



C.R.P (PD).No.1347 of 2022 and
C.M.P.No.7058 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.06.2022
Pronounced on	22.08.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P (PD).No.1347 of 2022 and
C.M.P.No.7058 of 2022

The Bar Council of Tamilnadu and Puducherry,
rep. By its Secretary,
High Court Building,
Chennai 600104.

...

Petitioner/1st defendant

Vs.

1.V.K.Sethukumar
Advocate

...

1st Respondent/Plaintiff

2.D.Selvam
Advocate & Chairman,
Bar Council of Tamilnadu and Puducherry.

3.K.Ranganathan
Advocate & Member,
Bar Council of Tamilnadu and Puducherry.

4.E.T.Rajendran @ E.T.Rasentheran
Advocate & Member,
Bar Council of Tamilnadu and Puducherry.

K.Rajarajan (Deceased)
Advocate & Member,
Bar Council of Tamilnadu and Puducherry.



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N.Sampath (deceased)
Advocate & Member,
Bar Council of Tamilnadu and Puducherry.

5.T.Mahesh Kumar Bhandari ... Respondents/defendants

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 15.03.2022 made in I.A.No.2 of 2021 in OS.No.5174 of 2020 on the file of learned V Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.C.K.Chandrasekar
Respondent-1 : Appearing in person.

ORDER

This Civil Revision Petition has been preferred challenging the order of learned V Additional Judge, City Civil Court, Chennai dated 15.03.2022 made in I.A.No.2 of 2021 in OS.No.5174 of 2020.

2. The 1st respondent/plaintiff filed the suit in OS.No.5174 of 2020, seeking for the relief of damages to the tune of Rs.50,00,000/- against the revision petitioner herein and other defendants along with interest. The 1st defendant is the Bar Council of Tamilnadu and Puducherry, which is a statutory authority under the Advocates Act,



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3. Mr.V.K.Sethukumar, 1st respondent/plaintiff is an advocate, who was originally enrolled with the Bar Council of Kerala and later got himself transferred to the Bar Council of Tamilnadu and Puducherry in the year 1983. The 7th defendant, Mr.T.Mahesh Kumar Bhandari has filed a complaint against the plaintiff to the Bar Council of Tamilnadu by alleging some professional misconduct. In the disciplinary proceedings in D.C.C.No.37/2012 taken by the Bar Council of Tamilnadu, by its order dated 22.06.2013, the 1st respondent/ plaintiff was found guilty of professional misconduct and he was reprimanded with certain directions. The 1st respondent/plaintiff-V.K.Sethukumar filed an Appeal before the Bar Council of India in DC. Appeal No.39 of 2013 and in the said Appeal, the order of the Disciplinary Committee of the Tamil Nadu Bar Council was set-aside, by its proceedings dated 29.11.2014. Having got the above order in his favour from the Bar Council of India, V.K.Sethukumar has filed the present suit in OS.No.5174 of 2020.

4. Originally the said suit was filed before the High Court in its Original Side jurisdiction. Later, the suit was transferred to the jurisdiction of the City Civil Court, Chennai on the point of jurisdiction.



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WEB COURT During the pendency of the said suit, the 1st defendant namely the Bar Council of Tamilnadu and Puducherry has filed an application in I.A.No.2 of 2021 under Order VII Rule 11 to reject the plaint. The said application was dismissed by the impugned order. Aggrieved over that, the 1st defendant has filed this Civil Revision Petition.

5. Heard the submissions made by the learned counsel for the revision petitioner and the 1st respondent appearing in person and also perused the materials available on record.

6. Mr.C.K.Chandrasekar, learned senior counsel appearing for the petitioner submitted that the Bar Council of Tamilnadu is a Statutory Body and the Disciplinary Committee of the Bar Council of Tamil Nadu has been vested with the powers of the Civil Court, while conducting disciplinary proceedings on the complaints against the advocates for any alleged misconduct; as per Section 42 (2) of the Advocates Act, all proceedings before the Disciplinary Committee of the Bar Council shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Panel Code and every such Disciplinary Committee shall be deemed to be a Civil Court for the purposes of



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WEB CONTENT Sections 480, 482 and 485 of the Code of Criminal Procedure.

6.1. It is further submitted that such proceedings or orders passed by the Disciplinary Committee are indemnified against any legal proceedings before this Court by virtue of Section 48 of the Advocates Act; if the 1st respondent /plaintiff-V.K.Sethukumar is aggrieved due to the order of the Disciplinary Committee of the Bar Council of Tamilnadu, he is entitled to prefer an Appeal before the Bar Council of India; if the order of the Bar Council of India is also not satisfactory to either of the parties, they are entitled to challenge the same before the Supreme Court of India; the above scheme in the Advocates Act would only show how much of sanctity is given to the orders of the Disciplinary Committee; neither the Committee nor its Members can be dragged to Court for having done anything in good faith while discharging their functions under the Advocates Act; while so, it is wrong on the part of the Civil Court to take the plaint on file; such proceedings are explicitly barred under Section 48 of the Advocates Act; when an Appellate Forum is seized of the matter and passes any order, the order of the Disciplinary Committee gets merged with the order of the Appellate Forum; in view of the above merger, the Bar Council of Tamil Nadu or any of its members cannot be sued for



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WEB COPY performing their official functions.

