

(1976) 07 CAL CK 0022**Calcutta High Court****Case No:** Civil Rule No. 1257 of 1974

Bilas Singh and Co.

APPELLANT

Vs

Sikha Raini Dutta

RESPONDENT

Date of Decision: July 30, 1976**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 3 Rule 4, Order 3 Rule 4(2)

Citation: (1976) 1 CALLT 416 : (1976) 2 ILR (Cal) 374**Hon'ble Judges:** Chittatosh Mookerjee, J**Bench:** Single Bench**Advocate:** B.C. Datta and Sudhansu Kumar Das Gupta, for the Appellant; Rathindra Nath Bhattacharjee and Debatosh Khan for Opposite Party No. 1, for the Respondent**Judgement**

Chittatosh Mookerjee, J.

The Petitioner had engaged Sm. Sikha Rani Dutta, who is opposite party No. 1 in this Rule, as one of its lawyers in an arbitration proceeding against Union of India and also in T.S. No. 33 of 1959 of the Fourth Court, learned Sub-Ordinate Judge, Alipore, which arose out of the said arbitration proceedings. The Petitioner, therefore, filed an execution case for realisation of the sum awarded in the said arbitration proceeding. The Union of India had deposited the decretal dues in the executing Court. The Petitioner, through Sm. Dutta, had filed a petition praying for issue of a payment order in its name. The Court below by its order dated November 15, 1973, had passed an order directing payment of the said award money. But before the said sum was withdrawn on December 1, 1973, the Petitioner filed an application stating that it now wanted to revoke the power executed in favour of Sm. Sikha Rani Dutta in the said Title Execution Case. It, accordingly, prayed that the vakalatnama dated August 1, 1973, in her favour be revoked. On December 4, 1973, Sm. Sikha Rani Dutta filed a statement before the executing Court claiming that Rs. 5,000 was still due as her fees. On December 5, 1973, the executing Court ordered that the decree-holder be permitted to terminate the appointment of Mrs. Dutta as its lawyer

subject to payment of her legitimate dues. It, accordingly, directed both the Petitioner and Mrs. Dutta to submit their respective accounts. According to the executing Court, since Mrs. Dutta claimed Rs. 5,000 as her fees, the decree-holder would be entitled to withdraw the decretal amount after leaving a sum of Rs. 5,000 in deposit. The Petitioner did not come up against the said order. On December 12, 1973. Sm. Sikha Rani Dutta filed a statement of her claim. In the meantime, the decree-holder, who is the Petitioner before me, also filed an application before the Court below praying that in the circumstances mentioned in its application necessary orders be passed for payment of the balance sum of Rs. 5,000 which was lying with the Court in terms of the order No. 12 dated December 5, 1973. It may be noted that on December 8, 1973 the Court had already issued the payment order for Rs. 9,19,075 in favour of the decree-holder Petitioner through its lawyer Arun (Kumar Deb. I understand the said sum has been already received by the Petitioner.

2. The trial Court by its order No. 21 dated February 11, 1974, refused the prayer of the decree-holder for permission to withdraw the said balance sum of Rs. 5,000. Further, the executing Court fixed March 23, 1974, for hearing in respect of the accounts filed by Mrs. Dutta and the decree-holder Petitioner. The Petitioner has obtained the present Rule against the said order dated February 11, 1974.

3. In this case the subject-matter of dispute is the sum of Rs. 5,000 claimed by Mrs. Dutta as her professional fees and which is disputed by the Petitioner. Therefore, in my view, the present Rule is maintainable before the Single Bench. The rest of the amount involved in the execution case is not in question. Therefore, it cannot be said that the application in question should have been valued at over Rs. 5,000.

4. I may now proceed to examine the merits of the rival contentions. Mr. Dutta, learned Advocate for the Petitioner, submitted that the Court below had no jurisdiction to retain Rs. 5,000 out of the decretal sum deposited by the judgment-debtor, Union of India, pending decision on the claim of Mrs. Dutta for her alleged outstanding fees from the Petitioner. Mr. Dutta submitted that, in the instant case, the only remedy of the learned lawyer concerned was to institute a separate suit for recovery of the sum claimed by her from the Petitioner as her fees. Mr. Dutta has submitted that the Petitioner firm seriously disputes that any further sum is payable to her as her fees and therefore, according to the Petitioner, the full amount of her fees has been already paid.

5. The Court below has not yet decided whether Sm. Sikha Rani Dutta is entitled to receive any further fees from the Petitioner firm. The Court below had directed the parties to file accounts in order to consider the same. Therefore, at this stage, I am not in a position to pronounce upon the merits of the claim made by Mr. Dutta. Only after the Court below passes appropriate order in accordance with law, it would be open to both the parties to proceed further in the matter in accordance with law. The only point in this Rule is whether the Court below while permitting the Petitioner to discharge Mrs. Dutta as its lawyer was entitled to detain the above sum

of Rs. 5,000 pending adjudication of her claim. In my opinion, the Court below did not act in excess of its jurisdiction in the present case. Sm. Dutta was appointed as a pleader on behalf of the Petitioner. Under Sub-rule (2) of Rule (4) of Order III of the CPC her such appointment must be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader. In this case, the lawyer concerned did not herself make any prayer before the Court for determination of her appointment and cancellation of her vakalatnama. It is the Petitioner who itself approached the Court for leave to determine her appointment. In the instant case, the Petitioner company did not allege any misconduct against her. In my view, it is well-settled that in case a litigant prays for leave to determine appointment of its lawyer, the Court concerned may, in appropriate cases, direct that such leave be granted on condition of settlement of claim of the lawyer for his outstanding fees and costs incurred by him. The Court's power under Rule 4(2) of Order III of the CPC is discretionary and lawyer holding a power from a party not only acts as an agent of his client but he is also an officer of the Court. A lawyer's duty is not only towards his client, but he has also his duties and obligations towards the Court itself. In the above view, the Court may legitimately direct that before a litigant can be permitted to change his lawyer he should pay up the outstanding fees of the lawyer concerned.

