

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10567 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? : NO
No.

ALAUKEIK TRADING & INVESTMENT PVT LTD & 3

Versus

C.R. IYER

Appearance:

MR AJ PATEL for Petitioners

MR HD VASAVADA for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-07 /09/1999

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 17-8-1994 passed by 5th Joint Civil Judge (SD), Vadodara below Exhs. 77, 78, 79, 83 and 85 in Special Civil Suit No. 675 of 1990 whereby Exh. 77 and 79 to relieve the respondent's advocate were rejected and the defendants/petitioners were directed to deposit Rs.4.77 lacs towards fees with costs of Rs. 50,000/- in the Court on or before 31-8-1994.

2. One Gaekwad Investment Corporation Pvt. Ltd. filed Special Civil Suit No. 675 of 1990 in the Court of Civil Judge (SD), Vadodara. The petitioners were the defendants in that suit and they have engaged local Sr. Advocate Mr. N.H. Bhatt. Petitioners no.3 and 4 also engaged the respondent as their advocate only for attending the application exh. 5 filed in the suit as regards the points arise under the Companies Act and the respondent filed his vakalatnama in the said suit on 2-4-1992. However, on account of difference of opinion between the petitioners on one hand and the respondent on the other, the petitioners no. 3 and 4 discharged the respondent as their counsel with effect from 12-4-1992 and orally asked the respondent not to attend their case on their behalf and not to come from Delhi on 18-4-1992 which was fixed for hearing of the application exh. 5. The petitioners also sent a cheque for the amount of Rs. 1 lac to the respondent towards full and final settlement of professional fee and expenses out of pocket in connection with his work. The said cheque was sent with a covering letter dated 13-4-1992. The respondent accepted the said cheque and encashed the same. The respondent after receiving the amount of Rs. 1 lac sent the letter dated 22-4-1992 to the petitioner no. 1 stating therein that it was a mischievous act on the part of the petitioners to call the payment "full settlement" and he asked the petitioner to clear the outstanding amount of Rs.4,77,000/- without any further delay. On 18-4-1992 the petitioners no. 1 and 4 made application exh. 77 seeking an adjournment on the ground that they had discharged the respondent as their advocate. The respondent moved an application exh. 78 on the same day protesting against the application exh. 77 and stating that the petitioners may not be permitted to change the counsel without obtaining "No Objection" from the respondent. The petitioners again moved an application exh. 79 on 20-12-1992 making the same request as made in exh. 77. The petitioners no. 3 and 4 filed a detailed reply exh. 81 to the application exh. 78 of the respondent. The respondent also filed the reply exh. 83 to the application for adjournments filed by the petitioners exh. 77 and 79. The petitioner no. 2 also filed rejoinder to the applications exh. 83, 86 and 91.

3. After hearing the parties, 5th Jt. Civil Judge (SD), Vadodara passed the impugned order dated 17-8-1994 directing the petitioners to deposit the sum of Rs. 4.77 lacs towards professional fee of the respondent including expenses with further sum of Rs. 50,000/- towards the expenses of the respondent for attending hearing of the

applications stated above.

4. The parties have exchanged the affidavits and I have heard Mr. A.J. Patel learned counsel for the petitioners and Mr. C.R. Iyer respondent advocate in person at length for several days.

