Advocate in order to frame the Defendant no.1 and deceased G.Ganesh and to extract illegal amount by threatening the Defendant no.1, had filed Regular First Appeal, which came to be filed against the dismissal of the suit in O.S. No.5466/2004 which came to be dismissed and threatened the Defendant no.1 and deceased G.Ganesh that they would lose their

possession and thereby got a illegal Memorandum of Understanding dated 01.06.2018 and claimed a legal fee of Rs.7,00,00,000/- and that a General Power of Attorney was also got executed in favour of the Plaintiff as on 05.07.2019 and that the act of the plaintiff is a professional misconduct as per the Bar Council of India Rules and that the act of the Plaintiff is opposed to public policy and professional ethics and as such it is barred by Law. And therefore the defendant has filed the above application seeking rejection of the plaint, under Order VII Rule 11 (a) & (d) of C.P.C.

4. Objections to the same is filed by the plaintiff contending that the said application is not maintainable and that the defendant no.1 with a malicious intention and to drag on the proceedings has filed the above application. And that the matter relating to the alleged professional misconduct was already disposed before the Karnataka State Bar Council, whereby the 1st defendant had filed a complaint to reject the plaint and also deposed before the said authority. And that first Defendant has filed the above application only with an intention to escape from the liability to pay the amount liable to be paid to the plaintiff. And that the plaintiff has sought for recovery of his professional fees and there by filed the above suit. The defendant

instead of paying the professional charges of the plaintiff has filed several complaints as against Plaintiff before other authorities and suit is also filed in OS 5466/2024 and a complaint to the Bar council in complaint No.106/2022 and the same came to be rejected as on 05.09.2023. and therefore the suit in OS 5466/2004 came to be disposed on 07.04.2018. Therefore on these and other grounds the plaintiff has sought for dismissal of the above application.

5. Counsel for the defendant has filed written arguments and relied upon 8 citations. The plaintiff counsel has relied upon the provisions of the Bar Council of India Rules.

6. Having heard both sides, perused the materials available on record.

7. Following points arise for my consideration:

POINTS FOR CONSIDERATION

(1) Whether the Applicant / Defendant has made out a ground for rejection of the plaint under Order VII Rule 11(a) & (d) of C.P.C. as the same being barred under the law?

(2) What order?

8. My findings to the above points are as under:

Point No.1 : In the Negative

Point No.2 : As per final order for the following;

REASONS

9. Point No.1 : The Defendants have maintained the above IA on the ground that the plaint of the Plaintiff has to be rejected under Order VII Rule 11 (a) & (d) of C.P.C. on the ground that the suit is not maintainable since Plaintiff has filed the above suit for recovery of money to the tune of Rs.2,45,00,000/- based upon the professional services rendered by the Plaintiff towards the Defendants herein and on that ground the suit is barred. Though the Defendants counsel has relied upon the above verdicts whereby the Hon'ble Apex Court has held that, the Judgment or Decree obtained by fraud is a nullity and other aspects. But what is crucial to consider an Application under Order VII Rule 11(a) & (d) of C.P.C. is that, on plain reading of the plaint averments, there should be a specific bar under the statute to invoke the provisions of order VII Rule 11 (a) or (d) of C.P.C. All the citations relied by the Defendant is with regard to the conduct of the Plaintiff and in this regard the Defendant has approached the appropriate authority by lodging a complaint and

subsequently and also by raising the grievance before the State Bar Council, which is with regard to the professional fees. So far as the professional misconduct is concerned, the same is outside the scope of the present suit since there is a "Separate Statutory Authority" to govern the same. As of now, all that the Defendant will have to establish under Order VII Rule 11 of CPC is that, there is a specific bar. But for the professional fees being charged by the Plaintiff is concerned, no other specific bar under any statute is placed on record by the Defendant.

