

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 11113 OF 2016

M/S. ADVANTA INDIA LTD.

.....APPELLANT(S)

VERSUS

B.N. SHIVANNA

.....RESPONDENT(S)

J U D G M E N T**A.K. SIKRI, J.**

An important question of law that needs to be determined in this appeal pertains to the power of review with the Disciplinary Committee of the Bar Council of India (BCI). On a complaint filed by the appellant against the respondent, who is an Advocate, alleging the commission of serious acts of professional misconduct, with the Karnataka State Bar Council, the complaint was referred to its Disciplinary Committee. It examined the matter after giving due opportunity to both the parties to lead their respective evidences and held the respondent guilty of the charges of misconduct levelled against him. As a sequitur, the order dated July 31, 2005 was passed by the State Bar Council whereby the respondent was debarred from practicing for life and his name was also removed from the rolls of the Bar Council.

2) Statutory appeal was preferred by the respondent before the BCI which disposed of the said appeal vide the Order dated September 10, 2011. It reduced the punishment awarded to the respondent by debarring him for a period of 18 months, along with fine of Rs.25,000/-. The respondent filed the review petition under Section 48AA of the Advocates Act, 1961 seeking review of order dated September 10, 2011 by the BCI. The Bar Council has allowed the review petition vide order dated July 11, 2015 by setting aside the previous order and directing fresh consideration of the matter. It is this order passed in the review petition which is impugned in these proceedings.

3) Having given the aforesaid introductory remarks, we may now state the fact of the matter in detail:

As per the complaint of the appellant company, it is engaged in the research, production and distribution of seeds and hybrids such as sunflowers, maize, cotton, rice, bajra and sorghum. The respondent herein has a long history with the appellant company who initially joined them as a Marketing Executive in 1998. However, he left that job after a brief period and then returned in the capacity of Legal Counsel. According to the appellant, it was at this juncture that devised an elaborate ploy to swindle the appellant company out of lakhs of rupees. It all began when a Police Constable came to the appellant's office

multiple times, beginning in September, 2000, claiming that he was there to execute warrants against the Managing Director, CFO and other top executives of the appellant company. The appellant automatically called their legal counsel, i.e. the respondent herein, to deal with the issue. The respondent had a long conversation with the Police Constable at the end of which he informed the appellant that numerous farmers had apparently filed complaints against the company and it was these large numbers of complaints the Police Constable was concerned with. Each visit of the Constable's followed the same pattern.

- 4) The appellant further alleged in the complaint that the respondent then advised the appellant company to file 631 criminal petitions to quash the alleged complaints filed against them. He painted a picture where the arrest of the appellant's top executives was imminent and further went to contend that this dire situation could only be staved off if the criminal petitions were filed. He introduced Ms. Gowri as the vendor from whom the stamps for court fees would be purchased. The respondent stated that each petition would require a court fee of Rs.10,000/- (Rupees Ten Thousand only) to be filed – a statement that is blatantly false. Misled by the respondent, the appellant remitted Rs.62,51,259/- (Rupees Sixty Two Lakh Fifty One Thousand Two Hundred and Fifty Nine only) towards court fees for filing the criminal petitions. In order to make his lie believable, the respondent issued a receipt signed by Ms. Gowri for

the amount received as the court fees. Further, respondent also stated that other counsels were required to deal with the criminal petitions and urged the appellant company to retain three persons he introduced as CC Narayana, D. Ramesh and Raghavendra Rao. The appellant company then issued cheques over a period of 15 months to these three persons amounting to Rs.6,46,500/- (Rupees Six Lakh Forty Six Thousand and Five Hundred only). In addition to the aforementioned sums, the respondent also charged the appellants herein a sum of Rs.2,12,500/- (Rupees Two Lakh Twelve Thousand and Five Hundred only) as his fees.

5) By this time, the appellant company had spent a sum of Rs.72,00,000/- (Rupees Seventy Two Lakhs only) on litigation and were anxious regarding the results of the petitions. The respondent assured them that the criminal petitions were proceeding well and in December, 2001, when mere assurances were no longer enough, he produced a document he claimed was an order passed by a Single Judge of the High Court of Karnataka at Bangalore dated October 3, 2001 whereby 318 petitions had been allowed in favour of the appellant company. The respondent's conduct is proven by multiple letters exchanged by him and the appellant company wherein he continued this charade. However, the appellant company grew suspicious of the respondent's evasive manner. In January, 2002, the Police Constable called the

appellant's offices threatening more warrants. At this juncture, the appellant company sought the advice of another Advocate. This action of the appellant company brought to light the myriad of deceptions practiced upon them by the respondent.