5. Mr. Iyer raised a preliminary objection in respect of maintainability of the writ petition alleging that this petition is not maintainable in the eye of law on the ground that alternative statutory remedy is available to the petitioners. He submitted that the impugned order has been passed under Order III Rule 4 of the Civil Procedure Code and that order is revisable under the provisions of the Civil Procedure Code. As no Revision Application has been filed, this writ petition is not sustainable in the eye of law. On the contrary, the learned counsel for the petitioner submitted that the principal question that is raised in the petition relates to the jurisdiction of the learned Trial Judge in passing the impugned order at the instance of a third party and the learned Trial Judge has no jurisdiction to pass an order directing the petitioners to deposit the amount of Rs.4.77 lacs towards professional fee of the respondent in the Court under Order III Rule 4 of the Civil Procedure Code. The respondent could have filed separate proceedings for recovery of his professional fee and he cannot claim the professional fee in the present proceedings of exh. 5. As such, the impugned order of the learned Trial Judge is without jurisdiction and not sustainable in the eye of law. The petitioners have filed this writ petition for quashing the impugned order which is beyond jurisdiction. Where the parties have other alternative remedy it would be appropriate for the petitioners to choose and avail any them even alternative remedy by way of Revision Application u/s 115 of the Civil Revision Application was available to the petitioners. Such remedy is not efficacious remedy compared to the remedy by way of this petition under Article 226 and 227 of the Constitution of India.

6. I have heard learned counsel for the petitioner and respondent advocate in person and perused the relevant papers and considered carefully the contentions raised on behalf of the parties as stated above.

7. It is well settled rule of law that where any order is illegal, arbitrary or beyond jurisdiction or any material irregularity causing grave injustice has been committed, if the remedy of appeal or revision is provided in the Statute and illegality, arbitrariness

jurisdictional error or material irregularity of an order can be decided, remedy of appeal or revision as the case may be provided therefor can only be remedy to be availed. No other remedy can be availed therefor. By filing writ petition extra ordinary jurisdiction under Article 226 and 227 of the Constitution of India should not be invoked to correct the illegality in the order to quash an order passed beyond jurisdiction particularly where the Statute has provided specific remedy unless Court records finding that remedy provided by the Statute is not efficacious or expeditious. The Civil Procedure Code has provided civil revision u/s 115 of the Civil Procedure Code as a remedy against such orders passed under Order III Rule 4 (2) of the Civil Procedure Code if such order suffers from jurisdictional error, or material irregularity. In the case of Union of India Vs. Radhey Shyam and Others, reported in AIR Rajsthan 1979 137, a revision petition was filed u/s 115 of the Civil Procedure Code against the order directing payment of full fee to Shri Gaur and the Union of India filed Revision Application before the Rajasthan High Court with a prayer to delete the direction relating to payment of full fee to Shri Gaur. The Rajasthan High Court entertained the Revision Application against the order passed under Order III Rule 4 of the Civil Procedure Code and the revision application after considering the merits was dismissed. Thus, I am in agreement with the contention of the respondent advocate that the revision application against the impugned order is entertainable under Section 115 of the Civil Procedure Code, the extra ordinary jurisdiction of this Court under Article 226 and 227 of the Constitution of India should not be invoked. However, in view of the fact that this Court had admitted this petition for hearing and the interim order was passed by this Court I would also like to consider this writ petition on merits.

8. The petitioner has raised following seven questions of law in the petition for invoking writ jurisdiction of this Court.

(i) Whether the learned 5th Joint Civil Judge

(Senior Division), Baroda had jurisdiction and competence to pass the impugned order passed below applications exh. 77, 78, 79, 83 and 85 in Special Civil Suit No. 6575 of 1990 whereby he directed the petitioners to deposit a sum of Rs.4,77,000/- towards professional fees of the respondent and a further sum of Rs.50,000/towards costs of the respondent for attending hearing of the applications Exh. 77, 78, 79, 83 and 85 ?

(ii) Whether the learned trial Judge was justified in passing the order at Annexure - J when the respondent was engaged only as an advocate by petitioners no. 3 and 4 and when he was not a party to the suit ?

(iii) Whether the learned trial Judge has committed an error apparent on the face of the record in passing the impugned order in the absence of any prayer made by the respondent in the aforesaid applications ?

(iv) Whether an advocate of a party has a legal right to make an application in a proceeding in which he appeared as an advocate for that party for an order for payment of fees and expenses to him without filing an independent proceeding for that purpose ?

(v) Whether in a suit filed by a third party against the petitioners, the learned Judge could have passed an order on the applications filed by the respondent, which was wildly beyond her jurisdiction ?