10. Counsel for the Defendant has relied upon the following citations :-

1. ***CIVIL APPEAL No. 31972/2023 in the case of SYED ALTAF AHMED V/s. S. SUSON***, wherein their Lordships have held as under:-

"The appellant did not dispute that he had appeared for the complainant as his Advocate in a suit. He has also accepted that he obtained a General Power of Attorney from his client in respect of the property subject matter of the suit and that he

has sold the same to a third party. The Bar Council found that this was a case of professional misconduct as admittedly the appellant had taken a General Power of Attorney from his own client in respect of the property which has the subject matter of the suit in which the appellant was representing him. Moreover, the appellant could not produce any evidence to show that the consideration received by him was paid over to his client. The Respondent submits that, he was also acting as the business assistant in Real-Estate for selling and buying the properties as a Real-Estate Agent. In that context the complainant approached the Respondent for a disposal of the half site and as per the instructions she executed Power of Attorney stating that, she has dispute with her family members and due to her old age she requested the Respondent to sell her half site and accordingly the Respondent arranged to sell her half site and consideration amount was paid to her in cash and she paid the Respondent 2% commission for sale of the property and it was done as Real-estate Agent not as an Advocate. The appellant himself has come out with a case that while practicing as an advocate, he was also carrying on

the business of selling and buying the properties as a Real-Estate Agent. The appellant has also stated that the transaction with his client was in his capacity as a real estate Agent. Thus, the statement made by the appellant on oath in paragraph 4 of his reply makes out a case of gross professional misconduct on his part apart from the misconduct already held as proved by the impugned order. Therefore, the direction to suspend him as an Advocate for five years is fully justified.”

The relevancy of this case to the case in hand will have to be established by way of a full fledged trial. But all that needs to be considered under the subject Application is that, Bar for this Court to entertain the suit and to reject the plaint under Order VII Rule 11 of C.P.C.

2. Another citation reported in ***(2018)1 SCC 638 Criminal Appeal No.2068/2017, in the case of B. SUNITHA V/s. STATE OF TELANGANA AND ANOTHER***, wherein their Lordships have held as under :-

“Held, firstly, mere issuance of cheque by client may not debar client from contesting liability to pay fees claimed by Advocate-If liability is disputed, advocate has to independently prove contract. One of the issues was dealt with by a Single Bench judgment of the Madras High Court in C. Manohar. B.R. Poornima. R.Banumathi, J(As her Lordship then was) held that no presumption could arise merely by issuance of a cheque that amount stipulated in the cheque was payable towards fee. In absence of independent proof, issuance of cheque could not furnish cause of action under Section 138 of the context of an advocate of client. Legal profession is essentially service oriented. Ancestor of today’s lawyers was no more than a spokesperson, who rendered his services to the needy members of the society, by putting forth their case before the authorities. Their services were rendered without regard to remuneration received or to be received. With the growth of litigation, legal profession became a full time occupation. The trend of the legal profession has changed. Profession has almost become a trade. There is no more service orientation. The relationship between the lawyer and

the client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him for the same reasons. Considering the relationship between the lawyer and the client and the present day trend in the profession, it has to be carefully seen whether the complainant has proved that the amount due of Rs.43,600 is being payable towards him. The Bombay High Court in High Court of Bombay K.L.Gauba held that fees conditional on the success of a case and which gives the lawyer an interest in the subject-matter tends to undermine the status of the profession. If an advocate has interest in success of litigation, he may tend to depart from ethics. In G, Senior Advocate, In this Court held that the claim of an advocate based on a share in the subject-matter is a professional misconduct.”

“The Complaint is at its threshold.” The matter is yet to be adjudicated, if there was a professional misconduct or not would be out of the Scope of the suit for recovery, which needs a full fledged adjudication.

3. In *V.C. Rangadurai. D.Gopalan*, it was observed that relation between a lawyer and his client is highly fiduciary in nature. The advocate is in the position of trust.

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

Thus, mere issuance of cheque by the client may not debar him from contesting the liability, If liability is disputed, the advocate has to independently prove the contact. Claim based on percentage of subject-matter in litigation cannot be the basis of a complaint under Section 138 of the Act.

In view of the above, the claim of the respondent advocate being against public policy and being an act of professional misconduct, proceedings in the complaint filed by him have to be held to be abuse of the process of law and have to be quashed.

We may note that after the hearing was concluded, the learned counsel for respondent 2 mentioned the matter to the effect that respondent 2 wanted to withdraw the complaint. An e-mail to this effect was also handed over to Court. The same has been kept on the record. However, we did not permit this prayer. Having committed a serious professional misconduct,

Respondent 2 could not be allowed to avoid the adverse consequences which he may suffer for his professional misconduct. The issue of professional misconduct may be dealt with at appropriate forum. Thus, while proceedings against the appellant will stand quashed, the issue of professional misconduct is left to be dealt with at the appropriate forum.

