IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF TELANGANA

****

CITY CIVIL COURT APPEAL NO.89 of 2011

Between:

B.V.SUBBAIAH, S/o Raghavaiah,
Advocate, R/o.Flat No. 201,
Vishnu Residence, Block-C,
Gandhinagar, Hyderabad

.... Appellant

And

ANDHRA BANK
Rep. by its Chairman,
Andhra Bank Buildings,
Opposite RBI, Saifabad,
Hyderabad and others.

..... Respondents

DATE OF JUDGMENT PRONOUNCED : 31.01.2022

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
&
THE HON'BLE DR. JUSTICE G.RADHA RANI

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments ? : No

2. Whether the copies of judgment may be marked to Law Reporters/Journals : **Yes**

3. Whether Their Lordship wish to see the fair copy of the Judgment ? : No

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**
&
THE HON'BLE DR. JUSTICE G.RADHA RANI

+ **CITY CIVIL COURT APPEAL NO.89 of 2011**

% 31.01.2022

B.V.SUBBAIAH, S/o Raghavaiah,
Advocate, R/o.Flat No. 201,
Vishnu Residence, Block-C,
Gandhinagar, Hyderabad

.... Appellant

Vs.

$ ANDHRA BANK
Rep. by its Chairman,
Andhra Bank Buildings,
Opposite RBI, Saifabad,
Hyderabad and others.

..... Respondents

!Counsel for the appellant	:	Sri D.V. Seetharam Murthy Senior Counsel appearing for Mr. T. Sridhar.
Counsel for the Respondents	:	Smt. V. Dyumani, Standing Counsel for the Andhra Bank.

<Gist :

>Head Note:

? Cases referred:

1993 (1) ALT 439
AIR 1930 PRIVY COUNCIL 270
AIR 1931 Allahabad 752 (1)
AIR 1973 GAUHATI 27
AIR 1977 SC 1778
AIR (29) 1942 Calcutta 444
(2005) 7 SCC 283
2010 (10) SCC 331
AIR 1960 SC 335
AIR (32) 1945 Madras 190
1957 An.W.R. 572
AIR 1957 A.P.950
AIR 1987 A.P. 254
1994 (2) SCC 204

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE G.RADHA RANI

CITY CIVIL COURT APPEAL NO.89 of 2011

JUDGMENT: *(Per Hon'ble Dr. Justice G. Radha Rani)*

This appeal is preferred by the appellant/plaintiff aggrieved by the judgment and decree dated 9.2.2011 passed in O.S.No.77 of 2008 on the file of X Additional Chief Judge (FTC), City Civil Court, Hyderabad in dismissing the suit filed by him.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed before the trial Court.

3.1. The case of the appellant/plaintiff in brief was that he filed a suit for recovery of amount of 19,46,701.31 Ps. with subsequent interest @ 18% pa. The plaintiff submitted that he was a practicing advocate for more than 5 decades and he was a standing counsel for various banks and companies including the defendant bank i.e. Andhra Bank. The defendant bank entrusted several matters to the plaintiff before various Courts, Tribunals, Forums etc. He also appeared before the State Consumer Forum on behalf of the bank and rendered his services. Several matters were disposed off. But the defendant bank, though a nationalized bank, had not chosen to pay his fees, not even the expenses incurred, in spite of several requests made by him.

3.2. The total amounts payable by the defendant bank including the expenses, junior fee etc. were indicated by him as under:

Sl. No.	**Details of Case Nos. in which plaintiff appeared**	**Amount payable by the Defendant Bank (□)**
1.	CD No.139/1991 (Saidabad branch)	7,287.00
2.	CDA No.299/92 (Annavaram branch)	1,250.00
3.	CDA No.128/93 (Repalle branch)	1,250.00
4.	CDA No.262/94 (Tadipatri branch)	5,050.00
5.	CDA No.258/94 Khammam branch)	3,450.00
6.	CDA SR No.823/93 against CD 331/92 (Bitragunta)	1,250.00
7.	CD No.59/1990 (HMT branch)	6,250.00
8.	CD No.64/90 (Anakapalli branch)	7,950.00
9.	CD No.273/91 (Nakkalagunta branch)	7,900.00
10.	CDA SR No.645/94 against CD No.56/93 (Ravinuthala branch)	1,250.00
11.	CDA No.445/93 (Nakkalagunta branch)	1,250.00
12.	CD No. 49/91 (Balanagar branch)	4,850.00
13.	CD No.48/91 (Balanagar branch)	16,250.00
14.	CD No.11/91 (Nizamabad branch)	5,450.00
15.	CD No.7/90 (Jaladanki branch)	1,250.00
16.	A.S. No.3009/90	76,953.00
17.	OA No.1069/1996= OS 1184/1990	15,505.00
18.	O.S. 672/1979	2,442.75
19.	OA 403/99 = OA 433/88	1,93,425.00
20.	OS 475/91 = OA 1117/96 OA 446/99	6,53,471.00
21.	OS 1211/91	40,492.56
22.	OS No.301/93 (Andhra Bank vs. Akruti Wood Works)	22,640.00
	GRAND TOTAL:	**10,76,876.31**

He stated that he addressed several letters to the respondent bank demanding the fee but as there was no response from them, having no option, filed writ petitions vide W.P.No.32469 of 1998 and W.P.No.8441 of 2004 before the Hon'ble High Court to pay the above mentioned amounts together with interest from the dates of default. Both the writ petitions were clubbed and the Hon'ble High

Court vide order dated 6.2.2008 dismissed both the writ petitions giving liberty to him to file a civil suit for recovery of the amount. Hence the suit.

