

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 4.08.2014

Coram

The Honourable Mr.Justice **SATISH K. AGNIHOTRI**

and

The Honourable Mr.Justice **M.M.SUNDRESH**

W.A.No.1029 of 2014
and M.P.Nos.1 & 2 of 2014

S.Diwakar

....Appellant

Vs.

1.The Deputy Registrar (Writs),
O/o The Deputy Registrar,
High Court of Madras,
High Court Buildings,
High Court, Chennai.

2.Leo Irudaya Raj

.... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 02.07.2014 made in W.P.SR.No.57325 of 2014.

For Appellant : Mr.S.Diwakar, Party-in-Person

JUDGMENT

The appellant, who appeared before us as a Party-in-Person and practising Advocate, was the writ petitioner before the learned single Judge. The writ petition was filed challenging the order of adjudication dated 15.04.2014 passed by the learned X Metropolitan Magistrate,

Chennai, in C.C.No.4527 of 2013 filed at the instance of the second respondent.

2. **Brief Facts:-**

The appellant was the counsel for the 2nd respondent in C.C.No.4527 of 2013. It appears that the 2nd respondent for the reasons known to him substituted the appellant with some other counsel. The subsequent counsel has also filed his vakalat. The case was adjourned by the X Metropolitan Magistrate, Egmore, Chennai, on 15.4.2014 recording the fact that the counsel, by name Mr.S.Jayakumar, has filed vakalat on behalf of the 2nd respondent. Accordingly, the case was adjourned to 6.6.2014. Thereafter, the appellant sent a letter to the 2nd respondent on 7.5.2014 that his action is against the rule of law. The said letter was followed by filing writ petition before the learned single Judge challenging the adjudication order dated 15.4.2014 passed by the learned X Metropolitan Magistrate, Egmore, Chennai in C.C.No.4527 of 2013. The Registry did not number the writ petition and raised the question of maintainability. Not satisfied with the reply of the appellant, the matter was posted before the learned single Judge. The learned single Judge, after hearing the appellant, has passed an order on merit dismissing the writ petition. Thereafter, the appellant has filed affidavit before the learned X Metropolitan Magistrate, Egmore, Chennai, seeking to adjourn the

pending case in C.C.No.4527 of 2013 for a period of one month for the purpose of challenging the order passed by the learned single Judge before the Division Bench. Now, challenging the order passed by the learned single Judge in W.P.SR.No.57325 of 2014 dated 02.07.2014, the appellant has preferred this writ appeal before us. The papers filed by the appellant were returned for certain compliance. The appellant made a complaint before us that the writ appeal has not been numbered without any basis. Thereafter, we directed the Registry to number the writ appeal. These are the background facts of the case.

3. **Submissions of the Appellant:-**

The appellant submitted that his fundamental right to practice as a Lawyer has been infringed. The learned X Metropolitan Magistrate, Egmore, Chennai, has deliberately passed the order since the appellant has given a complaint against some other judicial officer. The appellant has done an excellent service to the second respondent. It is not known as to why the second respondent turned against the appellant. The learned X Metropolitan Magistrate ought not to have noted the change of vakalath filed without following the required procedure. Admittedly, the consent of the appellant has not been obtained. The learned single Judge has given wrong findings on fact. There is no ill-will between the Judicial

Officer and the appellant. Hence, the appeal has to be allowed. In support of his contention, reliance was made on the decision rendered in **THE TAMIL NADU ELECTRICITY BOARD V. R. SRINIVASAN (AIR 1992 MADRAS 40)**.

4. We have heard the appellant at length and perused the documents filed by him.

5. **Discussion:-**

5.1. From the available records filed before us, it is seen that the second respondent has filed a private complaint before the jurisdictional Magistrate through his then counsel viz., appellant before us. A complaint has been taken on file in C.C.No.4527 of 2013. During the proceedings, a vakalath has been filed on behalf of the second respondent by another Advocate. Taking note of the same, the case stood adjourned as per docket order dated 15.04.2014.

5.2. The relationship between the Advocate and the client is strictly professional. It is depends upon the trust between the parties. The legal profession is not only a service but also a calling. Therefore, when the client wants to engage another counsel, the earlier Lawyer has got no

option, except to recuse himself from the case. Acting as a Lawyer to a client is different to any other disputes *inter se* including the payment of fees etc.

5.3. We do not find any fundamental right of the appellant being infringed. It is not, as if, the appellant has been debarred from doing his profession. It is purely a personnel dispute between the appellant on the one hand and the second respondent on the other hand. It is not the case of the appellant that the vakalath has not been signed by the second respondent. On the contrary, it is the case of the appellant that the learned X Metropolitan Magistrate, Egmore, Chennai, ought to have conducted an enquiry as the change of vakalath has been filed without obtaining his consent. The permission of the Court, even assuming, is required, at the best, can be termed as a procedural one. The appellant submitted that by conducting enquiry, the truth would come out. The duty of the Magistrate is to conduct the case before him and not to resolve the *inter se* between the Lawyer and the party.

5.4. The decision relied upon by the appellant, in our considered view, is not applicable to the case on hand. The Division Bench of this Court was dealing with the provisions contained under Code of Civil

Procedure, vis-a-vis the Appellate Side Rules. It is well known that in the appellant side, the parties are not required to be present as no element of trial is involved in the normal circumstance. Further more, admittedly, the second respondent has changed his counsel. Therefore, we do not find any merit in this appeal.

6. Accordingly, the writ appeal stands dismissed. However, we make it clear that the decision rendered by the learned single Judge as well as by us will have to be construed in the light of the issues raised and they will not have any bearing on the personal conduct of the appellant. No costs. Consequently, connected miscellaneous petitions are also dismissed.

(S.K.A.,J.) (M.M.S.,J.)
4 .08.2014

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To

The Deputy Registrar (Writs),
O/o The Deputy Registrar,
High Court of Madras,
Chennai.

**Satish K.Agnihotri,J.
and
M.M.Sundresh,J.**

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**Pre-delivery Order in
W.A.No.1029 of 2014**

4.08.2014