

(1929) 06 BOM CK 0018

Bombay High Court

Case No: Civil Revisional Application No. 161 of 1928

D.B. Ambashankar Uttamram
Malji

APPELLANT

Vs

Heptulla Sarafalli

RESPONDENT

Date of Decision: June 19, 1929

Acts Referred:

- Bombay Pleadings Act, 1920 - Section 17, 19(3)

Citation: (1930) ILR (Bom) 1

Hon'ble Judges: Sir Norman Kemp, J; Murphy, J

Bench: Division Bench

Advocate: G.N. Thakor, R.J. Thakor and H.D. Thakor, for the Appellant; H.V. Divatia, Messrs and Hasan Baxi and Company, for the Respondent

Final Decision: Dismissed

Judgement

Sir Norman Kemp, A.C.J.

1. This is a revision application against the decree of the learned First Class Subordinate Judge, vested with Small Causes Court powers, of Broach. The circumstances giving rise to the suit were as follows:

2. The Petitioner, who is a respectable and apparently well-known pleader of the Broach Court, entered into , an agreement with the opponent as his client to conduct certain litigation contemplated by the latter for a fee of Rs. 125 which was fixed on the conventional " ad valorem " scale on the amount of the suit. The Petitioner read the papers in the case and came to the conclusion that further instructions were necessary and in order to properly draft the plaint instructed his client to get them. Thereafter, the Petitioner saw nothing of his client for three months, when he was informed by him that the claim had been compromised. The client, the opponent in this application, filed a suit against the Petitioner to recover the fee of Rs. 125. The learned Subordinate Judge came to the conclusion that the

case should be decided on the principles of a " quantum meruit " and passed a decree in favour of the Plaintiff in the sum of Rs. 70 only directing each party to bear his own costs. Against that order the present revisional application has been preferred.

3. The point for determination is whether on an agreement between the pleader and his client--such as was arrived at in the present case--the pleader is entitled to retain the whole fee or whether, if the suit does not proceed to a final decree, the pleader is entitled to merely a " quantum meruit " of the fee that has been arranged. In deciding this point it is important to note that in this case there was an agreement with reference to the fee. This is not a case like those cited before the learned Subordinate Judge, where there was no agreement between the pleader and his client and this case is therefore distinguishable. In my opinion, the pleader was entitled clearly to retain the whole fee which was paid to him. The agreement was that in return for that fee he should conduct the litigation for the client, and it does not lie in the client's power to alter that agreement by compromising the suit before the trial. The effect of that would be to turn the contract of an engagement to do the work for a payment of Rs. 125 into an agreement to pay a proportionate part of the fee for a proportionate part of the litigation.

4. Section 17 of the Bombay Pleaders Act, 1920, is clear on the point and it is to this effect, " Any party employing a pleader may settle with him by private agreement the terms of his engagement and the fee to be paid to him for his professional services." The agreement was that the fee to be paid for the pleader's professional services in this case was Rs. 125. Then, Section 19 states that a pleader shall be entitled to recover from his client the fee, if any settled u/s 17. But it has been contended that Section 19, Sub-section (3), states that the fee is, unless otherwise agreed upon between the pleader and the client, payable in respect of the pleader's services until the final decree or order in the proceeding is passed, and it is argued from this that where the litigation does not proceed and, therefore, the pleader's services cannot be utilised until the final decree or order, the said clause intends that only a proportionate fee should be allowed. In my opinion, this is not the meaning to be deduced from the clause. I think it merely states what are the services which the client can demand in return for the fees, and that, apart from any agreement, the pleader would not be allowed to say that the fee which he received was merely for a portion of the litigation before the final order or decree. The clause is for the purpose of defining what the client is entitled to in respect of professional services in return for the fee.

5. In the present case there was an agreement to pay a lump sum for the litigation. It might have turned out to be insufficient if the litigation had proceeded for a long time. In that case the pleader would not have been entitled to demand more than the fee that he had bargained for. On the other hand, as happened in this case, the client compromised his claim. Equally the pleader was entitled to retain the full

amount of the fee. The pleader, when he agrees to a lump sum, knows, or tries to guess, what the amount of work involved in the suit will be and he naturally makes his engagements with reference to that and contracts for what he thinks is an appropriate fee.

6. In these circumstances, I am of opinion that the order of the learned Subordinate Judge should be set aside and the suit should be dismissed with costs. The opponent to pay the costs throughout.