(vi) Whether the order passed by the learned trial Judge can be sustained on merits when the respondent has not produced any specific agreement or any other document with a view to show that the petitioners had agreed to pay the fees awarded by the learned trial Judge to the respondent for representing their case in the aforesaid suit for some time at the hearing of application exh.5 ?

(vii) Whether the learned trial Judge has committed an error in not properly appreciating the ratio laid down in various decisions cited at the Bar at the hearing of the aforesaid applications ?

9. Learned trial Judge has dealt with 5 questions in her judgment (i) whether the Court can direct the party to pay the fees of his advocate ? (ii) Where such direction can be extended to the professional work done for the client outside Vadodara ? (iii) where the aforesaid directions can be given even if no other advocate is engaged after the respondent was relieved by them ? (iv) Whether the Court can decide the quantum of fees ? and (v) What is legal provision to show that the

act of the Directors is binding on the Company ?

10. So far as the question regarding direction to a party to make payment of the advocate's fees is concerned, learned counsel for the petitioners submitted that the advocate has no right to claim his fees in the proceedings. Of course, he can realize his fees by filing separate suit for recovery of his remuneration, fee or dues and he relied on the decision of the Supreme Court in the case of C.S. Venkatasubramaniam Vs. State Bank of India, reported in AIR 1997 SC 2329, wherein it has been held that until the proceedings are concluded the appellant has no right to collect the fees as a matter of course. The appellant cannot insist for payment of fee as a condition to give consent. On the contrary, Mr. Iyer contended that under the provisions of the different Statutes, he is entitled for his fees before he is discharged for this purpose leave of the Court is required in law on the application in writing by the Court to discharge him and leave of the Court is subject to condition that the client pay fees and cost of his advocate and he has cited various decisions of the different courts in support of his contention. On the basis of the decisions of different High Courts, it is a settled law that the respondent can claim his professional fee and expenses before he is discharged from the case.

11 Before advertizing the questions raised by learned counsel for the petitioner I would like to discuss the following four questions arising out of the controversies in the present case :

- (i) Whether leave of Court is necessary for discharging an advocate under Order III Rule 4(2) of the Civil Procedure Code or an intimation of discharging Advocate given to the Court would be sufficient ?
- (ii) Whether remuneration of an advocate can be taxed in the same proceedings in which he was engaged or he is required to file separate suit for recovery of his outstanding dues of his fees. If he is not required to file separate suit, then can he also claim his remuneration for his professional work done out side i.e. other suits or proceedings pending in the same Court or other Courts ?
- (iii) Whether quantum of fee of the advocate

can be determined by the Court ? If it is so, how it is to be determined and the Court below is justified in determining the fee of the respondent advocate in the facts and circumstances of the case.

- (iv) Whether the Court has jurisdiction to order for taxing fee in a case where fee or remuneration of Advocate is not claimed for discharge and the Court below is justified to pass the impugned order ?

For the answer of this first question we have to see the relevant provisions in the Civil Procedure Code then to consider the case law on issue.

12. The impugned order has been passed under Order III Rule 4 of the Civil Procedure Code. The relevant provisions are being quoted here.

- (i) Appointment of Pleader : No pleader shall act for any person in any Court unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment.

- (ii) Every such appointment shall be filed in Court and shall for the purpose 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.

The decisions of the Courts in the following cases are required to be looked into :

- (A) Bijli Cotton Mills (P) Ltd. Vs. M/s. Chhaganmal Bastimal & Others reported in the case of AIR 1982 Allahabad 183 (Division Bench), wherein it has been held that appointment of a pleader can not be determined unless leave of the Court is granted by a writing signed by the Client or the pleader until the Client or pleader dies or proceedings are concluded.