3.3. He further submitted that there was no contract agreed between them as to the amount of fee to be paid. As such, the fee had to be paid as per the Advocates Fee Rules. If the value of the suit was more than 10,000/-, a junior along with the senior could be engaged and the junior fee was also payable. The defendant bank was approbating and reprobating the pleadings. In one breath, the defendant stated that they had already paid by letter dated 4.2.1997, in another breath, the defendant did not choose to reply to the letters addressed for payment dated 12.2.1997 and 4.4.1998. One of the grounds taken by the defendant bank for refusing to pay the amount in respect of O.S.No.433 of 1998 was that he left the country for some time. For a short time he stayed abroad for getting treatment to his wife's ailment. He monitored all the cases even from the USA. He addressed a letter on 14.2.2000 from USA to the concerned Managers of all branches including the Sultan Bazaar Branch stating that he would conduct trial by himself. The defendant bank claimed that they had transferred 3 suits i.e. O.S.No.433 of 1988, O.S.No.475 of 1991 and O.S.No.1211 of 1991 to another advocate. The defendant bank could not transfer the cases without obtaining consent of the counsel on record. He never informed the bank that he abandoned the profession. His services were not terminated and no proceedings were initiated in the said regard. The defendant bank paid fee as per Advocates Fee Rules in the matter before the tribunal earlier. All the grounds for non-payment were taken only

when the bank was dragged to the High Court. The defendant bank being a State instrumentality had not replied to the letters addressed by him claiming fees and expenses which were legally due and lawfully payable. Even the stamp expenses for vakalats were not paid. The defendant bank was due a total sum of 10,76,876.31 Ps. on the respective dates they fell due. Since the defendant bank illegally withheld the amount and had not paid in spite of demand, he was entitled to claim interest @ 18% pa. Thus, he was entitled for a total sum of 19,46,701.31 Ps.

4.1. The defendant No.5 filed written statement and the same was adopted by the defendants 1 to 4 and 6. The defendant no 5 contended that as per the records maintained in the bank, the plaintiff was listed as one of the counsel to be engaged to prosecute or defend various cases filed by the bank and against the bank. The plaintiff failed to give the details relating to the payments already received by him while making the claim and stated the details of the amounts paid by the various branches in various cases. He contended that the plaintiff was away in USA and not prosecuted the case resulting which CDA SR No.823/93 was dismissed for default. The plaintiff had not informed the bank or the Bitragunta Branch about his non availability due to his going abroad, due to which the case was dismissed for non prosecution. The interest of the bank suffered and for the said reason they requested the plaintiff to reconsider his claim for full fee in the matter. He further contented that Consumer District Forum was not a regular court and elaborate procedures were not followed for deciding the cases. The procedure followed by the Consumer Dispute Courts was essentiality a summary procedure. The

advocates appearing there could not lay a claim of fee as applicable to suits before Civil Courts or Appellate Courts. The A.P.Advocate Fee Rules would not have application to consumer cases where summary procedure was followed. The bank was paying a reasonable fee for consumer cases depending upon the nature of the cases to its advocates. The bank was willing to consider the request of plaintiff for paying him as paid to the other advocates as per the norms laid down by the bank.

4.2. There was no practice in the defendant bank to pay junior advocate fee. The bank never agreed to pay junior advocate fee. It was evident from the letters dated 30.7.1991 and 8.8.1991. As per Rule 16 of A.P.Advocate Fee Rules 1990, if the suit was disposed off without contest, the fee payable was 50% of the fee payable in the suit. In other words, in ex-parte decree the advocate was entitled to only 50% of the fee. D3 paid the eligible fee for the *ex parte* decree, as per Rule 16 of AP Advocate Fee Rules 1990 in O.A.No.1069 of 1996. Towards travelling expenses and stay at Bangalore, the plaintiff claimed 4,480/-. D3 requested the plaintiff to submit proof of visit to Bangalore as well as related bills for stay and travel. In the absence of evidence, the plaintiff was not entitled to claim the said expenses. The plaintiff left for USA in 1999 and did not attend O.A.No.403 of 1999 and abandoned the case even before commencement of trial. Under the said circumstance, D5 was constrained to entrust the said case to another approved panel advocate of the bank, who conducted the trial and the said OA was decreed. The plaintiff received more than 50% of the fee even before the commencement of the trial. He was not entitled to any further fee and on the other hand was liable to

refund the excess fee which he received over and above 50% of the fee payable as per the AP Advocates Fee Rules.