6.2. For the obvious reasons, the proceedings before the Disciplinary Committee are deemed to be judicial proceedings; even while the order of the Disciplinary Committee of the Bar Council of Tamilnadu was set-aside by the Bar Council of India, no costs has been awarded to the plaintiff; so, that would only show the good intention of the Bar Council of Tamilnadu in taking up the Disciplinary proceedings against V.K.Sethukumar; since the Disciplinary Committee and its Members are conferred with statutory immunity, the suit filed by the plaintiff against the Bar Council of Tamilnadu is not maintainable.

6.3. Before seeking the remedy to reject the plaint by way of filing an application under Order VII Rule 11 of the Civil Procedure Code, the Bar Council of Tamilnadu has filed a Civil Revision Petition in CRP(PD)No.2125/2021 before this Court to strike off the plaint; the said civil revision petition was dismissed on 23.11.2021 with an observation that it is open to the Bar Council of Tamilnadu to file an application under Order VII Rule 11 of the Civil Procedure Code for seeking rejection of the plaint; only subsequent to that, the application



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WEB COPY in I.A.No.2 of 2021 was filed before the trial Court; but, the Trial Court, without taking into consideration of the bar under Section 48 of the Advocates Act, had chosen to dismiss the application. Since the order of the trial Court is contrary to Section 48 of the Advocates Act, which explicitly bars any Civil suit to entertain suits against the Bar Council of Tamilnadu for its actions done in good faith, the order of the learned Trial Judge should be set-aside.

6.4. In support of his above contentions, Mr.C.K.Chandrasekar has cited the following decisions:

Sl. No	Citations submitted by the appellant's counsel	Reported in
1	Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through legal representative and others	(2020)7 Supreme Court Cases 366
2	Chandra Prakash Mishra Vs. Flipkart India Private Limited & Ors	2022 Live Law (SC) 359
3	Kunhayammed and others Vs. State of Kerala and another	(2000)6 Supreme Court Cases 359
4	M/s Frost International Limited Vs. M/S Milan Developers and Builders (P) Limited & another	The judgement of the Supreme Court held in Civil Appeal No.1689 of 2022 dated 01.4.2022

7. Mr.V.K.Sethukumar – the 1st respondent/plaintiff appearing in



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WEB COPY person has submitted that the benefit of indemnity conferred under Section 48 of the Advocates Act is available to the petitioner herein only if the action is taken in good faith. The plaintiff has established several facts to prove that the Disciplinary Committee of the Bar Council of Tamil Nadu has acted in a *malafide* manner while conducting the disciplinary proceedings against the plaintiff and hence, the Bar Council of Tamil Nadu cannot be allowed to enjoy the immunity given under Section 48 of the Advocates Act; before the disciplinary proceedings, itself the members of the Disciplinary Committee had predetermined the and they also exhibited their biased attitude; in fact, during one of the hearings, one of the Members of the Disciplinary Committee called the 7th defendant and asked him to attend the proceedings; the above gesture shown by one of the members, even while sitting on the dais and too in front of the other party namely the petitioner herein, would only substantiate the lack of good faith on the part of the Disciplinary Committee in initiating the disciplinary action against him.

7.1. In fact, the case which stood posted for plaintiff's evidence on 22.6.2013, was *suo motu* advanced to 21.06.2013 without notice to



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WEB COPY the plaintiff; on 21.06.2013 the plaintiff was called absent and set exparte; on 22.06.2013, the order was passed; the manner, in which the proceedings were conducted, would show that the Members of the Disciplinary Committee were hand-in-glove with the 7th defendant; since the first respondent has not established the *mala-fide* intention of the 1st defendant, the learned trial Judge is right in dismissing the application.

7.2. In support of his above contention, Mr.V.K.Sethukumar has cited the following decisions:

Sl. No	Citations submitted by the appellant's counsel	Reported in
1	Bar Council of India, New Delhi-1 Vs. Manikant Tewari and Others	AIR 1983 ALLAHABAD 357
2	Mayar (H.K) Ltd. And Ors Vs. Owners and Parties, Vessel M.V.Fortune Express and ors.	2006 AIR (SC) 1828

8. Point for Consideration:

Whether the order of the learned Trial Judge in dismissing the application filed under Order VII Rule 11 is fair and proper?