- 6) The appellant company asked its newly appointed Advocate Mr. B.K. Sampath Kumar to check on the status of the criminal petitions as they felt that with the same pending before the trial courts, there was no reason for the Constable to call them and threaten the issuance of warrants. It was then they came to know that no criminal petitions had been filed in their name. The appellant company also gained knowledge that no court fees had to be paid to file criminal petitions. The web of deceit now began to unravel, further queries made to the Commissioner of Stamps, Karnataka and the Secretary of the Bangalore Advocates Association revealed that Ms. Gowri was not a registered vendor of stamps as they had been led to believe. This galvanized the appellants to produce the order given to them by the respondent before the Registrar of the High Court. The latter declared the alleged order as forgery and a fake and unequivocally stated that the Single Judge of the High Court had never issued such an order. In the wake of receiving this fake order, the High Court initiated *suo moto* contempt proceedings, CCC No. 7/2002.

- 7) Apart from filing the complaint before the State Bar Council of Karnataka under Section 35 of the Advocates Act on the aforesaid allegations, the appellant company has also filed Criminal Contempt Case No. 12/2002 and filed CC No. 8178 of 2002 under Sections 400, 417, 419, 420, 468, 471 and 474 of the IPC which is pending before the IVth Addl. Metropolitan Magistrate, Bangalore. The appellant has also filed OS No. 1575 of 2002 for recovery of Rs.72,00,000/- taken by the respondent on false pretexts.
- 8) The State Bar Council vide Resolution No. 68 referred the complaint before the Disciplinary Committee. After enquiring into the matter, the Disciplinary Committee adjudged the respondent guilty of misconduct and vide Orders dated July 31, 2005, debarred the respondent for life and removed his name from the rolls of the BCI. The respondent appealed the order passed in DCE No. 14/2004 before the BCI in DC Appeal No. 59/2005. The Disciplinary Committee of the BCI decided the appeal on September 10, 2011. It agreed with every finding rendered by the State Bar Council. However, it chose to reduce the punishment dealt to the respondent and debarred him only for a limited period of 18 months.
- 9) Aggrieved by the said order of the BCI, the appellant company filed CA No. 2732 of 2012 before this Court. While this appeal was pending, the

respondent filed Review Petition No. 7/2011 in DC Appeal No. 59/2005 before the BCI under Section 48AA. The Disciplinary Committee considered the same as per the powers vested in it under Section 44 of the Act and vide impugned order dated July 11, 2015, remanded the matter back to the Disciplinary Committee of the BCI.

- 10) Civil Appeal No. 2732/12 filed by the appellant, thereafter, came up for hearing before this Court on September 01, 2016 which was disposed of as infructuous, with the following order:

“Mr. Naresh Kaushik, learned counsel for the appellant submits that since the order impugned in this appeal has been reversed and the matter remanded back to the Disciplinary Committee of the Bar Council of India, this appeal has become infructuous and may be dismissed as such reserving liberty for the appellant to challenge the order passed in review in separate proceedings in accordance with law. The civil appeal is accordingly dismissed as infructuous with the liberty prayed for.”

- 11) It is in the aforesaid background that the present appeal filed by the appellant company has come up for hearing in which the counsel for both the parties have been heard.

- 12) On going through the Orders dated July 07, 2015 passed by the Disciplinary Committee of BCI, we discern that the reason which swayed the BCI to review its order was that before the State Disciplinary Committee, the respondent herein was not given adequate opportunity to cross-examine PW-1, i.e., the complainant. It has recorded that the

evidence of the complainant was closed on June 19, 2005, even though the respondent could not appear on that day due to his sickness and had produced the medical certificate in support thereof. After closing the evidence of the complainant, case was fixed for respondent's evidence on July 03, 2005. However, on that day also the respondent was not well and he had sought adjournment in the form of memo supported by medical certificate dated July 02, 2005. This application was declined by the Disciplinary Committee of the State Bar Council and evidence was closed. On that basis, the BCI has formed an opinion that in the absence of an opportunity to cross-examine PW-1, the respondent was denied his valuable right to defend himself which infringed the principle of fair trial. At the same time, while allowing the review petition on the aforesaid basis, instead of remanding the case back to the Disciplinary Committee of the State Bar Council, the BCI has withdrawn the case to itself on the ground that by virtue of the Section 36B of the Act, the jurisdiction of the Disciplinary Committee of the State Bar Council comes to an end on expiry of the period of one year. It has ordered that further enquiry shall be conducted by the Disciplinary Committee of BCI from the stage it was as on June 19, 2005 and the Chairman, BCI may constitute Disciplinary Committee of the BCI in this behalf.