4.3. He contended that O.S.No.475 of 1991, O.S.No.1211 of 1991 were entrusted by D5 to another bank panel advocate to protect the interest of the bank as the plaintiff abandoned the said cases before commencement of trial, as such he was not entitled to any further fee. He further contended that in A.S.No.3009 of 1990, the case was entrusted to plaintiff to avail his personalized services looking into the stakes involved and the complexity of the matter. Unfortunately the plaintiff had not prosecuted the first appeal and entrusted the matter to his junior colleague without informing the bank or obtaining concurrence of the bank. The advocate to whom the first appeal was entrusted did not contact the bank, as a result the appeal was dismissed by the High Court exposing the bank to pay the decretal amount, the bank interest was not properly safeguarded by the plaintiff. The plaintiff ought to have informed the bank about his non-availability at Hyderabad. Since he left to USA for a longer period, the case would have been prosecuted through various other agencies available to the bank. Unfortunately the plaintiff had not taken the bank into confidence. Hence the bank would feel it justified in not setting the full fee in favour of plaintiff in A.S.No.3009 of 1990.

4.4. In the suit filed against M/s. Akruthi Wood Works, it ended in compromise when the matter was posted for written statement of D1. The defendant bank paid more than 50% of the fee as per Rule 16 of the AP Advocate Fee Rules and the plaintiff was not entitled

to any further fee and on the other hand was liable to refund the excess fee paid.

4.5. He further contended that the Hon'ble High Court had not condoned the period of limitation while dismissing the writ petitions. The suit filed for recovery of the alleged fee was barred by limitation and liable to be dismissed on the said ground. The plaintiff was claiming fee for the work not done by him. The plaintiff was not entitled to claim fee in respect of the suits or proceedings conducted by other advocates. The plaintiff was not entitled to claim interest on the alleged fee for the work not done by him and prayed to dismiss the suit.

5.1. The plaintiff filed a rejoinder contending that if the defendants pleaded payment either in part or in full, the burden of proof was upon them to establish the factum of payment. Some payments made by the defendants might not have been noticed as the plaintiff's junior colleagues were looking after the same and the plaintiff never bothered to look into them. Any payment made, not innocently noticed might be given credit. He never abandoned any case without taking steps safeguarding the interest of the bank. Not a single matter suffered on account of default on his part during the period from 1990 to 2000 or at any time during the long period of 25 years when his services had been engaged by the bank. For the first time, it was falsely stated that he abandoned the matters. It was only a ruse or pretext for their conduct of engaging new advocates. It was fundamental that before any advocate on record was removed, they must be given notice and give justifiable reasons for withdrawing the case from him.

Transferring the case to another advocate means removal and the defendants did not have minimum courtesy at least to inform him that they were transferring the case to another advocate. He would have voluntarily withdrawn from the file if they had informed him that they were not satisfied with his work. His temporary absence from the country would not mean that he was not returning to the country and would not attend the cases. He was entitled to full fee as per the rules. Without the consent of advocate on record, another legal practitioner could not take up the matter. It was unethical to accept a brief without consent from the advocate on record. The advocates were not servants of the bank or their sub-ordinates to expect to work under their supervision and orders. The bank was not the master of the advocate. The advocate need not take the consent of the client whenever he leaves the place like a salaried sub-ordinate of the bank. He reserves his right to take appropriate action for the criticism and defamatory statement made by the officers of the bank against him in the suit as well as in the writ petitions.

5.2. He further contended that the claim was not barred by limitation. No such plea was taken by the bank in the writ petitions and there was no occasion for the High Court to consider the aspect of limitation. The contention of the defendants that the payment of fees was hit by the period of limitation would speak volumes of the attitude of the bank in payment of fees for the services rendered by the advocates. The conduct of the bank in postponing the payment without refusal and ultimately taking the plea of limitation as a ground would only demonstrate the cantankerous attitude of the bank. The advocate making trips to

USA or other places was not the concern of the defendant bank. It only would show the ill natured attitude of the officer. The bank employees would not wait for a day for their payments but making advocates wait without payment for years together, ultimately to state that the claim was barred by time was regrettable. The bank kept the advocate waiting promising payment, as such it was estopped from pleading otherwise. Limitation would start only from the date of refusal and prayed to decree the suit.

6. Basing on the above pleadings, the trial court settled the issues as follows:

1. Whether the plaintiff is entitled to recover the suit amount as prayed for?
2. Whether the suit claim is barred by limitation?
3. To what relief?

7. The plaintiff examined himself as PW1. Exs.A1 to A44 were marked on his behalf. DW1 was examined on behalf of defendants. Exs.B1 to B4 were marked on their behalf.

8. On considering the evidence and on hearing both the counsel on record and the citations relied by both the counsel, the trial court dismissed the suit without costs holding that the suit was barred by time and that the plaintiff was not entitled for recovery of suit amount.

9. Heard the learned senior counsel Sri D.V.Seetharam Murthy for the appellant and the learned counsel for the respondents.

10. Learned senior counsel contended that the trial Court ought to have seen that the entire contest was that though the advocate

was entitled for the fee as per the Advocates Fee Rules, the plaintiff abandoned the cases and hence not entitled for full fees, the trial Court ought to have understood the principle from the various pronouncements that as long the advocate continued on record he should be paid the full fees, the advocate would continue till he was terminated by due process of law or till he consented for another advocate to appear for conducting the case. In fact there was a bar for any other advocate to appear without the consent of the advocate on record. Admittedly no consent of the plaintiff was taken, nor was his authority terminated by any proceeding in any Court, as such he was entitled for full fees as per the Advocates Fee Rules. The statement that permission by the Court implied was erroneous.