However, apart from the present individual case, the general issue, having been highlighted, may need further consideration by this Court in the larger interest of the legal profession and the system of administration of justice.

Undoubtedly, the legal profession is the major component of the justice delivery system and has a significant role to play in upholding the rule of law. Significance of the profession is on account of its role in providing access to justice and assisting the citizens in securing their fundamental and other rights. Can justice be secured with the legal professionals failing to uphold the professional ethics? This court has even earlier expressed the concern on the falling professional norms in the legal profession. In *Tahil Ram Issardas Sadarangani V.B.Lokesh Ramchand Issardas Sadaangani* this court noted the trend of increasing element of commercialisation and decreasing element of service.”

4. Further, in V.C. Rangadurai, this Court observed that confidence of the public in the legal profession was integral to the confidence of the public in the legal system. Commercialization to the extent of exploiting the litigant and misbehaviour to the extent to browbeating the court, breach of professional duties to the court and the litigant on the part of some members of the legal profession, affecting the right of the litigants to speedy and inexpensive justice, need to be checked. This has also been observed earlier in the decisions of this court.

In its 131st Report dated 31.08.1988, the Law Commission of India, examined the role of the legal profession in strengthening the system of administration of justice. The issue considered included:

- “(I) the state of profession and its public image;
- (ii) profession’s attitude towards the policy of social change intended under the Constitution;
- (iii) the functioning of the Bar Councils and the question of disciplinary jurisdiction;
- (iv) the strike by lawyers, its implications and fall out;
- (v) the question of hobnobbing between the Bar and politicians, between the Bar and the Judiciary;
- (vi) regulation and standardisation of fees

chargeable by the members of the profession in relation the monopolistic character of the profession.

It was observed that recurring strikes by the Bar had contributed to the piling up of arrears jeopardising the consumers of justice and has thus led to weakening the system of administration of justice. While considering the mounting cost of litigation, it was observed that fee charged by some senior advocates are astronomical in character. The corporate sector is willing to retain talent at a high cost. It develops into a culture and it permeates down below. Role of the legal profession in strengthening the administration of justice must be in consonance with the mandate of Article 39-A to ensure equal opportunity for access to justice. The legal profession must make its services available to the needy by developing its public sector. It was observed that like public hospitals for medical services, the public sector could have a role in providing legal services for those who cannot afford fee. Maintenance of irreducible minimum standards of the profession is a must for ensuring accountability of the legal profession. The methodology was required to be devised as apart of social audit of the profession wherein consumers of justice were required to be given role. Referring to the lawyers fee as barrier to access to justice it was observed that it was the duty of Parliament to prescribe fee for services rendered by members of the legal

profession. First step should be taken to prescribe floor and ceiling in fees. With regard to the role of the legal profession for strengthening the administration of justice, it was observed that members of the legal profession could have a decisive say in law making being largest group in legislative bodies. They could contribute to reduce the litigation instead of perpetuating disputes by counselling the parties and could contribute to reduce the delay in proceedings. Alternative modes of resolution of disputes should be explored and one such may be examined by avoiding the irrelevant witnesses reducing the length of cross-examination by avoiding unnecessary questions and avoiding adjournments could help the administration of justice. Though the 131st Report was submitted in the year 1988, no effective law appears to have been enacted to regularise the fee or for providing the public sector services to utmost needy litigants without any fee or at standardised fee. Mechanism to deal with violation of professional ethics also does not appear to have been strengthened. Success of administration of justice to a great extent depends on successful regulation of legal profession in the light of mandate under Article 39-A for access to justice. Deficiency in the working of the present regulatory mechanism has been acknowledged by this Court in several decisions. Mandate for the Bench and the Bar is to provide speedy and

