
Nagappa Mallappa Bandi Vs Shivraj

Writ Petition No. 41013 of 2004

Court: Karnataka High Court

Date of Decision: Sept. 21, 2005

Acts Referred:

Advocates Act, 1961 " Section 30, 33#Civil Procedure Code, 1908 (CPC) " Section 151,
152#Constitution of India, 1950 " Article 227

Citation: AIR 2006 Kar 229 : (2006) 3 KCCR 1703 : (2006) 3 RCR(Civil) 723

Hon'ble Judges: Ajit J. Gunjal, J

Bench: Single Bench

Advocate: R.L. Patil, Patil and Patil, for the Appellant; Krishna S. Dixit, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ajit J. Gunjal, J.

""The subject of traditions of the Bar has, quite unfortunately, come to be associated with certain indelicate assumptions

that the best traditions of the Bar are mere myths and the illusions of be gone time and a nostalgia of a nineteenth century pradery.
I venture, more

hopefully, to think that the great traditions of the Bar have sustained the profession of law which every civilised society cherishes
as part of a very

valuable inheritance. The high traditions of the Bar are springs of strength and sustenance in its days of trial. The profession of the
lawyer is perhaps

the single most powerful instrument for the protection of the liberty of man and the decencies of civilised living"" - Hon"ble Mr.
Justice M. N.

Venkatachalaiah.

2. This preface is required, as the subject matter of the present proceedings would involve a delicate question where a practicing
Counsel, who is a

party to the proceeding can represent himself when the advocate representing him continues to be on record. The matter arises in
the following

manner:

3. Respondent herein has filed a suit in O.S. No. 20/1995 on the file of the Munsiff and JMFC, Haveri, for recovery of certain amount and for use

and occupation of the suit schedule property. It appears that the said suit was decreed ex parte for a sum of Rs. 960.50 ps. Since the respondent

was not awarded future interest, an application was filed u/s 152 r/w. Section 151 of the CPC for amendment of the decree so as to include

awarding of the future interest. The said proceeding was numbered as Miscellaneous Application No. 2/2000. In the said proceeding, the present

respondent was the applicant. A perusal of the cause title would clearly show that the applicant who is the respondent herein is a practicing

advocate of Haveri Bar, An application was filed by the opponent in M.A. No. 2/2000 under Sections 30 and 33 of the advocate Act r/w Section

151 of the CPC seeking an injunctive relief restraining the petitioner i.e., the respondent herein not to conduct the proceedings personally without

discharging the advocate appearing for him in the case. The sum and substance of the application I. A. 2 is that the respondent had engaged an

advocate for conducting the said proceedings and he had not discharged the said advocate. Unless the said counsel is discharged, the respondent

cannot conduct the proceedings. According to the petitioner, the same is illegal and not permissible under law and sought for an injunction

restraining the respondent from arguing the case without discharging his counsel on record. The respondent herein seriously objected to the said

application and has filed a detailed statement of objection, a copy of which is produced at Annexure "B-1". The substratum of the said objection

would show that the respondent having innumerable personal cases where he has obtained a decree, it would be difficult for him to instruct his

counsel in order to conduct the case and the circumstance warrant that he conducts the case himself, notwithstanding the fact that the counsel being

engaged by him or without discharging him. In support of his contention, the petitioner has relied on a judgment of the Apex Court in Shrimati

Vidya Verma, through next Friend R.V.S. Mani Vs. Dr. Shiv Narain Verma, . The learned Trial Judge on a consideration of the various

contentions urged by both the parties has declined to entertain the said application and rejected the same on the ground that it is not necessary for

the respondent to discharge the advocate before he represents the case himself and conducts the matter. The impugned order passed by the

learned trial Judge is to be found at Annexure "C".

4. Mr. R. L. Patil, learned Counsel appearing for the petitioner would strenuously contend placing reliance on the judgment of the Apex Court

referred to above that until and unless the party who himself is an advocate discharges the counsel representing him in the proceedings, cannot

address the Court. He drew my attention to the observations made by the Apex Court in the said ruling, which is at para 5. In furtherance of his

submission on the litigants at the Bar, he relied on certain observations made in the book "Legal and Professional Ethics" authored by Mr. P.

Ramanatha Iyer.