10.1. He would contend that the trial Court failed to see that in cases at Sl.Nos.1 to 13 nothing was paid either towards expenses or fees and in the cases at Sl.Nos.16 to 22 only part payments were made.

10.2. He would further contend that the trial Court went wrong in holding that the suit claim was barred by limitation. Article 18 would not apply. Only Article 113 would apply and limitation would start only if the demand for fee was refused. The trial Court ought to have seen that the plea of limitation was a later thought, just a means to escape the liability. The provisions of Limitation Act and Articles had not been correctly understood by the Court. The suit was filed without any loss of time on the next day of dismissal of the writ petitions. The trial Court has not considered Section 14 of Limitation Act.

10.3. The Court ought to have seen that the bank officers were promising to pay fee and at no point of time, there was any refusal. In the absence of refusal for the standing counsel, the period of limitation would not begin to run. The learned senior counsel for the appellant contended that the plea of limitation was not taken by the respondents/defendants in their counters filed in the writ petitions. Limitation would start only from the date of denial by the defendants. The letter addressed by the defendants would not disclose that they had rejected the claim of the plaintiff in total. They had only disputed the quantum of fee claimed by the plaintiff, but never raised the plea of limitation. The right to sue would accrue to the plaintiff only when there was a clear and unequivocal denial of his right by the defendant. The defendant had not expressed his denial till filing of the counter in writ petitions on 25-04-2007. The suit was filed by the plaintiff on 07-02-2008 i.e. within three years of the denial of his right by the defendants in claiming the fee, as such it was filed within the time. The trial Court erred in coming to the conclusion otherwise.

10.4. He would contend that the learned Judge had not even included the memo of fees and costs in the decree. He had not even considered equities and the principles of justice. The findings were patently incorrect and prayed to allow the appeal.

10.5. Learned senior counsel placed reliance on following decisions:

i) P.Ram Reddy v. The Shipping Corpn. of India Ltd., Bombay[1];

ii) Mt. Bolo v. Mt. Koklan and others[2];

---

[1] 1993 (1) ALT 439

iii) (Panchaiti Akhara Bara Udasi) Nanak Sahi Kydganj v. Naziruddin and another[3];

iv) Kakodonga Tea Estate v. J.N. Saikia[4]

11. The learned counsel for the defendants contended that the suit is barred by limitation. It is instituted nearly 8 years after the judgment in O.S.No.1211 of 1991 and nearly 10 or more years after the results of other cases. The fee was claimed beyond three years after the result of the cases. Further, the suit was not filed within three years of the termination of his services in the respective cases. According to learned counsel, as per Article 18 of the Limitation Act suit has to be instituted within three years on completion of work and when payment was due. The appellant had knowledge about the approximate dates of his termination of services in each and every individual case and he was aware that the respondents had not replied to his notices demanding fee in cases. The same would amount to deemed denial.

11.1. She would submit that Article 113 of the Limitation Act has no application and on the claim of appellant Article 18 would apply. The trial court rightly came to the conclusion that the suit was barred by limitation.

11.2. Learned counsel for the defendants relied on following decisions:

(i) **Mrs.Moti Natwarlal and others v. M/s.Raghavayya Nagindas and Co.[5];**

(ii) **Sachindra Nath Chatterjee v. Bengal Nagpur Railway Co. Ltd.[6]**

---

[2] **AIR 1930 PRIVY COUNCIL 270**
[3] **AIR 1931 Allahabad 752 (1)**
[4] **AIR 1973 GAUHATI 27**
[5] AIR 1977 SC 1778
[6] AIR (29) 1942 Calcutta 444

12. In the light of the rival contentions, the point for consideration is:

> "Whether the judgment of the trial court is in accordance with law, evidence and probabilities of the case and whether there are any reasons to set aside the same? "

13. To appreciate submissions of learned counsel, it is considered necessary to understand scope of Articles 18 and 113 of the Limitation Act 1963.

14. Article 18 is under Part-II of Schedule pertaining to suits relating to contracts. It reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
18. For the **price** of work done by the plaintiff for the defendant at his request where no time has been fixed for payment.	Three years.	When the **work is done.**

Article 113 comes under Part-X of the Schedule pertaining to suits where there is no prescribed period of limitation. It reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
113. Any suit for which no period of limitation is provided elsewhere in the schedule.	Three years.	When the **right to sue accrues.**

It is apparent from the reading of both Articles that though the period of limitation is three years, but under Article 18 it begins to run when the **work is done** and under Article 113 it begins to run **when the right to sue accrues**.

15. Whether a professional activity can be considered as a commercial activity and the term '***price'*** is synonymous with the

term '***fee***' came up for consideration before the Hon'ble Apex Court in two cases relied on by the learned senior counsel for the appellant.