(B) Babui Dulhika Devi Vs. Ram, Ashay Prasad & others, reported in AIR 1930 Patna 403 (Division Bench), wherein it has been held as under :

"Thus, the appointment may be determined either by the client or by the pleader but in every case it can be done only with the leave of the Court if it is not determined that the appointment continues until all the proceedings in the suit are ended." " In the circumstances of this case the Advocates are entitled to the costs of this hearing in addition to their fees in the case"

(C) Thomas Rajan Vs. Philip John & Others reported in AIR 1982 Kerala 188, wherein it has been held that merely sending letter by the client to his pleader that he has given up the engagement is insufficient.

(D) Narayandas Sunderlal Rethi & Others Vs. Narayandas Harbhagat, reported in AIR 1932 Bombay 363, wherein it has been held that it is rule of the Court not to sanction a change of solicitors when the former solicitor has not discharged himself, so long as his costs remain unpaid.

(E) Pankajkuamr Ghose Vs. Sameer Kumar Shikhdar, reported in AIR 1934 Calcutta 58, wherein it has been held that the practice of the Calcutta High Court has always been that no order for change of attorney is made unless provision is made for payment of the Attorney except where the Attorney has by his own conduct or misconduct discharged himself.

(F) A.V. Sundarmurthy Chethiar Vs. S. Muthiah Mudiah & Others, reported in AIR 1945 Madras 190 (Division Bench), wherein it has been held that 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 had the charge of the case till then without making a satisfactory arrangement to pay the advocate.

13. On the basis of statutory provisions of Order III Rule 4 (2) of the Civil Procedure and the decisions of the various Courts as stated above, it is a well settled principle of law that engagement of an advocate on behalf

of the party continues until it is determined by the advocate or by the party, but that requires leave of the Court. For the leave of the Court the advocate or the party will have to move the Court in writing under his signature by the client or the advocate, as the case may be, the advocate will be deemed to have discharged if the party or the advocate dies or the proceedings are concluded for which he was appointed. Every client is at liberty and entitled to change his advocate. But that is subject to the leave of the Court and the leave is granted only on the condition that the party pays costs, fee of the advocate agreed upon before he is discharged. It is not necessary that the leave will be granted only for change of the advocate, even no advocate is changed the leave of the Court is must for dis engagement of the advocate. Concept behind the sanction of the Court for the discharge of an advocate is that the Court will consider the cause of disengagement and leave would be granted subject to the condition of payment of fee to the advocate. As leave of the Court is necessary for discharge of an advocate, mere intimation to the Court that the advocate has been discharged, is not at all sufficient in law and the advocate will not be deemed to have discharged on the intimation given to the Court.

14. For determination of second issue stated above, the following decisions of the different Courts would be helpful for arriving at correct proposition of law.

(i) Basudeo Ram Govind Vs. Vachha & Co.
reported in AIR 1955 Bombay 126 (Division Bench),
wherein it has been held, as under :

"Now, before we deal with the facts of this case, it is necessary perhaps to reiterate certain principles with regard to the rights of Solicitors which we think by now are well settled. A solicitor is undoubtedly entitled to proceed against his own client for the cost to which the solicitor is entitled in respect of the work done by the solicitor for his client. The Court gives many facilities to the solicitor to recover his costs from his client. He can get his costs taxed on the issue of an allocatur he can get a pay order from the Chamber Judge which he can execute as decree. Therefore, the important facility that the Court affords him is that he need not file a suit against his client to recover his cost."

(ii) Nawroji Pudamji Sardar Vs. Kanga &

Sayani, reported in AIR 1926 Bombay 272 (Division Bench), wherein it has been held that there is no reason why a solicitor practising in Bombay and performing professional services for client regarding business in the mofusil should not be entitled to send bill to his client for such professional services and if the client declines to pay, why he should not be entitled to come to the Court and ask for a common order to get the bills taxed by the Taxing Master.

(iii) Tyagji Dayabhai & Co. Vs. Jetha Devji & Co. reported in AIR 1927 Bombay 542, wherein it has been held as under :

"The lien of a solicitor is grounded on the principle that it is not just that the client should get the benefit of the solicitor's labour without paying it" "I am further of the opinion that there is nothing substantial in the contention that the parties ought to be left to a separate suit."