- 13) We may also point out, at this juncture, that the appellant herein had raised a preliminary issue questioning the maintainability of the

review petition, *inter alia*, on the ground that scope of review jurisdiction was very limited. This objection has been turned down by the BCI with the remarks that review jurisdiction of the Disciplinary Committee of the Bar Council under the Act is wider than the review jurisdiction of a court under Section 114 of the Code of Civil Procedure read with Rule 1, Order 47 of the CPC. For this purpose, it has taken shelter in the judgment of this Court in the case of ***O.N. Mohindroo v. District Judge, Delhi & Anr.***¹ and has quoted following portions from the said judgement:

“The powers of review are not circumscribed by the Act. The analogy of the Civil Procedure Code must not be carried too far. Such powers may be exercised in a suitable case for or against an advocate even after the matter has gone through the hands of the Disciplinary Committee at some stage or even through this Court.

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.....All processes of the court are intended to secure justice and one such process is the power of review.”

- 14) Taking umbrage under the aforesaid dicta, the impugned order proceeds to hold that if a manifest wrong has been done, it is never too late to undo the wrong, since the factors that are placed on civil courts on their review powers are absent in review powers of the Disciplinary Committee, in terms of Section 44 and Section 48AA of the Advocate’s Act, 1961.

1 (1971) 3 SCC 5

- 15) There cannot be any doubt about the aforesaid proposition stated by the BCI. However, its application on the facts of the present case is clearly unsustainable. We are of the opinion that the BCI has, in fact, gone much beyond the scope of review powers, even when these are liberally construed. Our reasons for this conclusion are discussed hereinafter.
- 16) The aforesaid ground of not allowing the respondent to cross-examine PW-1 was not taken in the review petition for the first time. It was argued even before the Disciplinary Committee of the State Bar Council. The State Bar Council considered the argument and rejected the same after it found that the respondent had intentionally adopted dilatory tactics. It specifically held that cross-examination of the complainant was closed after giving adequate opportunities to the respondent. However, every time, when the case was fixed for cross-examination of PW-1, the respondent would send the proxy counsel with a medical certificate stating that he was unable to present himself. The State Bar Council even found discrepancies and inherent contradictions in the medical certificates. Discussion in this behalf, contained in the order of the Disciplinary Committee of the State Bar Council runs as under:

“It is to be seen from the records, that even before this Committee the respondent has availed maximum indulgence to cross examine his opponent, and inspite of availing the opportunity did not choose to complete the

cross examination of his opponent. This Committee ultimately after understanding the intentional default has passed the order taking the cross examination as closed. It is to be further seen that the respondent inspite of affording sufficient opportunity to him did not choose to let in any evidence from his side to substantiate his defense except marking some of the documents as exhibits, would not in any way assist the defense set up by him or would controvert the claim made by the complainant in this petition. The respondent in this case, except making all efforts to stall the proceedings has not done the positive known to law to disprove the case set up against him.”

- 17) It would be pertinent to mention that even in the appeal filed by the respondent before the BCI, he had raised this ground. After considering the same, in the light of arguments of both sides and the material placed on the record, the BCI specifically rejected this contention, finding no merit therein, in its order dated September 10, 2011 and also affirmed the findings recorded by the State Bar Council that respondent had committed a serious professional misconduct by revisiting the matter as an appellate authority. Relevant portion of the order of the BCI, discussing this aspect, goes on to say the following :

“The appellant further contended that the learned Lower D.C. has not granted full opportunity to lead evidence in his defense and the learned Lower D.C. hastily and in a speedy manner without giving proper opportunity to the appellant had decided the case. After going through the proceedings, we are satisfied that ample opportunities were given to appellant for cross-examination of the complainant as well as tendering evidence in his favour. From the proceedings and conduct of the appellant it is revealed that he was found delaying the proceedings on one pretext or other, therefore, the learned Lower Disciplinary Committee has rightly closed the right of cross-examination and further found that inspite of

providing sufficient opportunities to tender his evidence in defense – the appellant to do so. Moreover, the learned Lower D.C. has also dealt with this issue elaborately in paragraph 9 of the judgment and we find no infirmity in it. Thus, the objection raised by the appellant in this context has no substance.”

- 18) It is clear from the above that the issue as to whether there was any denial of principles of natural justice or fair trial in closing the cross-examination of PW-1 or whether this course of action was right on the part of the State Bar Council after giving sufficient opportunities to the respondent, was specifically dealt with by the BCI and authoritatively rejected while deciding the appeal of the respondent. It arrived at a categorical and definite conclusion that the respondent was given sufficient opportunities to cross-examine the complainant and it is the respondent who was at fault in failing to avail the said opportunities as he was found delaying the proceedings on one pretext or the other. It clearly follows that the BCI found fault with the respondent whose attitude was non-participatory and he was avoiding attending the hearings on false pretext.
- 19) When we examine the review power of the BCI, keeping in view the aforesaid factual matrix in mind, the necessary consequence would be to hold that in such a situation revisiting the issue on merits again on the pretext that the respondent was not granted proper opportunities to cross-examine PW-1 is clearly beyond review jurisdiction. No doubt, in