15.1. In **M.P. Electricity Board and others v. Shiv Narayan and others[7],** the Hon'ble Apex Court held that:

> "***a professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character***. The word "commerce" is a derivative of the word "commercial". The word "commercial" originates from the word "commerce". The expression "commerce" or "commercial" necessarily has a concept of a trading activity. Trading activity may involve any kind of activity, be it a transport or supply of goods. Generic term for almost all aspects is buying and selling. But in legal profession, there is no such kind of buying or selling nor any trading of any kind whatsoever. Therefore, to compare legal profession with that of trade and business is a far from correct approach and it will totally be misplaced."
>
> (emphasis supplied)

15.2. In **Dharmarth Trust, Jammu and Kashmir, Jammu and others v. Dinesh Chander Nanda[8],** the Hon'ble Apex Court held that:

> "11. The term `**price',** as appearing in Article 56, is to be understood in common parlance/ordinary or normal sense. It takes its colour from the meaning attached to the term `price' in the Articles immediately preceding `Articles 52 to 55'. ***`Price' does not cover the services provided by the professionals such as Architect, Lawyer, Doctor etc., as professionals charge a `fee'.*** Also, the term ***`work done' in Article 56 will not be applicable to professionals such as Architect, Lawyer, Doctor etc. as these professionals render services to their clients. The remuneration of a professional is in the form of a `fee' and therefore, it cannot be said that the professional earns a `price'. In common usage, the term `price' refers to goods sold.*** For illustration, the term `price' is defined in Section 2 (10) of the Sale of Goods Act, 1930 as "price" means the money consideration for a sale of goods.
>
> 18. ....***The word `price' was never intended to be used synonymously with the word `fee' and, therefore, the fee charged by an Architect for services rendered by him would not be covered under Article 56 of the Act***. In the case on hand, the Trial Court as well as the High Court have made a clear distinction between the terms `work done' and `services'. The `work done' would refer to work done by masons such as land filling or engineering projects etc."
>
> (emphasis supplied)

---

[7] (2005) 7 SCC 283
[8] 2010 (10) SCC 331

15.3. The Hon'ble Apex Court extracted the judgments of the High Court of Allahabad and the High Court of Gauhati and explained the difference between the two Articles, as under:

> "The High Court of Allahabad in *Kaviraj Baroda Kant Sen vs. Court of Wards in Charge of Baraon Estate*, [AIR 1931 All. 752], as early as in 1931, while interpreting Article 56 of the Indian Limitation Act, 1908 has stated as follows:
>
> > ".....it is difficult to apply Article 56 which relates to a suit for the price of work done by the Plaintiff for the Defendant at his request. No special article appears to be applicable to a claim by a medical practitioner for recovery of his fees for attendance on a patient. The residuary Article 115 which applies to all breaches of contract, would therefore apply, for there was undoubtedly a contract, at east, an implied one, to pay the fee, and the non-payment of that fee amounted to a breach for which the plaintiff would be entitled to compensation. In Harish Chander Surmah vs Brojonath Chackerbutty [1870] 13 W.R. 96 a suit for recovery of compensation for the fees of a medical practitioner was held to lie under the corresponding article of the Limitation Act then in force"
>
> 24. The High Court of Gauhati in *Kakodonga Tea Estate vs. J.N. Saikia*, [AIR 1973 Gau. 27], has also held that "a suit to recover unpaid professional fees by a Chartered Accountant falls under Article 113 and not under Article 18 or Article 55...". The High Court of Gauhati further specifically held as follows:
>
> > "8. It is easy to assume that very deep thought must have been devoted by the Legislature in giving shape to the various Articles of the old as well as the new Limitation Act. It is equally legitimate to assume that the words of each Article must have been used in their commonly accepted connotation unless contrary intention is expressed in the body of the Act just as is apparent from Section 2 wherein certain expressions have been defined to mean something less or more than what their commonly known attributes are. The expression "price" used in Article 18 must, therefore, be taken to convey the commonly accepted sense implicit in it. According to the Chambers Twentieth Century dictionary the word "price" means: the amount, usually in money, for which a thing is sold or offered; that which one forgoes or suffers for the sake of or in gaining something: money offered for capture or killing of anybody: that for which one can be bribed; betting odds; values. ***In common parlance what a client pays to a professional person like an Advocate and a CA is described as "fee" and not "price". Likewise, what a patient pays to a medical-man for the services rendered to him by the latter is called "fee" and not "price". Therefore, it would be unduly straining the expression "price" used in Article 18 if it were held synonymous in connotation with the fee paid to an Advocate, a Medical-man or a CA.*** For this reason alone, I believe, Article 18 does not provide for a suit for the professional fee of the nature just stated....."
>
> 25. We agree with the ratio laid down by the Allahabad and Gauhati High Courts relating to Article 56 of the Indian Limitation Act, 1908 that the term ***"price of work done" cannot be made applicable to professions where the***

> ***professionals merely provides services for a "fee". We accept the claim of the respondent that the profession of an Architect is one such service, hence Article 56 is not applicable to the present case.*** Both the Trial Court as well as the High Court has arrived at correct conclusion."
>
> (emphasis supplied)

