

Ramzan Fathubhai Tamboli Vs. Bansilal Chunilal Munot

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Court : Mumbai

Decided On : Dec-07-1971

Reported in : (1974)76BOMLR39

Judge : Vaidya, J.

Appeal No. : Second Appeal No. 13505 of 1971 and Appeal No. 205 of 1972

Appellant : Ramzan Fathubhai Tamboli

Respondent : Bansilal Chunilal Munot

Disposition : Appeal allowed

Judgement :

Vaidya, J.

1. In this matter Vakalatnama is filed on behalf of the appellant and the question is whether it is in proper form. The question arises because the appellant has authorised a firm of advocates practising in the name and style of Messrs R.G. Samant and Co. to appear, plead, act and to compromise on his behalf in the matter filed in the High Court. The Vakalatnama is accepted and presented on November 10, 1971, for R.G. Samant and Co. by a partner Mr. C.G. Parulekar. The question has arisen because although warrants of authority are filed on the Original Side and such Vakalatnamas are also filed on the Appellate Side on behalf of the attorneys, no such Vakalatnamas were in practice filed by advocates on the Appellate Side of this Court.

2. Rule 6 of Chapter IV of the Bombay High Court Appellate Side Rules, 1960, which requires a Vakalatnama to be filed runs as follows:

6(i) Where an Advocate is required to file any matter or proceeding on behalf of his client, he shall not do so, unless he produces either a vakalatnama authorising him to do so or a written statement signed by him stating that he has instructions from or on behalf of his client to file the matter or proceeding and also undertaking to file within a week a vakalatnama duly authorising him to file the same on behalf of his client. The vakalatnama or the written statement shall contain the Advocate's address.

(ii) The vakalatnama shall before it is filed in Court bear an endorsement of acceptance by the Advocate concerned or by any other Advocate on behalf of such Advocate.

(iii) Any matter not complying with the requirements of this rule shall not be accepted by the office.

3. Relying on this rule, the office of the Appellate Side of the High Court has raised a query as to whether the Vakalatnama filed in this case can be said to have complied with this rule and whether for purposes of record of this Court appearance on behalf of the appellant may be shown as appearance of 'M/s. R.G. Samant and Co.'

4. On behalf of M/s. R.G. Samant and Co., the partnership deed is produced. It is clear from the deed and the facts of the case that on account of the present state of health of Mr. R.G. Samant, he has no desire to attend personally to the office matters in the High Court and he intends to discharge his responsibility with regard to the work entrusted by the client to him through the partnership firm in the name and style of M/s. R.G. Samant and Co. whenever he finds it not possible to attend personally on account of bad health or risk to health. There is no law which prohibits formation of such a firm of advocates. In the draft rules framed by this High Court under the Advocates' Act, a firm of advocates is permitted to appear on behalf of the parties in the same way as advocates appearing individually or jointly.

5. In this connection, it is also necessary to bear in mind the distinction made between a firm and its partners by commercial men on the one hand and the lawyers on the other as pointed out in the following classic passage of Lord Lindley: Commercial men and accountants are apt to look upon a firm in the light in which lawyers look upon a corporation, i.e. as a body distinct from the members composing it, and having rights and obligations distinct from those of its members. Hence, in keeping partnership accounts, the firm is made debtor to each partner for what he brings into the common stock, and each partner is made debtor to the firm for all that he takes out of that stock. In the mercantile view, partners are never indebted to each other in respect of partnership transactions; but are always either debtors to or creditors of the firm.

Owing to this impersonification of the firm, there is a tendency to regard its rights and obligations as unaffected by the introduction of a new partner, or by the death or retirement of an old one. Notwithstanding such changes among its members, the firm is considered as continuing the same; and the rights and obligations of the old firm are regarded as continuing in favour of or against the new firm as if no changes had occurred. The partners are the agents and sureties of the firm; its agents for the transaction of its business; its sureties for the liquidation of its liabilities so far as the assets of the firm are insufficient to meet them. The liabilities of the firm are regarded as the liabilities of the partners only in case they cannot be met by the firm and discharged out of its assets....

But this is not the legal notion of a firm. The firm is not recognised by English lawyers as distinct from the members composing it. In taking partnership accounts and in administering partnership assets, courts have to some extent adopted the mercantile view, and actions may now, speaking generally, be brought by or against partners in the name of their firm;...but speaking generally, the firm as such has no legal recognition, The law, ignoring the firm, looks to the partners composing it; any change amongst them destroys the identity of the firm; what is called the property of the firm is their property, and what are called debts and liabilities of the firm are their debts and their liabilities. [Law of Partnership. 13th Ed. Chap. 3, p. 25]

6. It is, therefore, clear that when M/s. R.G. Samant and Co. filed the Vakalatnama, it is in the eye of law, the Vakalatnama of all the partners. All of them are bound to act, appear and plead on behalf of the appellant. Each can also appear for the others or

do anything authorised to be done under the Vakalatnama. No objection to the appearance being shown as that of M/s. R.G. Samant and Co, can be valid. It may be so shown for all legal purposes as well as for convenience of typing and for reduction of clerical work of writing on the boards of hearing etc. the names of all the partners. No partner of the firm can plead an excuse of his personal name being not shown on the boards of hearing¹. The object of Rule 6 is to see that some advocate who has undertaken to appear for a party will be always responsible to the office of the High Court and be approachable by the office in connection with the matters relating to the party pending in this Court and will be further responsible for due appearance before the Court in the case. Rule 6(ii) itself says that if the Vakalatnama is bearing endorsement of acceptance by the advocate concerned or by any other advocate on behalf of such advocate, the Vakalatnama is in proper form. Mr. C.G. Parulekar has signed the Vakalatnama as a partner of M/s. R.G. Samant and Co. It clearly means that he has signed it as a partner of M/s. R.G. Samant and Co. of which the members are (1) Mr. R.G. Samant, (2) Mr. G.R. Rege, (3) Mr. Bhal D. Desai and (4) Mr. C.G. Parulekar, all advocates on the roll of this Court. All of them will be jointly and severally responsible as advocates acting under the Vakalatnama.

7. It will always be open to the office to ascertain who are the partners of a firm authorised under a Vakalatnama. Once the High Court is satisfied that all the partners are advocates, a Vakalatnama signed by one of the partners, as in the present case, in my judgment, complies with the Rule 6(ii). There is nothing in the Advocates' Act or the proposed rules under the Advocates' Act or the Appellate Side Rules which prohibits the Court from accepting such Vakalatnama and showing appearance of such a firm in cases in which Vakalatnama is filed duly signed by one of the partners, who is an advocate, on behalf of the other partners, who are all advocates. For these reasons¹, I find that the Vakalatnama filed on behalf of M/s. R.G. Samant and Co. by Mr. C.G. Parulekar may be accepted as in proper form under Rule 6 of the Appellate Side Rules and the appearance of the firm of M/s. R.G. Samant and Co. be shown as advocates for the appellant.