inexpensive justice to the victim of justice and to protect their rights. The legal system must continue to serve the victims of injustice. In view of this mandate, this Court requested the Law Commission to have a relook at the regulatory mechanism and expressed the hope that the Government of India will consider the recommendation of the Law Commission. In its 266th Report dated 23.03.2017 submitted in the light of decision of this Court in Mahipal Singh Rana it was noted that conduct of members of the legal profession who do not follow ethics contributes to the pendency of cases. Element of public service has to remain predominant. The commission noted that there was a huge loss of working days by call of unjustified strikes in jurisdiction of various High Courts resulting in denial of justice to the litigant in public. Such dilatory tactics including seeking adjournments on unjustified grounds effect the speedy disposal of cases. The Commission also noted the instances of browbeating the courts for getting favourable orders obsructing administration of justice. The Law Commission also noted the contemptuous conduct of some members of the legal profession. The Law Commission thereafter considered the issue of review of regulatory framework of the legal profession. Referring to the developments in other countries it was observed that there was dire necessity of reviewing regulatory mechanism not only in

the matter of discipline and misconduct but also in other areas. It was suggested that constitution of the Bar Council required a change for which an Amendment Bill was also recommended. We hope that the authorities concerned in the government will take cognizance of the issue of introducing requisite legislative changes for an effective regulatory mechanism to check violation of professional ethics and also to ensure access to legal services which is major component of access to justice mandated under Article 39-A of the Constitution. The appeal stands disposed of accordingly.”

5. And also relied on another citation reported in **(1979) 1 SCC 308 Civil Appeal No.839 of 1978 in the case of V. C. RANGADURAI Vs D. GOPALAN AND OTHERS**, wherein their Lordships have held as under :-

“Handing over brief to another lawyer without consent of the client is against professional etiquette. Representing conflicting interests without knowledge and concurrence of all the parties is professional misconduct. Advocates Act,1961 Section 38 Professional misconduct Concurrent finding by the State Bar Council and the Bar Council of India. When can the finding be interfered with, in appeal to Supreme Court Tests. We agree wholly with our

learned brother Sen, J., that the appellant is guilty of gross professional misconduct and deserves condign punishment. But conventional penalties have their punitive limitations and flaws, viewed from the reformatory angle. A therapeutic touch, a correctional twits, and a locus penitentiae, may have their rehabilitative impact, if only we may experiment unorthodoxly but within the parameters of the law. Oriented on this approach and adopting the finding of guilt, we proceed to consider the penalty, assuming the need for innovation and departing from wooden traditionalism. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the advocates Act confers a monopoly, the goal is not assured income but commitment to the people. The common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint."

Section 35(3) reads:

“The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders,

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- (b) reprimand the advocate;
- (c) suspend the advocate from practice for such period as it may deem fit;
- (d) remove the name of the advocate from the State roll of advocates.”

6. Another citation reported in **(1994)1 SCC Civil Appeal No.994 of 1972 in the case of S.P.CHENGALVARAYA NAIDU(DEAD) BY LRS Vs. JAGANNATH (DEAD) BY LRS. AND OTHERS**, wherein their Lordships have held as under :-

“Judgment or decree obtained by fraud to be treated as nullity and can be questioned even in collateral proceedings. Fraud meaning . f Non disclosure of relevant and material documents with a view to obtain advantage amounts to fraud. Partition suit filed by respondent without disclosing deed of release

executed by him relinquishing his rights in the property and preliminary decree obtained. At the time of hearing of application for final decree filed by respondent, appellants defendants coming to know about want of locus standi of the respondent and as such challenging the application on ground of fraud. Held, decree obtained by non-disclosure of the release deed amounted to fraud on court and hence decree liable to be set aside. Civil Procedure Code, 1908 or 7 R.11 rejection of plaint. Exercise of power, when called for-Averments contained in plaint must be read as a whole to find out whether same disclosed cause of action- Power under R.11 can be exercised for rejection of plaint if suit found to be barred by law and manifestly vexatious and meritless, which would always depend on facts and circumstances of each case."