15.4. Learned counsel for defendants placed heavy reliance on **Mrs.Moti Natwarlal** (supra) to contend that claim of plaintiff is barred by limitation. We have carefully gone through the said judgment. In **Mrs. Moto Natwarlal,** the question for consideration was whether the bill of costs of a Solicitor or Attorney, who had rendered professional services to his client in the City Civil Court could be taxed by the Taxing Master, Original Side of Bombay High Court, and if so, whether it can be taxed on the original side scale. The issue concerned with scope of Rules 569 and 573 of 'The Rules of the High Court of Bombay (Original Side), 1957". Three contentions were raised by the appellants in the High Court: (1) a Solicitor's bill for costs and remuneration in respect of the work done by him in the City Civil Court cannot be taxed by the Taxing Master, Original Side, High Court; (2) the bill, in any event, cannot be taxed according to the scale of fees applicable on the Original Side as between as Attorney and client; and (3) the recovery of the amount taxed by the Taxing Master is barred by limitation under Art.113 of the Limitation Act, 1963. The High Court rejected all these contentions by its judgment dated October 8, 1974. From paragraph-5 of the judgment of Hon'ble Supreme Court, it is noticed that appellant did not press the third point regarding limitation and Hon'ble Supreme Court observed as, "***rightly so".*** Thus, issue as arising in this case was not considered by Hon'ble Supreme Court. No such rules were in vogue applicable to the facts of the present case. In fact, the Hon'ble Apex Court had not

discussed with regard to the applicability of Article 18 of the Limitation Act for recovery of the fees of the attorneys and clearly stated that Article 113 of the Limitation Act is applicable to the suits. As such, the said judgment is distinguishable on the facts and do not come to the aid of defendants.

15.5. It is thus beyond pale of doubt that '***price of work done'*** is not applicable to professionals and therefore Article 18 of Limitation Act is not attracted to the claim of plaintiff.

16.1. The plaintiff in his evidence stated that he issued notices to the defendants demanding the amounts due to him giving the list of cases and particulars of the amounts due to him vide letter dated 20.03.1996 marked as Ex.A1. He stated that apart from the Managers and concerned staff, the Assistant General Manager also promised on several occasions and undertook to pay the amounts. The amounts due to him in the matters before the Consumer Forum was 71,937/-. He issued a reminder vide letter dated 09.09.1996, the office copy of which was marked as Ex.A2. The Assistant General Manager and the Chairman were informed requesting payments vide letter dated 09.06.1998 and the copy of the letter so addressed was marked as Ex.A3. The postal receipts and acknowledgments were marked as Exs.A4 and A5.

16.2. He claimed fee due to him in A.S.No.3009 of 1990 vide letter dated 14.06.1991, the office copy of which was marked as Ex.A6. The Manager gave a reply on 08.08.1991 vide Ex.A8 stating the Junior Advocate's fee would not be paid as the suits filed by the Bank would not involve any complicated issues warranting the assistance of Junior Advocate and not to engage the services of the

Junior Advocate at their cost. The plaintiff stated that he had not claimed Junior Advocate's fee from then onwards, but for the Junior Advocate's services till then engaged, fees had to be paid and accordingly replied in his letter dated 12.08.1991, the copy of which was marked as Ex.A9. The bank addressed a letter to him on 13.08.1991, which was marked as Ex.A.10 enclosing a pay order for 82,479/- towards the payment of fee in A.S.No.3009 of 1990 (NTR Stadium Committee case, Gudiwada). The plaintiff wrote on 17.07.1996 to the defendants that he was still due an amount of 76,953/- in the said case. The same was marked as Ex.A11. The bank addressed a letter to the plaintiff on 04.02.1997, marked under Ex.A12, stating that the pay order for 82,479/- included the above amount of 76,953/-. The plaintiff addressed a letter to the defendants on 12.02.1997 clarifying about the payments made and due to him in A.S.No.3009 of 1990 vide Ex.A.13 stating that the Senior Advocate's fee would come to 1,53,906/- out of which half of the amount would come to 76,958/- and the same was only sent and the balance equal amount was payable. He issued another reminder with regard to the fee in the said case vide Ex.A16 dated 14.07.1998. He again wrote on 26.08.1998 vide Ex.A17 demanding payment of 76,958/-, the balance amount due to him in A.S.No.3009 of 1990.

16.3. He further stated that he addressed a letter on 10.03.1999 for payment of fee and expenses in O.A.No.1069 of 1996 vide Ex.A19. He addressed a letter dated 03.10.2000 vide Ex.A31 reminding the defendants that an amount of 88,613/- was due

towards his fee in O.A.No.1069 of 1996. The defendants gave a reply on 25.11.2000 enclosing a DD for 18,488/- stating that the suit was decreed *ex parte* and the advocate was not entitled for junior advocate fee and the ticket numbers in proof of visiting Bengaluru and incurring expenses was not filed. He addressed another letter dated 02.02.2001 stating that the said suit was not decreed *ex parte* and the total fee payable to the Senior Advocate was 30,808/- but only an amount of 18,488/- was sent on 25.11.2000 with a covering letter that the suit was decreed *ex parte* and that he was not paid expenses for his visits to Bengaluru for arguing the matter before the Debt Recovery Tribunal at Bengaluru and an amount of 15,505/- was due in the said suit.

