



CASE REPORT ON- RD SAXENA V BALRAM PRASAD (AIR 2000 SC 2912)

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INTRODUCTION

Type of Case –

Civil Case

A federal **civil case** involves a legal dispute between two or more parties. It is a noncriminal lawsuit, that involves private property rights.

A **civil** action begins when a party to a dispute files a complaint and pays a filing fee required by statute. The plaintiff who can't pay the expense may record a solicitation to continue in forma pauperis.

For example, lawsuits including breach of agreement, probate, judicial separation, copyright infringement and negligence are just a few of the many hundreds of varieties of civil lawsuits.

Abstract of The Case

The issue was faced in this appeal of **AIR 2000 SC 1912** has consecutive significance for all the individuals from the legitimate calling.

The issue was – **“Has the advocate a lien for his charges on the case papers depended to him by his client? Also, if litigation papers are considered as goods according to the Sales of Goods Act, 1930?”**

For this case, The Bar Council of India, without deciding the above significant issue,

has forced discipline on the reprobate advocate with a **penalty of Rs. 1000/- and also debarred him from practising for a time of 18 months.**

The advocate concerned was additionally coordinated to restore all the case groups which he got from his client respondent immediately. This appeal was recorded by the said advocate under **Section 38** of the **Advocates Act, 1961.**

This case was decided in the bench of Justice K.T. Thomas and R.P. Sethu on 2nd August, 2000.

History of The Appellant

Appellant, now a septuagenarian, has been rehearsing as an Advocate for the most part in the courts at Bhopal. In the wake of enlisting himself as a lawful expert, he enrolled himself with the State Bar Council of Madhya Pradesh. As indicated by him, he was designated as legitimate counsellor to the Madhya Pradesh State Co-agent Bank Ltd. ('bank'. for short) in 1990 and the Bank kept on holding him in that limit amid the succeeding years. He was likewise connected with by the said bank to lead cases in which the Bank was a gathering.

ABOUT THE CASE

Facts

On 17/7/1993 the Bank ended the above stated retainership of the appealing party and asked for him to restore all the case documents identifying with the bank.

Rather than restoring the records the appealing party sent a united bill to the Bank demonstrating a measure of Rs. 97,100 as the adjust payable by the Bank towards the legitimate compensation to which he is entitled. He educated the Bank that the



records would be returned simply in the wake of setting his contribution.

Correspondence went ahead between the appealing party and the Bank regarding the sum, assuming any, payable to the litigant as the money owed to him. Respondent Bank renounced any risk extraordinary from them to the appealing party.

The debate stayed uncertain and the case packages never go from litigant's hands. As the cases were pending the Bank was restless to have the documents for proceeding with the procedures under the watchful eye of the Courts/Tribunals concerned. In the meantime, the Bank was not arranged to give in to the terms directed by the appealing party which they viewed as terribly nonsensical.

The Indulgence of State Bar Council

An objection was henceforth recorded by the Managing Director of the Bank before the State Bar Council of MP on 3.2.1994. It was asserted in the grievance that appealing party is liable of expert offense by not restoring the records to his customer.

In the answer which the appealing party submitted before the Bar Council he conceded that the records were not returned but rather declared that he has a privilege to hold such documents by practicing his privilege of lien and offered to restore the records when instalment is made to him.

Role of Disciplinary Committee

The dissension was then sent to the Disciplinary Committee of the District Bar Council. The State Bar Council neglected to discard the dissension even after the expiry of one year. So, as per the **Section 36-B of the Advocates Act⁽¹⁾**, the procedures stood

exchanged to the Bar Council of India. In the wake of holding request the Disciplinary Committee of the Bar Council of India achieved the conclusion that appealing party is blameworthy of expert unfortunate behaviour. The Disciplinary Committee has expressed the accompanying in the upbraided arrange:

Based on the protest and in addition the reports accessible on record we are of the sentiment that the respondent is liable of expert offense and in this way, he is at risk for discipline. The complainant is an open foundation. It was the obligation of the respondent to restore the briefs to the Bank and further more to show up before the board of trustees to return his charges made in application dated 8.11.95. No such endeavour was made by him.

In this interest learned Counsel for the appealing party battled that the disappointment of the Bar Council of India to consider the particular safeguard set up by the litigant, i.e., **he has a lien over the documents for his unpaid expenses** because of him, has brought about unnatural birth cycle of equity. The Bank battled that there was no charge payable to the appealing party and the sum appeared by him was by virtue of swelling the expenses.

On the other hand, the **respondent held** that a supporter can't hold the documents after the customer ended his engagement and that there's **no lien on such records**.

Verdict

After holding the enquiry, the Disciplinary Committee of the Bar Council of India held that the **Saxena (the respondent) was guilty**



of professional misconduct and, thus, extracted penalty.