(iv) M/s. Moti Natarwarlal & Others Vs. M/s. Raghvayya Nagin Das & Co., reported in AIR 1977 SUPREME COURT 1778, wherein it has been held as follows:

"We have already mentioned that in M/s. Pereira Fazalbhoj & Co. (1963) 65 Bombay Law Reporter 87 Mody J., held that an Attorney was entitled to have his bills taxed on the original side scale even in respect of work done by him outside High Court. For various reasons mentioned above we endorse that view"

15. On the basis of the proposition of law laid down by the different Courts as stated above, I am of the view that the advocate is an officer of the Court. The Court gives various facilities to the advocate including the facility of charging his remuneration from the client and client shall not be permitted to leave his advocate without giving his fees agreed upon and he is not left to be driven to file separate suit for recovery of his fee. He is entitled to recover his remuneration in the proceedings in which he was proposed to be engaged. Further he is also entitled to tax his bills in the same proceedings for the professional work done outside the proceedings pending in the same Court and other Courts. He is not required to file a separate suit for recovery of his fee of the professional work done outside

proceedings in the same Court or different Courts. Thus, the Court below has not committed any error or mistake in accepting the bills of the advocate for his professional work done in the proceedings of the present case as well as of other suits.

16. The next question is in respect of the quantum of fee. Some of the High Courts have laid down the guide lines for determination of the fee of the advocate.

- (i) The State Vs. Narsingha Naik reported in AIR 1955 Orissa 102 (Full Bench), wherein it has been held as under :

"Undoubtedly a pleader is entitled to the fee for work done on the basis of quantum meruit in the absence of any specific agreement fixing a stipulated fee and such an agreement may be express or implied and can be basis of a suit by the pleader. Apart from his right of suit the pleader has a lien on the papers entrusted to his custody and even refuse to part with the papers until his fee is paid."

- (ii) City Improvement Bond Vs. M.P. Ramanna, reported in AIR 1974 Karnataka 88, wherein it has been held as follows :

"The client has an opportunity to change his counsel during the pendency of a case and is entitled to leave of the Court to do so. But that leave is subject to the condition that he pays the fee determined by the Court granting leave. In case there is an agreement between the client and his Advocate with regard to the fee on the part of the advocate or where the advocate himself has not discharged the client, leave will be granted subject to the condition that the client pays the full fee agreed upon for the entire case. If there is no agreement between the client and the advocate with regard to the fee payable to the advocate then leave will be sanctioned where the advocate himself has not discharged, the client on payment by the client of such fee which is found reasonable by the Court on the basis of the quantum meruit taxing into consideration of all the circumstances."

- (iii) Damodardas Agrawal & Others Vs. Badrilal & Others, reported in AIR 1987 Andhra Pradesh 254 (Division Bench), wherein it has been held that

in the absence of any allegation of misconduct on the part of the advocate or any dispute regarding fee due or payable, the Court is justified in ordering payment of fee or a reasonable amount of fee if the fee is not fixed when client wants to seek the leave to terminate the services of the advocate in the case."

(iv) Government of Tamil Nadu Vs. R. Thillaivillalan, reported in AIR 1991 SC 1231, wherein it has been held as under :

"After hearing learned counsel of both the sides the order that commands itself as appropriate having regard to all the circumstances of this case is to direct the Corporation to pay sum of Rs. one lac lump sum to the respondent which shall include Rs.84,212-21 determined by the High Court as well as the liability for any interest thereon. In other words the liability for interest is limited to the difference between Rs. one lac and Rs.84,212-21. The Corporation shall pay the aforesaid amount to the respondent within three weeks from today."

