

=CIVIL APPEAL NO.5284/2005

ITEM NO.106

COURT NO.5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5284 OF 2005

N.V. RAMAKRISHNA

Appellant (s)

VERSUS

SYNDICATE BANK, ALWAL BRANCH, A.P. & ANR

Respondent(s)

(With office report)

Date: 21/05/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
(VACATION BENCH)

For Appellant(s) Mr. Mahabir Singh, Sr. Adv.
Mr. D. Mahesh Babu, Adv.
Mr. Amit K. Nain, Adv.

For Respondent(s) Rr-Ex-Parte

UPON hearing counsel the Court made the following
O R D E R

In terms of the signed order, the appeal
is allowed in part. No order as to costs.

(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5284 OF 2005

N.V. RAMAKRISHNA

Appellant (s)

VERSUS

SYNDICATE BANK, ALWAL BRANCH, SECUNDERABAD
ANDHRA PRADESH & ANR.

Respondent(s)

O R D E R

This appeal has been preferred against the

impugned judgement and order dated 23.4.2005 passed by the Disciplinary Committee of Bar Council of India in BCI Tr.Case No.75/2002.

The facts and circumstances giving rise to this appeal are that a complaint dated 5.12.2002 was filed against the present appellant by the official of the Syndicate Bank, a nationalised Bank through its Manager, Narayana Rao, against the appellant that he had been handed over 75 cases for recovery, etc. from 1994 to 1997. As there had been no response in respect of some cases from him in spite of contacting him time and again, the Bank instructed another counsel Shri K.G. Shastry to find out the fate of those cases. The details of the said six

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cases had been given in the complaint and it was further stated that said six cases were not filed before the court and thus, as per the complaint there was a serious misconduct by the appellant.

The appellant submitted his reply in an affidavit wherein he had stated that the six cases were returned to the counsel by the Registry of the Court as they did not contain the full particulars. The appellant had taken a series of defence including that for want of particulars, the cases were returned to the counsel and he had subsequently, as a consequence, had returned the same to the Bank itself. However, after appreciating the entire evidence on record and considering the submissions made by the present appellant, the Disciplinary Authority of the State Bar Council kept the matter pending for more than one year, therefore, in view of the statutory provisions contained in the Advocates Act, 1961, the complaint stood transferred to the Bar Council of India and the matter was

examined by the Disciplinary Committee of the Bar Council of India consisting of three Members and all of them unanimously held the appellant was guilty of misconduct. The Disciplinary Committee passed punishment of suspension from practice for the period of one year from the date of communication of its order and during
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suspension, he was debarred from practicing in any court or before any authority or person in India in the capacity of an Advocate and was further directed to pay a sum of Rs.5000/- towards fine within a period of two months from the date of communication of the order and further directed that on deposit of the said amount, the same shall be transferred to the to the Bar Council of India Advocate Welfare Fund.

We have heard Mr. Mahabir Singh, learned senior counsel appearing on behalf of the appellant and perused the record. In view of the grievance raised by the Bank about the misconduct of the appellant and upon appreciation of facts and the defence taken by the appellant before the Disciplinary Committee of the Bar Council of India, it leaves no room for doubt that there had been a misconduct on the part of the appellant. As

the defence taken by the appellant cannot be held to be sustainable in view of the fact that Order 7 Rule 10 and Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short "the CPC") are the only provisions which provide for returning of the plaint. Under Order 7 Rule 10, CPC, in case the trial Court comes to the conclusion that it does not have jurisdiction over the matter, it shall return the plaint or it can reject it under Order 7 Rule 11, CPC, if
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the case comes within the sweep of any of the 5 clauses which make the suit not maintainable. It is worth noting

that 2 out of 5 clauses have been added only by amendment in the CPC with effect from 1st July, 2002. As the complaint in respect of the cases relates to 1994 to 1997, only 3 clauses were available under Order 7 Rule 11 CPC, the plaintiff's case is barred by law or the same has not been presented with proper stamp or the plaint does not reflect any cause of action.

In the instant case, the appellant has taken a defence which cannot be accepted. Therefore, in view of the above, the evidence of fact recorded by the Disciplinary Committee of the Bar Council of India does not require any interference. However, in the facts and circumstances of the case, as the appellant has already suffered the punishment of suspension of his practice for about more than six months and a fine of Rs.5000/- has already been paid and considering the fact that the misconduct was occurred in the year 1994 to 1997, the punishment imposed by the Bar Council of India is reduced to the period already undergone.

The appeal is allowed in part.

No order as to

costs.

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.....J.
[DR. B.S. CHAUHAN]

NEW DELHI
MAY 21, 2012

.....J.
[DIPAK MISRA]