

Presented on : 01/01/2018
Registered on : 01/01/2018
Decided on : 25/07/2019
Duration :YY MM DD
01 07 24

IN THE COURT OF THE 2nd JT.CIVIL JUDGE, J.D. VASAI
DIST. THANE

(Presided over by A.V.Musale)

Regular Civil Suit No.01/2018
CNR No. MHTH25-000002-2018
Exhibit No.19

Shri. Yogesh Balkrushna Raool.

Occu. Advocate.

R/o. A/001 Grishma Garden,
Near Balaji Hotel, Gokhivare Road,
Vasai East.

Tal. Vasai Dist. Palghar

..... Plaintiff.

v/s.

Shri. Pramod Bistur Patil.

Occu. Business.

R/o, Usgao, Bhatanae.

Tal. Vasai. Dist. Palghar.

....Defendant.

SUIT IN RECOVERY OF MONEY

APPEARANCES :

Smt. Devashri Mhatre, Advocate for the plaintiff.

Ex-parte against the defendant.

J U D G M E N T

(Delivered on this 25th day of July, 2019)

1) The present suit is instituted for recovery of money amounting to Rs.5,00,000/- as per section 34 of the Specific Relief Act, 1963.

2) The brief facts of the plaintiff case are as under :
The plaintiff is an advocate. The defendant engaged him in Sessions Case no. 52/2013 wherein the defendant was an accused. It was registered against the defendant and PW2 Nafis Hawari as per section 302 of the Indian penal Code and sections 3, 5 of the Arms Act read with section 34 of the Indian Penal code. The plaintiff being engaged as an advocate on behalf of the defendant acted in the above mentioned case, on his behalf. A decision was passed in it on 19/03/2016 whereby the defendant (who was the accused) was acquitted. It is further pleaded that, the plaintiff and the defendant had agreed for legal fees amounting to Rs.5,00,000/-, which was to be paid by the defendant (accused in Sessions Case No. 52/2013). However, even after the decision of the above case, the defendant failed to repay the amount, despite several requests being made by the plaintiff. Hence, this suit.

3) The defendant was duly served vide Exh.5. However, he failed to appear and therefore the matter proceeded ex-parte

against him.

4) I heard the learned advocate for the plaintiff. Considered his submissions and evidence on record. Following points arose for my determination to which I have recorded my findings with reasons thereunder:

POINTS

FINDINGS

- | | |
|---|-----------------------------------|
| 1. Whether the plaintiff is entitled to recover the amount of Rs.5,00,000/- with interest ? | No. |
| 2. What order and decree ? | The suit is dismissed with costs. |

REASONS

5) The plaintiff examined himself at Exh.9. He also examined PW2 Nafis Hawari. He placed reliance on the certified copy of judgment in Sessions Case No.52/2013, which is at Exh.14. He also relied upon the notice dated 13/12/2016 issued to the defendant, which is at Exh.15. The receipt of notice is at Exh.16 and its acknowledgement is at Exh.17.

AS TO POINT NO.1

6) The testimonial affidavit of the plaintiff at Exh.9 is similar to his averments in the plaint. It is testified that, the defendant had engaged the plaintiff as an advocate on his behalf and therefore it was agreed that an amount of Rs.5,00,000/- shall be paid as the legal fees. The decision in the above referred

sessions case, turned out in favour of the defendant, but, he did not pay the legal fees of the plaintiff.

7) I have gone through the certified copy of the decision at Exh. 14. Indeed, the plaintiff herein, was engaged as an advocate for the defendant, who was one of the accused in that case. Moreover, it is also seen that, the defendant who was an accused in that case was acquitted on 19/03/2016.

8) In support of his contention, the learned advocate for the plaintiff relied upon the testimony of PW2 Nafis Hawari. His testimony affidavit is at Exh.13. He testified that, the defendant agreed to pay an amount of Rs.5,00,000/- to the plaintiff as his legal fees in session case no.52/2013, wherein he was represented by the plaintiff. But, even after the decision of the above case, the defendant failed to repay the legal fees. It is to be mentioned here that, PW2 Nafis Hawari was the co-accused in the above referred sessions case. However, herein I would like to state that, though PW2 Nafis Hawari testified that, he paid the legal fees, which he was liable to pay, he did not mention as to what was the exact amount paid by him. Moreover, his testimony does not show that, what was the amount agreed to be paid by the defendant. Indeed, he placed his testimonial affidavit on Exh.13 on oath. However, he was bound to state the amount which was liable to be paid.

9) The plaintiff further relied upon the notice at Exh.14,

which was served to the defendant. In view of the notice, the plaintiff demanded an amount of Rs.5,00,000/-. The notice as well as its receipts and acknowledgement are duly exhibited. Hence, they are considered in evidence. I have carefully gone through the notice at Exh.15. It states that, an amount of Rs.5,00,000/- was to be paid by the defendant. However, herein I would like to state that there was no agreement so far as the amount as referred to in respect of either professional fees or amounts under any other heads. There is neither any substance in the claim being made nor the evidence produced in respect of the same. There was no written agreement so far as the claim, in respect of suit.

10) While conducting the litigation of his client, the advocate has to observe a certain objectivity and detachment which are necessary for the proper conduct of the litigation and if the lawyer becomes interested in the result of the litigation he loses both his objectivity and his detachment. He puts himself in the same position as the litigant and although formally appearing as a lawyer and arguing for his client, for all practical purposes he is no better than and no different from the litigant himself.

11) If that is the true principle to be deduced, that principle applies whether a lawyer contracts with his client to receive a certain percentage of the money. It can be said that the lawyer is interested in the litigation. His fees depend upon the result of the litigation. In a sense also he is speculating on the litigation because

it is uncertain whether he would get any fees, and if he would get fees what the quantum of the fees would be.

12) It may be said that ordinarily a lawyer should fix his fees at the time when he is engaged by his client. He would know the work which he would have to do for his client and he can charge the fees according to what the law permits on taxation or higher fee's if he thinks that his status at the Bar or the complexity of the case demands that he should charge a higher fee. But ordinarily it must always be improper for a lawyer to leave the determination of the fees till the conclusion of the litigation or to leave the determination of the fees dependent upon how the litigation fares.

13) In the case in hand, the plaintiff has not produced any evidence on record to show what was the amount paid by the accused or whether any amount was paid by him or not. It is acceptable for a litigant, to not pay any amount during the entire trial and pay it lastly after its conclusion. The plaintiff did not provide any explanation on this regard. Moreover, there is no documentary evidence on record to show that the fees of the plaintiff was Rs.5,00,000/-. The court cannot accept mere submissions of the plaintiff about a certain amount, in absence of evidence, in that regard.

14) Therefore, in the light of the above discussion, I answer

to point no.1 in the negative and pass the following order in answer the point no.2.

ORDER

1. The suit is dismissed with costs.
2. The decree be prepared accordingly.

(Judgment dictated and pronounced in an open court.)

Place: Vasai

(A. V. Musale)

Date : 25/07/2019.

2nd Jt. Civil Judge J.D.

Vasai.