17. The question is in respect of determination of quantum of fees. Some of the High Courts have laid down guide lines for determination of fee of advocate. Learned counsel for the petitioners contended that the counsel has no right to claim his fees until the proceedings are concluded. This contention is also not tenable in view of the fact that the right of entitlement of fees of a lawyer can be determined on the facts and circumstances of each case. Where any allegation of any act amounting to misconduct is made against the lawyer then it would be a disputed question of fact. When it is a disputed the question of fact, then, it can be decided on the basis of the evidence adduced by the parties and it would be difficult in the proceedings wherein he is discharged, to decide whether the lawyer is entitled for his fees as a matter of right even if he has committed misconduct, then the lawyer cannot claim full professional fee unless it is established that he has not committed any misconduct. But where the facts are not disputed that there is no charge of misconduct or even no irregularity has been committed by the respondent advocate in his professional work and the bills dated

5-3-92 were handed over to the Secretary of the Company and forwarded the copy of the same to the petitioner on the very date by the respondent - advocate, the petitioners had not raised any objection to the rate of fee of Rs.. 20,000/- per day.

18. The respondent has filed his written submissions dated 1-1-94 in the lower court where in para 2 (h), it is stated that the respondent had put in several days of legal work including a thorough research which was not billed by him. Leaving aside the time consumed in such unbilled professional work, he had put in 28 days of court appearance and other legal work. On 31-1-92, when he reached Baroda to start his legal work, he made it clear to the defendants that his professional fee would be Rs. 20,000/- on per day basis. During his stay at Baroda from 31-1-92 to 4-2-92, met the defendants no. 2 and 4 and various officers of defendant no. 1 Company including Mr. M.N. Khade, Secretary and also Mr. Ajit Singh Gaekwad a close relative of the defendants no.2 and 3. The defendants have agreed to pay the professional fee on the above basis. After the visit for 5 days, he visited Baroda again for 9 days from 12-2-92 to 20-2-92. After second visit when he came to Baroda on 6-3-92 to appear in civil suit he submitted his bills dated 5-3-92 personally to Shri M.N. Khade, Secretary of the defendant no. 1 - Company. On that day, the defendants were also conveyed in writing his professional charges which was originally conveyed orally to them. The respondent submitted his bill on 5-3-92 to the Secretary of the Company and in writing he also conveyed to the other defendants. The petitioners have not raised any objection regarding the charges at the rate of Rs.20,000/- per day. Later on, the respondent submitted his bill with his affidavit in the Court. Both the petitioners have filed their reply to the written submissions of the respondents on 1-4-94. The petitioners have not stated in their reply that the respondent had not submitted the bills dated 5-3-92. If the bills have already been received by the petitioners and intended to discharge the respondent and to get adjournment, their intention is only that they were avoiding the fees of the respondent settled between them as submissions of the bills are not in dispute. It is also undisputed fact that the respondent advocate was engaged to deal with and argued complicated questions in respect of Company Law. The arguments were almost completed when the petitioners moved the applications for adjournment after relieving him. The fact is not disputed that the respondent advocate is LL. M.. with specialization in Corporate Laws including the Company

Law. He is also an Associate Member of the Institute of Company Secretaries of India, New Delhi which is a professional qualification for a specialized knowledge in Company Law. He is specialized in Company Law which is as such a complicated and highly technical subject. He has worked for the petitioners to the satisfaction of the Court. The lower Court has made an observation in the judgment that earlier predecessor presiding Officer of the Court has prepared hand written notes of arguments of the respondent advocate of about 70 pages in the day to day sitting. The respondent is highly qualified, specialized in the Company law and expert therein. His charges Rs.20,000/- per day do not appear to be excessive particularly when he is a practising lawyer of the Supreme Court in the facts and circumstances of the case. The lower court did not find any error in respect of the amount of fees charged by the respondent. In my opinion also, the petitioners were trying to avoid the respondent's fees and sent cheque of Rs. 1 lac on 20-4-1994 as the respondent had work for more than 28 days and that amount of Rs. 1 was insufficient for an advocate practising in the Supreme Court. The Lower Court has not committed any error in fixing the quantum and also in awarding special cost of Rs.50,000/- and the order of the lower court is justified and is liable to be confirmed.