It was concluded that the Complaint was a public institution and so, it became the duty of the Respondent to return the case files to the bank and was also to be presented before the committee to mutate his allegation, however, no such action was made by him.

Aggrieved by this, an appeal was filed in Supreme Court of India under **Section 38 of the Advocated Act, 1961**.

Issue Raised:

Whether an advocate has lien on the files entrusted to him by the client.

Explanation:

As per **Section 171 of ICA**,

Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

As per the above stated Section of ICA, it can be concluded that-

- **Files containing copies of the records** (perhaps some original documents also) **cannot be equated with the "goods"** referred to in the Section.
- **The advocate keeping the files cannot amount to "goods bailed"**.

The word "**bailment**" is defined in **Section 148 of ICA** as

“the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned or otherwise

disposed of according to the directions of the person delivering them, when the purpose is accomplished.”

In the case of litigation papers in the hands of the advocate there is **neither delivery of goods nor any contract that they shall be returned or otherwise disposed of**.

That apart, the word "goods" mentioned in Section 171 is to be understood in the sense in which that word is defined in the *Sales of Goods Act (SGA)*.

It must be remembered that **Chapter-VII of the ICA**, comprising Sections 76 to 123, has now been replaced by the *SGA*, 1930.

As per the definition in **Section 2(7) of the SGA**, the word ‘**GOOD**’ has been defines as - **every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale.**

Hence, one can understand "**goods**" to fall within the purview of Section 171 of the *ICA* should –

- have marketability, and
- the person to whom it is bailed should be in a position to dispose it of in consideration of money

At the end of the day, the products alluded to in Section 171 of the Contract Act are **SALEABLE GOODS**.

And since, **there was no scope for converting the case files into cash or money, nor can they be sold to any third**



party, the reference to Section 171 of ICA had no merit.

HOWEVER,

In Halsbury's Laws of England, solicitor's right under **Solicitors Act, 1860**, it is stated in vide paragraph 226 in volume 44 that

At common law a solicitor has two rights which are termed liens.

- The first is a right to **retain property** already in his possession until he is paid costs due to him in his professional capacity; and the second is
- A right to ask the Court to direct that **personal property recovered** under a judgment obtained by his exertions **stand as security** for his costs of such recovery.
- In addition, a solicitor has by statute a right to **apply to the Court for a charging order on property recovered** or preserved through his instrumentality in respect of his taxed costs of the suit, matter or proceeding prosecuted or defended by him.

In *P. Krishnamacharya v. The Official Assignee of Madras MANU/TN/0020/1931: AIR 1932 Mad 256* a Division Bench held that a promoter couldn't have such a lien unless there was an express consent in actuality.

The Division Bench has recognized a before choice of the Bombay High Court in *Tyabji Dayabhai and Co. v. Jetha Devji and Co. MANU/MH/0227/1927: AIR1927Bom542* wherein the English Law identifying with the specialist's lien was taken after. Along these lines, a Full Bench of the Madras High Court in 1943 took after the choice of the Division Bench. A Full Bench of the Patna High Court

In re *B.N. Backer in the matter of Misc. Judl. Case No. 18/33 MANU/BH/0204/1933: AIR1933Pat571* held the view that a promoter couldn't assert a privilege to hold the guaranteed duplicate of the judgment acquired by him on the start that an interest was to be recorded against it. Obviously, the Bench said that if the customer had particularly taught him to do as such it is available to him to keep it.

Introduction of the new Bar Council of India-

At the point when the new Bar Council of India appeared it confined Rules called the Bar Council of India Rules as engaged by the Advocate Act. Such Rules contain arrangement particularly denying an advocate from modifying the expenses payable to him by a client against his very own risk to the client.

When in doubt an Advocate might not do anything whereby he misuses or exploits the certainty rested in him by his client (vide Rule 24). In this setting, Rules 28 and 29 can be referred to which are extricated underneath:

RULE 28: After the end of the procedure, the Advocate should be at freedom to proper towards the settled charge because of him, any aggregate staying unexpended out of the sum paid or sent to him for costs, or any sum that has come into his hands in that procedure.

RULE29: Where the expense has been left disrupted, the promoter should be qualified for deduct, out of any funds, of the customer staying in his grasp, at the end of the procedure for which he had been locked in, the charge payable under the principles of the Court, in compel until further notice, or by



then settled and the adjust, assuming any, might be discounted to the customer.

Consequently, even subsequent to giving a privilege to a supporter to deduct the charges out of any cash of the client staying in his grasp at the end of the procedure for which the backer was locked in, see that no lien is furnished on the prosecution records kept with him. In the conditions winning in India with heaps of ignorant individuals among the prosecutor open it may not be fitting likewise to allow the Counsel to hold the case package for the expenses asserted by him. Any such lien if allowed would end up defenceless to great misuse and abuse.