7. Another citation reported in (2020)7 SCC 366 Civil Appeal No. 9519 of 2019 in the case of **DAHIBEN Vs ARVINDBHAI KALYANJI BHANUSALI(GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS,** and also relied upon the citation reported in (1998)3 Supreme Court Cases 573, wherein their Lordships have held as under :-

“Abuse of process of court-What amounts to- Relitigation whether or not barred by res judicata, if manifests from the pleadings, amounts to abuse of process of court. Court has discretion to strike out the pleading on being satisfied of there being no chance of success in the suit. Court should exercise its discretion sparingly only in special cases. Two proceedings initiated by appellants on the same day, one under S.33 of Arbitration Act challenging decision of Chairman, Industrial Finance Corporation of India(IFCI) (to whom dispute/issues referred by the parties) considering the decision as award rendered by arbitrator and the other proceeding it was held to be not an arbitration award. Several other prayers, identical to those made in the first proceeding considering the decision of the Chairman, IFCI as arbitration award also made in the suit. Held, the plaint in the suit to the limited extent that it raised an alternative independent plea, would not amount to relitigation of the same issue and hence would not amount to abuse of the process of Court. But the plaint insofar as it challenged the decision as an award, on the same ground as an award , would amount to abuse of process of the court. Abuse of process of court.”

11. The counsel for the Plaintiff has relied upon the **Bar Council of India Rules** with regard to **Rules governing the Advocates at Chapter**

I of part VI, Restrictions on Senior Advocates and chapter II with regard to Standards of Professional Conduct and Activities whereby the counsel for the Plaintiff has contended and has relied upon the Preamble of the said provision, which reads as under :-

“An Advocate shall, at all times, comfort himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his non professional capacity may still be improper for an Advocate. Without prejudice to the generality of the forgoing obligation, an Advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned.”

12. In the instant case as well, the Plaintiff claims that for the professional services rendered by the Plaintiff based upon his experience and expertise, there was a mutual Agreement between the Plaintiff and the Defendant that the Defendant would pay certain

amount towards the professional services rendered by the Plaintiff herein and that the Plaintiff has specifically pleaded with regard to the professional services rendered by the Plaintiff and towards recovery of the said professional charges has maintained the present suit. Whether the Plaintiff is entitled for recovery of the said amount or not, is a matter that needs an adjudication by way of a full-fledged trial. So far as the requirement under Order 7 Rule 11 (a) & (d) of CPC is concerned, the Defendant who has approached this court will have to establish the same, that is Order VII Rule 11(a) would read as under :-

“Rejection of plaint, the plaint shall be rejected in following cases :- (a) Where it does not disclose a cause of action.”

13. In the case in hand, the Plaintiff has specifically pleaded the cause of action that is said to have arisen in the month of August 2021, when the Defendants issued a cheque to the Plaintiff and the Defendant became chronic defaulter in clearing the outstanding amount of 2,45,00,000/- and whereby the Plaintiff caused a legal notice to the Defendant as on 26-07-2024. This being the cause of action that is clearly pleaded at para 10 of the plaint, the grounds urged by the Defendant that plaint does not disclose the cause of

action cannot be accepted. As such, the Defendant fails to make out the first requirement that is under Order VII Rule 11(a) of CPC.

14. Now, moving to the second ground, where by this Defendant has contended that the plaint has to be rejected under Order VII Rule 11(d) of CPC. Order VII Rule 11(d) of CPC would read as under :

“Where the suit appears from the statement in the plaint to be barred by any law.”

15. In the instant case in hand, though the Defendant intends that the conduct of the Plaintiff is against the professional ethics that has to be followed by the Plaintiff as concerned, the Defendant has approached the appropriate Forum under law for appropriate action against the Plaintiff. So far as the bar in any statute to entertain the suit is concerned, the Defendant as of now has failed to place any ground of bar to entertain the present suit. In absence of the same, the above point needs a negative finding. Therefore, safely relying upon the above Verdicts as well, on perusal of the prima facie materials available on record, it is the plaint averment, as of now, the Defendant has failed to make out any grounds that is either under

Order VII Rule 11(a) of CPC or under Order VII Rule 11(d) of CPC to reject the plaint. As such, I answer the above point in Negative.

16. Point No.2 : In furtherance of my findings to Point No.1, I proceed to pass the following:

ORDER

I.A.No.3 filed by the Defendant No.1 under Order VII Rule 11(a) & (d) of C.P.C. is hereby dismissed.

Post the matter for issues.

(Dictated to the Typist directly on Computer, computerized by her, corrected and then pronounced by me in the open Court on this the **15th day of July, 2026**)

(A.M. NALINI KUMARI)
C/c. XXXVIII Addl. City Civil & Sessions Judge,
Bengaluru.