19. Turning to the contention of the learned counsel for the petitioners that the respondent has no right to claim his fee, the Supreme Court has not laid down a rule that the counsel cannot claim his professional fee before he is discharged. The Statute has made it very clear that the Court can pass an order relieving the counsel for which the application for discharging is moved. But discharge can be subject to the conditions imposed by the Court. In the case relied on by the learned counsel for the petitioners the Supreme Court has observed that where there are allegations against the counsel, the counsel has no legal right to claim his fee in the proceedings. But in the present case, there are no allegations against the respondent that he has committed an act amounting to misconduct or he has committed any fraud or irregularity or has not argued the case to the satisfaction of the court. As such, the Trial Court was fully justified in holding that the Court can pass the order directing the petitioners to pay fee to the respondent.

20. So far as the fourth question whether the

advocate sought to be discharged has not claimed his remuneration or if the Court has jurisdiction to award his fee is concerned, the Court is required to see the real intention of the parties whether the advocate has claimed his fee by way of the objection raised by him. In the present case, the petitioners have not sought for leave to discharge the respondent advocate. They simply informed the Court by the applications exh. 77 and exh. 79 dated 18-4-92 and 20-4-92 respectively that they have discharged the respondent advocate. In reply, exh. 83 the respondent advocate in para 7 stated that his dues have not been settled. In para 7 he made it clear that he received the cheque of Rs. 1 lac only and there is outstanding dues of Rs. 4.77 lacs which is to be paid by the petitioners to the respondent advocate and he pointed out his outstanding dues. In para 11 he stated that in the facts and circumstances there is no reason why the defendant - petitioner should not pay the professional fee and charges of the respondent advocate and requested the Court to direct the petitioners to pay all the dues before they are permitted to continue with another advocate. The respondent advocate was under the impression that after relieving him the petitioner engaged another counsel. Hence he also prayed that the applications exh. 77 and exh. 79 for adjournment be dismissed and no advocate be permitted to argue out the case without his consent. In the written submission dated 1-1-94 he prayed for directions to the defendants in the Civil Suit No. 675/90 to pay balance fee and charges of Rs.4.77 lacs to the respondent advocate. Thus, the real intention of the respondent advocate was that he should be paid his outstanding dues of fee for discharge of his services and no other advocate should be permitted to argue the case without his consent. While, the intention of the petitioners was to avoid payment of fee to the respondent advocate. It was stated in this Court that the Court below tried to resolve the controversy. But the defendant - petitioners were not prepared for the same. In order to shorten the litigations this Court also tried to resolve the controversy and settle the disputes between the parties the time was allowed to learned counsel for the parties. But the present petitioners were not ready and hence this matter has to be considered on merits. On the other hand during the course of the arguments to avoid decision of this Bench, the petitioner moved the application for amendment in the petition challenging the vires of the provisions under Order III Rule 4 of the Civil Procedure Code and that application is rejected today. For the arguments of this petition in this Court and harassment and dragging the respondent advocate in further

litigations, the respondent advocate is further entitled for special costs in this petition besides special costs awarded by the Court below.

21. In the facts and circumstances of this case and looking to the intention of the parties, the Court below is fully justified and competent to direct the petitioners to deposit the amount of outstanding dues of the respondent advocate and to reject the applications exh. 77 and 79 of the petitioners wherein the Court was informed about discharge of the respondent advocate and adjournments were sought for.

22. In the facts and circumstances of the case, the petition has no merit and deserves to be dismissed. Accordingly, this petition is dismissed on merits. The interim order passed by this Court stands vacated. Rule is discharged, with further special cost of Rs.50,000/- besides the cost awarded by the Court below.

-0-0-0-0-0-

/JVSatwara/

After pronouncement of this judgment, the learned counsel for the petitioners submitted that the interim relief granted by this Court may be extended for a further period of four weeks to approach the higher forum. I do not find any substance in this prayer made by the learned counsel for the petitioners. Accordingly, this prayer is rejected.

Date:-7-9-1999. (Kundan Singh, J.)