

MFA No.6526/2013

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER 2016

PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

MISCELLANEOUS FIRST APPEAL NO.6526/2013 (LAC)

BETWEEN:

KARNATAKA POWER TRANSMISSION
CORPORATION LTD.
REPRESENTED BY
EXECUTIVE ENGINEER (ELEC)
TL & SS DIVISION, KPTCL
MYSORE – 570 021

...APPELLANT

(BY SRI AJITH ANAND SHETTY, ADVOCATE)

1. M.RAJASHEKAR
S/O M.C.MADAPPA
R/AT NISARGA, 85TH K.M
KANAKAPURA, MYSORE ROAD
T.K.HALLI, HALAGURU HOBLI
MALAVALLI TALUK
MANDYA DISTRICT – 571 401
2. H.M.RAVISHANKAR
S/O H.B.BASAVANNA
R/AT MUTT ROAD

HALAGUR, MALAVALLI TALUK
MANDYA DISTRICT – 571 401

3. H.M.MAHESH
S/O LATE H.M.MALLIKARJUNAPPA
R/AT MUTT ROAD, HALAGURU
MALAVALLI TALUK
MANDYA DISTRICT – 571 401

4. THE ASSISTANT
COMMISSIONER AND LAND
ACQUISITION OFFICER
MYSORE SUB DIVISION
MYSORE – 570 021

...RESPONDENTS

(BY SRI C.M.JAGADEESH &
SRI VEERABHADRA SWAMY, ADVOCATES FOR R1 TO R3;
R4 IS SERVED & UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 54(1) OF LAND
ACQUISITION ACT AGAINST THE JUDGMENT AND AWARD DATED
23.11.2011 PASSED IN LAC NO.243/2010 ON THE FILE OF THE
IV ADDITIONAL SENIOR CIVIL JUDGE & JMFC, MYSORE.

THIS MFA HAVING BEEN HEARD AND RESERVED ON
19.11.2016 FOR ORDER ON OFFICE OBJECTION RAISED ON THE
VAKALATNAMA, THIS DAY, H.G.RAMESH J., MADE THE
FOLLOWING ORDER:

ORDER

H.G.RAMESH, J.:

1. Whether vakalatnama filed by a new advocate is to be accepted in the absence of 'no objection' of the advocate already on record, is the short question for consideration in this case.
2. Registry has raised an objection on the vakalatnama of the appellant filed by Sri Ajith Anand Shetty, advocate; objection is that the vakalatnama does not contain 'no objection' of the advocate already on record for the appellant.

3. We have heard Sri Ajith Anand Shetty, learned counsel, on the objection raised by the Registry. The learned counsel submitted that a party to a litigation has an absolute right to appoint an advocate of his choice, to terminate his services, and to appoint a new advocate. Hence, a party cannot be compelled to obtain 'no objection' from the advocate already on record. Insisting for 'no objection' from the previous advocate will amount to putting a restriction on the right of a party to appoint an advocate of his choice. He sought for overruling of the objection raised by the Registry. In support of his submission, he relied on two decisions of the Supreme Court in R.D.Saxena v. Balaram Prasad Sharma [AIR 2000 SC 2912], and in New India Assurance Co. Ltd. v. A.K.Saxena [AIR 2004 SC 311], and also a Division Bench decision of this Court in Sri C.V.Sudhindra & Ors. vs M/s Divine Light School for Blind & Ors. [ILR 2008 KAR 3983].

4. To examine the question raised, it is relevant to refer to the following observations made by the Supreme Court in R.D.Saxena v. Balaram Prasad Sharma [AIR 2000 SC 2912]:

15. A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. **For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative.**

17. If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him is paid, the situation perhaps may turn to dangerous proportion. There may be cases when a party has no resource to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees is yet to be paid.

18. Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. But if he has a duty to return the files to his client on being discharged the litigant too has a right to have the files returned

to him, more so when the remaining part of the lis has to be fought in the court. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate.

23. We, therefore, hold that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct.

42. ----- It is true that an advocate is competent to settle the terms of his engagement and his fee by private agreement with his client but it is equally true that if such fee is not paid he has no right to retain the case papers and other documents belonging to his client. Like any other citizen, an advocate has a right to recover the fee or other amounts payable to him by the litigant by way of legal proceedings but subject to such restrictions as may be imposed by law or the rules made in that behalf. -----

(Emphasis and underlining supplied)

5. In the context of the question raised, the following observations made by a Division Bench of this Court in Sri C.V.Sudhindra & Ors. vs M/s Divine Light School for Blind & Ors. [ILR 2008 KAR 3983] are also apposite:

7. We are therefore of the considered opinion that the contract of vakalathnama can be withdrawn by the client at any time. There is nothing known as irrevocable vakalathnama. Precisely the same right has been exercised by respondent No.1 herein (defendant No.7 in the suit) who had earlier engaged the petitioners on their behalf as Advocates to represent them. -----

8. -----if the Advocate feels that he has any genuine claim or grievance against his client, the appropriate course is to return the brief with endorsement of no objection and agitate such right in an appropriate forum, in accordance with law and not indulge in arm twisting methods by holding on to the brief.

(Underlining supplied)

6. As could be seen from the observations made in the two decisions extracted above, a party to a litigation has an absolute right to appoint an advocate of his choice, to terminate his services, and to appoint a new advocate. A party has the freedom to change his advocate any time and for whatever reason. However, fairness demands that

the party should inform his advocate already on record, though this is not a condition precedent to appoint a new advocate.

7. There is nothing known as irrevocable vakalatnama. The right of a party to withdraw vakalatnama or authorization given to an advocate is absolute. Hence, a party may discharge his advocate any time, with or without cause by withdrawing his vakalatnama or authorization. On discharging the advocate, the party has the right to have the case file returned to him from the advocate, and any refusal by the advocate to return the file amounts to misconduct under Section 35 of the Advocates Act, 1961. In any proceeding, including civil and criminal, a party has an absolute right to appoint a new Advocate. Under no circumstance, a party can be denied of his right to appoint a new advocate of his choice. Therefore, it follows that any rule or law imposing restriction on the said right can't be construed as mandatory. Accordingly, Courts, Tribunals or other authorities shall not ask for 'no objection' of the advocate already on record, to accept the vakalatnama filed by a new advocate.

8. As observed in the decisions referred to above, if an Advocate is discharged by his client and if he has any genuine claim against his client relating to the fee payable to him, the appropriate course for him is to return the brief and to agitate his claim in an appropriate forum, in accordance with law.

9. As stated above, under no circumstance, a party can be denied of his right to appoint a new advocate of his choice. The right is absolute and not conditional. Hence, the objection raised by the Registry on the vakalatnama is overruled. Hereafter, the Registry shall not ask for 'no objection' of the advocate already on record, to accept the vakalatnama filed by a new Advocate.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

KSR