17. Thus, the evidence of PW.1 would disclose that he continuously addressed letters to the defendants claiming the amounts of fee due to him in various cases. The defendants had not denied his entitlement of fee in the said cases but objected it on other grounds. Vexed with the attitude of the defendants, the plaintiff had filed Writ Petitions vide W.P.No.32469 of 1998 claiming an amount of 1,48,890/- due to him in A.S.No.3009 of 1990 and filed W.P.No.8441 of 2004 claiming an amount of 9,27,986.31 Ps. due to him in six other cases. The defendants/respondents had filed counters in both the WPs on 25.04.2007 denying the claim of the plaintiff. Both the writs were disposed off by a common order dated 06.02.2008 dismissing the same on the ground that no writ petition can lie for recovery of amount due towards professional fee and gave liberty to the writ petitioner/plaintiff to approach the civil court for recovery of the said amount. The contention of the respondents/defendants was

that the High Court had not condoned the time taken for prosecuting the writ petitions.

18. We are of the considered opinion that the trial Court has misdirected itself in appreciating the issue of limitation. The trial Court also erred in observing that in some of the cases the plaintiff was removed in the middle of the suits and some other Advocates were engaged to conduct the said cases, as such the plaintiff must be having knowledge of his removal and the limitation would start from the said date.

19.1. In **Mst. Rukhmabai v. Lala Laxminarayan and others[9],** the Hon'ble Apex Court held that knowledge was not sufficient to attract the provisions of the Limitation Act and limitation would start to run only when there was effectual threat of infringement to his right. It held that:

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.
>
> Where there are successive invasions or denials of a right, the right to sue under Art.120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

19.2. Same is the view taken by this Court in **P.Ram Reddy** (supra). This Court held:

> "Period of limitation prescribed under the Limitation Act in a suit for recovery of professional fee is three years as provided under Article 113 of the Limitation Act and the cause of action would arise on the date the respondent had unequivocally denied the petitioner's right to claim the amount."

---

[9] **AIR 1960 SC 335**

19.3. In **Mt. Bolo** (supra), the Privy Council has also expressed same view. It held that:

> "There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or atleast a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

20. With regard to the claim of the plaintiff for recovery of his professional fees in consumer cases for an amount of 71,937/-, the respondents/defendants contended that A.P.Advocates Fee Rules were not applicable to the cases filed before the Consumer Forum as such, the plaintiff could not claim the fee basing upon the A.P.Advocates Fee Rules. But, when there was no specific contract between the plaintiff and the defendant bank with regard to the payment of the fee, it was only the A.P. Advocates Fee Rules which would govern the payment of fee. As per the defendants, the plaintiff was listed as one of the counsel engaged by them to prosecute or defend the cases on their behalf. Thus, there must be several advocates engaged by them to argue the matters before the Consumer Forums also and must be paying fee to them. Though the defendants stated in their reply that they were paying reasonable fee for consumer cases depending upon the nature of the cases to its Advocates and bank was willing to consider the request of the appellant for paying him as being paid to other Advocates as per the norms laid down by the bank, failed to adduce any evidence to show the amount of fee they were paying to the other Advocates on record who appear before the Consumer Forum.

21. Though it is stated that the Bank had never shown any disinclination to settle the fee of the appellant in the consumer matters entrusted on behalf of the bank, failed to pay the said amount and dragged the appellant to the extent of filing a writ petition before this Court and even after that failed to settle the issue. The contention of the appellant was that he was not paid even a single pie with regard to the said cases. When the respondents were claiming that they paid certain amounts, the burden would lie upon them to prove that the amounts were in fact paid by them as contended. The defendants examined DW.1, but had not adduced any evidence in proof of the payments made by them. Hence, they failed to discharge the burden laid upon them to show that the amounts were in fact paid to the appellant in the said consumer dispute cases.

22. The other contention taken by the learned counsel for the respondents/defendants was that the plaintiff abandoned the cases in the middle and left to USA as such they were constrained to hand over the cases to some other Advocates and as such the plaintiff was not entitled for payment of fee for the work not done by him. The learned senior counsel for the appellant/plaintiff refuted the said argument and contended that the Advocate would continue on record till he was terminated by due process of law or till he consented for another Advocate to appear for conducting the case and there was a bar for any other Advocate to appear without the consent of the Advocate on record and admittedly, no consent of the appellant was taken nor his authority was terminated by any proceedings in any Court and as such the plaintiff was entitled for full fee as per the Advocates Fee Rules.

23. Learned senior counsel for the appellant contended that Order 3 Rule 4 CPC would empower the counsel to continue on record until the proceedings in suit were duly terminated.

23.1. Learned senior counsel relied on following decisions:

(i) **A.V.Sundaramurthy Chettiar v. S.Muthiah Mudaliar and another[10];**

(ii) Sankara Venkatappayya v. Vijayawada Municipality, by Commissioner[11];

(iii) Kodanda Ramaswami Vari Devastanam and others v. D. Seshayya and others[12];

(iv) Damodardass Agarwal and others v. R. Badrilal and others[13]

24.1. In **A.V.Sundaramurthy Chettiar** (supra), Madras High Court held:

> "Advocate was entitled to be paid his full fee and a change of advocate could not be sanctioned until satisfactory arrangements were made to that end.
>
> In the absence of misconduct on the part of the advocate engaged by a client to appear in a case, the client is not entitled to the sanction of the Court for a change of the advocate who has had charge of the case till then without making a satisfactory arrangement to pay the advocate."