6. The decision of G.N. Das and Guha JJ. in *Mohanlal Sewlal v. Probodh Krishna Shome* (1949) 54 C.W.N. 733 in my opinion, itself is an authority for the course adopted by the executing Court in the instant case. In *Mohanlal Sewlal v. Probodh Krishna Shome* the learned Advocate concerned did not move this Court in revision against the order of the Tribunal rejecting his prayer for payment of the sum claimed by him as due to him out of the money lying with the President, Calcutta Improvement Tribunal, to the credit of his client. The Tribunal by a subsequent order had rejected the prayer of the litigant to withdraw the said money through another Advocate. The Petitioner obtained the Rule against the said order. The Division Bench accepted the contention of Mr. Panchanan Ghosh, who appeared on behalf of the lawyer, that it is true that before the Court grants leave to discharge a lawyer under Order III of the CPC the Court is entitled to make suitable provisions for the payment of the sums due to the outgoing pleader in respect of the services rendered by him and in respect of the costs incurred by him on behalf of his client. The Division Bench also agreed with the submission of the learned Advocate for the opposite parties that a litigant cannot engage any lawyer without formerly discharging the previous lawyer and without arranging payment of the sums due to him. The Division Bench, accordingly, directed that a sum of Rs. 1,700 be retained in the Court till a decision was made in an appropriate proceeding regarding fees and the costs of the lawyer concerned.

7. Das and Guha JJ. did not, however, further lay down that in every dispute between a party and his pleader about the fees of the latter, a suit would be the only appropriate proceedings.

8. The learned lawyer for the opposite party No. 1 in the present case also referred me to several other reported decisions which also recognized the power of the Court to give directions regarding the payment of the fees of an outgoing lawyer while disposing an application made by a litigant for discharging its lawyer not on the ground of mis-conduct: vide A.V. Sundaramurthy Chettiar Vs. S. Muthiah Mudaliar and Another, and In re Application of an Advocate to retire from the case AIR 1951 Nag. 278.

9. While it is true that the Court undoubtedly has jurisdiction to pass orders in appropriate cases for payment of the lawyer's fees before his appointment is allowed to be determined on the prayer of his client, ultimately it is a matter of discretion of the Court concerned. It would depend on the facts of each particular case whether in a particular case the Court should exercise its discretionary powers having regard to the conduct of the parties, nature and the magnitude of dispute, the convenience of the Court itself etc. Therefore, what would be the appropriate proceeding for adjudication of the claim of the lawyer for payment of fees claimed from its client should be in the ultimate analysis left for decision of the Court. In the facts of a particular case, it might be more appropriate to relegate the parties in an appropriate suit. But in another case, the Court having regard to the facts and circumstances may itself make appropriate order for payment in the suit or proceeding itself in which the lawyer had been engaged by his client.

10. In the instant case, the Petitioner did not come up against the earlier order No. 12 dated December 5, 1973, by which the Court had disposed of the Petitioner's application for discharging Mrs. Dutta and for permission to withdraw the decretal sum. The Court by the said order, as already pointed out, allowed the Petitioner to discharge Mrs. Dutta subject to the detention of Rs. 5,000 in Court. The Petitioner accepted the said order by withdrawing the decretal sum less Rs. 5,000 from the Court through another lawyer of its choice. Therefore, it was not open to the Petitioner to subsequently come up with an application for releasing the balance sum of Rs. 5,000. The Court below either by its earlier order dated December 5, 1973, or by its subsequent order dated February 11, 1974, did not adjudicate about the merits of the respective cases relating to the claim of the lawyer but directed that the said Rs. 5,000 be held till a decision was made regarding the claim put forward by Mrs. Dutta. The Court did not either say that the said claim was tenable or untenable. In my view, the said order was in the interest of both parties. Therefore, the Petitioner was rightly not allowed to unconditionally withdraw the said sum of Rs. 5,000. But in view of the fact that the matter may be prolonged the Court might be directed to arrange for investment of the said sum of Rs. 5,000 in some fixed deposit pending decision of the matters in controversy between the Petitioner and Mrs. Dutta. I may also point out that when the matter is further considered by the Court, the Court will decide whether it would be appropriate to make a determination of the claim of Mrs. Dutta in this proceeding or she should be relegated to a separate suit while detaining the money in question till such decision.

Subject to this observation, I discharge this Rule. In case the proceedings are delayed it would be open to the Court below to direct deposit of the said sum of Rs. 5,000 in the feted deposit account for a period of one year in its own name till the decision of the matter.

11. There will be no order as to costs. Let the record go down expeditiously.