In civil cases, the appointment of an advocate by a party would be deemed to be in force until it is determined with the leave of the Court, (vide Order 3, Rule 4(1) of the CPC). In criminal cases, however, every accused has the right to consult and be defended by a legal practitioner of his choice.

If a party terminates the engagement of a lawyer before the culmination of the proceedings, the entire file should be in custody of the party in order to engage another lawyer for their suit. In any case, if the advocate who is changed halfway through the case stands that he would not restore the case record until the expenses asserted by him is paid, the circumstance maybe may go to risky extent.

Decision of the Court in *State of Madhya Pradesh v. Shobharam and Ors.* MANU/SC/0271/1966: 1966CriLJ1521. The words "of his choice" in Article 22(1) indicate that the right of the accused to change an advocate whom he once engaged in the same case, cannot be whittled down by

that advocate by withholding the case bundle on the premise that he has to get the fees for the services already rendered to the client.

There might be situations when a gathering has no asset to pay the colossal sum asserted by the supporter as his compensation. A gathering in a prosecution may have a variant that he has effectively paid the honest to goodness charge to the backer. At any rate if the suit is pending, the gathering has the privilege to get the papers from the backer whom he has changed so the new Counsel can be informed by him successfully. In either case it is impermissible for the ongoing Counsel to hold the case bundle on the argument that costs is yet to be paid.

Reaching to the Conclusion

Regardless of whether there is no lien on the prosecution papers of his clients, an advocate isn't without solutions for understand the expense which he is truly qualified for. Be that as it may, on the off chance that he has an obligation to restore the records to his customer on being released, the defendant too has a privilege to have the documents came back to him and to sue his client for his charges, if not paid.

Reference to "products" as referred to in Section 171 of the ICA, can't, by any creative ability, be extended to mean the case papers, entitling their maintenance by the attorney as his lien for the motivations behind understanding his expense.

Other than the significance connected to the "products" under Section 2(7) of the SGA, under the General Law the "products" have been characterized in-

- Bailey's Large Dictionary of 1732 as "stock"



- By Johnson, who took after as the following word specialist, it is characterized to be **movables in a house; individual or steadfast homes; products, cargo, stock.**
- Webster characterizes "merchandise" in this manner: "**Merchandise, thing, plural; (1) movables; family unit furniture; (2) Personal or versatile domain, as steeds, cows, utensils, and so on (3) products; stock; items purchased and sold by shippers and dealers.**"

Court in *Union of India and Anr. v. Delhi Cloth and General Mills Co. Ltd.* MANU/SC/0245/1962: 1973ECR56(SC) held that to wind up "**products**" an article must be **something which can customarily go to the business sectors to be purchased and sold.**

In *Collector of Central Excise, Calcutta-I v. Eastend Paper Industries Ltd.* MANU/SC/0107/1989: 1989(43)ELT201(SC) it was expressed that merchandise are comprehended to mean as **identifiable articles** referred to in the business sectors as **products and advertised and attractive in the market all things considered.**

Where the Act does not characterize "**merchandise**", the Legislature ought to be ventured to have utilized that word in its conventional lexicon meaning i.e. **something which can usually go to the market to be purchased and sold and is referred to the market all things considered.**

The Final Conclusion

In this manner, looking from any edge, it can't be said that the case papers depended by the client to his Counsel are the products in his grasp whereupon he can

guarantee a holding lien till his expense or different charges caused are not paid.

In our nation, honestly, a social obligation is provided reason to feel ambiguous about the legitimate calling to demonstrate the general population entice light by their direct and activities. Destitute individuals, uneducated and abused mass of everyone need some support from the legitimate calling, really, perceived as a most upright and reputable calling. No exertion ought to be made or permitted to be made by which a prosecutor could be denied of his rights, statutory and additionally sacred, by an advocate just by virtue of the magnified position gave upon him under the legal framework predominant in the nation.

Doubtlessly a supporter is equipped to settle the terms of his engagement and his expense by private concurrence with his customer however it is similarly obvious that **if such charge isn't paid he has no privilege to hold the case papers and different archives having a place with his customer.** Like some other native, an advocate has a privilege to recoup the charge or different sums payable to him by the prosecutor by method for lawful procedure.

Rules made under **The Advocates Act** and the Rules made by different High Courts, for fortifying the conviction of the basic man in the establishment of law. Producing such a confidence and certainty would reinforce the govern of law as well as bring about achieving the perfection in the legal profession.

References

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➤ Indian Contract Act, 1872



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