24.2. In **Sankara Venkatappayya** (supra), this Court held that:

> "The right to fee of a counsel is not dependent on the quantum of work that he is actually called upon to do in the Court. In a number of cases, counsel are not called upon to plead in Court when they appear for a defendant or a respondent; it is their liability to act and plead under the vakalatnama that entitles them to payment for services which they are bound to render when called upon to do so."

24.3. In **Kodanda Ramaswami Vari Devastanam** (supra) this Court held:

> "Order III, Rule 4, does not give an absolute right to a pleader to appear in a Court till the termination of the proceedings, but only provides in what manner should a pleader be appointed

---

[10] **AIR (32) 1945 Madras 190**
[11] **1957 An.W.R. 572**
[12] **AIR 1957 A.P.950**
[13] **AIR 1987 A.P. 254**

> and till what time the appointment will be in force. The rule, in so far as it governs the continuance of a vakalat, is primarily concerned not so much with the right of an advocate as with the right of the court to consider that the client, who appears by a pleader in any proceedings continues to be represented by him until the appointment which is filed in court is determined in the manner specified in the rule."

24.4. In **Damodardass Agarwal** (supra)**,** this Court considered the aspect that leave of court is necessary for termination of appointment of an advocate and leave of court is not a mere formality. The Court after examining the provisions of Order III Rule 4 and Rule 20-A of Civil Rules of Practice observed that:

> "32. We shall examine the first question. For that we must look O. 3, R. 4 sub-rule (2), C.P.C. and also R. 20-A, Civil Rules of Practice.
>
> "Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client."
>
> (Explanation. - Omitted) "Rule 20-A of Civil Rules of Practice: Consent for change of vakalat:- An advocate or pleader, proposing to file an appearance in a suit, appeal or other proceeding in which there is already an advocate or pleader on record, may not do so unless he produces the written consent of such advocate, or pleader or where consent of such Advocates, or pleader is refused, unless he obtains the special permission of the Court."
>
> A perusal of these rules discloses that if a practitioner who filed vakalat on behalf of his client has not given consent, leave of the Court is necessary to terminate his appointment as an advocate in the case. Though O. 3, R. 4 is silent about the power of the Court to determine any question disputed between the parties courts have construed this provision empowering the Court to pass an appropriate order while granting leave to the client to terminate the appointment of his counsel. The enquiry is clearly summary and the Court cannot make an elaborate adjudication on seriously disputed questions of fact and law. There is consistent practice in this Court whereunder the Court is empowered to pass appropriate order directing the payment of fees to the advocate before his services as an advocate are terminated.
>
> A Division Bench of the Madras High Court in Sundaramurthy v. Muthjah Mudaliar, AIR 1945 Mad 190 held that "in the absence of misconduct on the part of the advocate, the client is not entitled to the sanction of the Court for a change of the advocate without making a satisfactory arrangement to pay the advocate who has had charge of the case." Hence the client cannot without the leave of the Court terminate the services of his advocate. Hence even if the advocate reports no instructions at one stage, he is entitled to prosecute the proceedings at a later stage so long the Court has not passed

> an order terminating his services and in the absence of an order discharging an advocate the advocate is deemed to continue to represent his client."

25. From the above precedent decisions, it is apparent that an advocate was entitled to be paid his full fee and a change of advocate could not be made without the permission of the court and the right to fee of a counsel was not dependent on the quantum of work that he actually did in the Court.

26. From the foregoing discussion, the contentions of the learned counsel for the defendants are not on sound grounds. The trial Court erred in not appreciating the precedent decisions of the Hon'ble Apex Court, this Court and the High Courts of other States.

27. Before parting with the case, it is considered necessary to make an observation about the conduct of the defendants, a Nationalized Bank, towards their Standing Counsel in respect of his financial claim by adopting dilatory tactics and raising technical pleas to avoid payments and making him to take recourse to prolonged litigation by wasting the time not only in terms of money but also the valuable time of the counsel and the court is highly reprehensible. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and he is at liberty to leave him also for the same reasons. But the lawyer, in turn, is not an agent of his client and is a dignified, responsible spokes person.

28. Advocate is essentially an advisor to his client as laid down by the Hon'ble Apex Court in **R.D. Gupta and others v. State of U.P. and others**[14] as under:

> "Legal profession is essentially a service oriented profession. The lawyer of the Government or a public body is not its employee but is a professional practitioner engaged to do the specified work though he is on the full-time rolls of the Government and the public bodies are described as their law officers. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies."

29. Thus, the defendants denying the professional fee of their Standing Counsel and taking the plea of limitation itself is a degrading act on their part.

30. Hence, the Appeal is allowed setting aside the judgment and decree dated 09.02.2011 passed in O.S.No.77 of 2008 by the X Additional Chief Judge (FTC) City Civil Court, Hyderabad, holding that the appellant/plaintiff is entitled to recover the suit amount as prayed for with interest at 9% per annum from the date of institution of the suit till the date of realization. Pending Miscellaneous petitions, if any, shall stand closed.

JUSTICE P.NAVEEN RAO

JUSTICE G.RADHA RANI

Date: 31.01.2022
KTL/KKM

[14] 1994 (2) SCC 204

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE G. RADHA RANI

CITY CIVIL COURT APPEAL NO.89 of 2011

Date: 31.01.2022

KTL/KKM