5. Mr. Dixit, learned Counsel appearing for the respondent would support the impugned order passed by the Trial Court and submits that in a

given set of circumstance, it is always permissible for a party to address the Court without discharging the counsel on record. Further placing

reliance on the judgment of the Apex Court in Rajendra Singh Vs. State of Madhya Pradesh and others, , he would submit that no prejudice would

be caused to the petitioner by the impugned order and this Court in a given set of circumstances normally should not interfere under Article 227 of

the Constitution of India.

6. The subject matter of the dispute inter se between the parties is really of no substance, which is a decree for a sum of Rs. 960.50 ps. The larger

question and issue is where it deals with legal and professional ethics as referred to in the book "Legal and Professional Ethics" by Mr. P.

Ramanath Iyer, "Conduct and Etiquette at the Bar" by Sir. William Boulton (sixth edition) and "Barrister at Law" by Mr. James Robert Vernam

Merchant. In Merchant's Barrister at Law, it is stated as

for beside the case law and statute law on the subject, there is a not inconsiderable body of unwritten law, consisting of customs, rules, and usages,

which are binding on the profession.

The author further observes that

No one but a litigant in person or a solicitor can do this. It follows that, when an action is to be instituted, a litigant who does not wish to conduct it

himself must retain a solicitor to commence and conduct it for him, or, if the litigant is a defendant, to defend it for him.

In the same book, it is stated as

Counsel cannot share the conduct of a case with his client; if counsel is instructed, he ought to be at the head of the case and conduct it throughout.

It is not becoming for counsel to submit to any limitation of the ordinary authority of counsel in this respect or to take a subordinate position in the

conduct of a case. If a litigant conducts his case in person and examines and cross-examines witnesses, counsel will not be allowed to suggest

questions and argue points of law.

It is further observed that

the same rule applies if the litigant is himself a barrister; a barrister who is a litigant cannot appear both as counsel and as litigant; he must elect

either to conduct the case entirely as litigant in person or to abandon the case entirely to his counsel; he cannot be heard to address the Court

either after or before his counsel.

7. Sir William Boulton on "Conduct and Etiquette at the Bar" observes

Whilst a member of the Bar is entitled, like any other member of the public, to appear in person, it is improper for him whether instructed

professionally or not, to appear also as counsel in a case in which he himself is a party i.e. to wear robes or to sit in counsel"s seats.

In the case of the New Brunswick and Canada Railway and Land Co. v. John C. Conybeare 1862, House of Lords Cases, page No. 711, it is

stated that a barrister who is a party in an appeal case must elect to conduct his own case or to have it conducted by counsel".

8. A compendious reading of the observations would indicate that the learned Trial Judge was clearly in error in holding that the respondent shall

continue to appear and address the Court without discharging the Counsel who was appearing for him. The Apex Court in the case referred to

above, has clearly stated that unless the counsel appearing for the petitioner is discharged, he will not be heard in the matter. It is useful to extract

the observations made by the Apex Court, which reads as follows:

At the adjourned hearing Mr. Mani appeared in person, unrobed as directed, but with the advocate on record sitting by his side. He asked for

permission to address us himself. We declined to hear him unless he discharged the advocate on record. He did that on the spot and then

proceeded to address us in person.

9. It is no doubt true that no prejudice would be caused if the respondent appears without discharging the counsel on record. But the vexed

question is whether legal and professional ethics and conduct and etiquette at the Bar would permit the party to appear in person and conduct the

proceedings without discharging the counsel. The answer will have to be "No" as he cannot appear without discharging the counsel on record.

10. In the "All England Law Reports 1961 volume-I", it is stated that "a junior barrister wearing his robes and sitting in counsel"s row rose to

make an application to the Court on his own behalf in a criminal matter. Lord Parker, C. J., directed the applicant to make this application later, as

an applicant in person and not as counsel. The barrister later returned to Court unrobed and made his application from the well of the Court", In

"Halsbury"s Laws of England, volume 3, at right to practice; intervention of solicitor, it is stated that "a barrister who is a party in a case must elect

to conduct his own case or to have it conducted by counsel; if he appears on his own account he cannot claim the rights of counsel but will be

accorded only those rights enjoyed by a member of the public (Newton v. Chaplin (1850) CB 356 (barrister not allowed to address Court when

represented by counsel".

11. It is directed that the respondent herein shall discontinue to appear in person until he discharges the counsel appearing for him in the

proceedings.

12. Writ Petition stands disposed of with the above observations.