view of dicta of this Court in **O.N. Mohindroo** case, the review power of the Disciplinary Committee/BCI is not to be confined within the narrow parameters laid down in Section 114 and Order 47 Rule 1, CPC. At the same time, the power also cannot be extended to the extent that the reviewing authority becomes appellate authority over its own order passed earlier. The liberty taken by the BCI outstrips even the wider amplitude and greater discretion that is granted to the Bar Council. It has reviewed its own finding of fact and overturned the same on the same material which was produced earlier and going by the same arguments which were advanced earlier.

- 20) After going through the record, we find that the BCI has shown undue indulgence to the respondent by allowing him to take advantage of his own wrong, in the guise of exercising its review power. It is a case of *Nullus Commodum Capere Potest De Injuria Sua Propria* meaning thereby a party cannot take advantage of its own wrong. This maxim is explained in **Eureka Forbes Limited v. Allahabad Bank and Ors.**² in the following manner:

“The maxim *nullus commodum capere potest de injuria sua propria* has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations.”

2 (2010) 6 SCC 193

21) It was argued before us by the learned counsel for the appellant that it is a gross case of misconduct committed by the respondent. The respondent has tarnished the image of a noble profession by indulging into cheating and fraud. He duped the appellant by pretending that various criminal cases were filed against the appellant and there was inherent threat of arrest of the appellant therein. On the basis of this cooked up story of fictitious cases, the respondent extracted huge amounts of money from the appellant by adopting illegal means. In the process, in order to project semblance of those cases, the respondent fabricated number of documents. Ultimately, it was found that no such criminal cases were filed by the farmers against the appellant. The respondent stands convicted by the trial court in criminal proceedings. He had even the audacity of producing fabricated copy of the order of the High Court, for which the High Court of Karnataka initiated contempt proceedings against him and in those contempt petitions, he is found guilty by the orders dated August 18, 2004 passed by the High Court and is sentenced to undergo 6 months' simple imprisonment along with fine of Rs. 2000/-.

22) However, we refrain from making any comments as the appeal of the respondent against his conviction is pending before the appellate court and, moreover, those aspects would have been relevant in

deciding Civil Appeal No. 273 of 2012.

- 23) In the aforesaid circumstances, the impugned order dated July 11, 2015 passed by the Disciplinary Committee of the BCI is hereby set aside.
- 24) The outcome of the aforesaid discussion would be to resuscitate Order dated September 10, 2011 passed by the Disciplinary Committee of BCI. However, the appellant was not satisfied with that order and it had challenged the same insofar as it modified the punishment awarded to the respondent is concerned. However, said appeal (Civil Appeal No. 273 of 2012) was disposed of on September 01, 2016 as having become infructuous because of orders dated July 11, 2015 passed by the BCI in review petition. Liberty was granted to challenge the order passed in review petition in accordance with the law. In these circumstances, we permit the appellant to seek recall of orders dated September 01, 2016 passed in Civil Appeal No. 273 of 2012 and seek restoration of the said appeal for its decision on merits.
- 25) To sum up, with setting aside of order dated July 11, 2015 passed by the Disciplinary Committee of BCI, its earlier order dated September 10, 2011 stand revived. However, to the extent the said order reduces the punishment that was awarded to the respondent, same shall be subject to the outcome of Civil Appeal No. 273 of 2012, in case the

same is revived by the appropriate Bench and it decides to hear that appeal on merits.

26) The appeal is allowed in the aforesaid terms.

No costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI;
FEBRUARY 21, 2018.**

ITEM NO.1501

COURT NO.6

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 11113/2016

M/S. ADVANTA INDIA LTD.

Appellant(s)

VERSUS

B.N. SHIVANNA & ANR.

Respondent(s)

(HEARD BY: HON. A.K.SIKRI AND HON. ASHOK BHUSHAN, JJ.)

Date : 21-02-2018 This matter was called on for pronouncement of judgment today.

For Appellant(s) Mr. B.K. Sampath Kumar, Adv.
Mr. Balaji Srinivasan, AOR
Ms. Vaishnavi Subrahmanyam, Adv.
Ms. Pratiksha Mishra, Adv.
Mr. Abhishek Bharti, Adv.

For Respondent(s) Mr. Aljo K. Joseph, Adv.
Mr. Sayooj Mohandas. M., Adv.
Mr. Vishal Arun, AOR

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur) (Mala Kumari Sharma)
COURT MASTER COURT MASTER
(Signed reportable judgment is placed on the file)