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have a bird's eye view about the facts:

Mr.V.K.Sethukumar - 1st respondent/ plaintiff is a practising advocate; as per the contention of the 1st respondent/plaintiff, one Mr.Tarachand Bhandari - father of the 7th defendant was his old client; the said Mr.Tarachand Bhandari was a financier; the plaintiff had housed his office in the shopping complex of Tarachand Bhandari at Door No.14, Rameswaram Road, T.Nagar, Chennai 600 017; since the said Mr.Tarachand Bhandari became old, his two sons Mr.Harish Kumar Bhandari and Mr.Mahesh Kumar Bhandari took over the business; they also continued to engage the legal services of the petitioner; unlike the father, his sons were not cordial in maintaining the relationship with plaintiff; in one case where the plaintiff was engaged, one of the sons Mr.Harish Kumar Bhandari was a party. Since the plaintiff's wife met with an accident and died, the plaintiff was depressed and due to that he was not attending the Court for some time; after the plaintiff resumed office, he asked the 7th defendant to come and take back the bundles after settling his fees; instead of coming and collecting the bundles directly from the plaintiff, the 7th defendant had illegally removed the bundles from the office of the plaintiff by breaking open



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the door and spoiling the professional materials kept inside the office; in view of that, the plaintiff gave a police complaint against the 7th defendant; as a counter blast, the 7th defendant gave a complaint against the plaintiff to the Bar Council of Tamilnadu by making false allegations professional misconduct.

10. The above facts led to the disciplinary action taken by the Bar Council of Tamilnadu, in which the 1st plaintiff was found guilty for professional misconduct and he was reprimanded. In the Appeal filed by the 1st respondent/plaintiff, the order of the Disciplinary Committee of the Bar Council of Tamilnadu was set-aside. Only subsequent to that, the suit has been filed by the 1st respondent / plaintiff for claiming damages against defendants 1 to 7. Out of the defendants 1 to 7, 1st defendant is the Bar council of Tamilnadu and the 2nd defendant is the Chairman of the Bar Council of Tamilnadu. Defendants 3 to 6 were Members of the Bar Council of Tamilnadu and the 7th defendant is the complainant.

11. The Advocates Act, 1961 was enacted with the objective to consolidate the law relating to legal practitioners. The advocates play an integral part in the administration of justice and as officers of the



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WEB COPY Court, they are expected to conduct themselves in a dignified manner, suit to the profession. As per the scheme of the Act, whenever a complaint is made to the State Bar Council against an advocate by alleging misconduct, the matter should be referred to the Disciplinary Committee. The proceedings before the Disciplinary Committee should be conducted by adhering the principles of natural justice and by hearing both parties, after sending notice to them. Once such allegation was made by the 7th defendant against the 1st respondent/plaintiff herein and the said complaint was taken on file by the State Bar Council for enquiry and a finding was also rendered that the 1st respondent/plaintiff has committed professional misconduct and was given with a minimum punishment of reprimanding.

12. The complaint was initiated by a private person, who is the 7th defendant in the suit. Even according to the allegations made by the 1st respondent/plaintiff, the 7th defendant had given the complaint as a counter blast to the police complaint filed by the 1st respondent/plaintiff against the 7th defendant. It was not the submission of the 1st respondent/plaintiff that the complaint was originated from any kind of involvement of defendants 1 to 7. In other words, the complaint was not given at the instigation of defendants 1 to 6.



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13. As per Section 35 of the Advocates Act, the State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its Disciplinary Committee and direct the inquiry to be made by any other Disciplinary Committee of that State Bar Council. The State Bar Council is expected to take a call and take action against any advocate if a complaint is preferred against the advocate and when the State Bar Council has reasons to believe that the advocate has been found guilty of professional misconduct or other misconduct, as per Section 42 of the Advocates Act, the Disciplinary Committee of the Bar Council is conferred with certain powers of the Civil Court for the purpose of conducting the disciplinary proceedings. In fact, under sec. 42((2) of the Advocates Act, the disciplinary proceedings so conducted shall be deemed to be the judicial proceedings. And hence statutory immunity has been given under Section 48 of the Advocates Act.

14. The relevant provisions of the Advocates Act are extracted as under:

Section 42(2) : All proceedings before a



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disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860), and every such disciplinary committee shall be deemed to be a civil court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898 (5 of 1898).

Section 48 : *Indemnity against legal proceedings.—No suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of a Bar Council or any Committee thereof for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made there under.*

15. The contention of the 1st respondent/ plaintiff is that while conducting the proceedings, the Members of the Disciplinary Committee have conducted themselves in a biased manner. In fact, the hearing was advanced *suomoto* without notice to the 1st respondent/plaintiff and an adverse order was passed against him and they also exhibited biased conduct and hence the action taken by the Bar Council of



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16. Per contra, the learned counsel for the petitioner/first defendant submitted that even if an erroneous or perverse order is passed by a Bar Council of a State, that alone will not render the proceedings *mala-fide*. In support of his above argument, the judgement of the Supreme Court held in the case of **Chandra Prakash Mishra Vs. Flipkart India Private Limited & Ors** (cited supra) is relied upon.

17. In the judgment in the case of **Chandra Prakash Mishra Vs. Flipkart India Private Limited & Ors (cited supra)**, it is held as hereunder:

"13. Having examined the matter in its totality, we are of the view that even if the High Court found that the impugned actions of the authorities concerned, particularly of the appellant, had not been strictly in conformity with law or were irregular or were illegal or even perverse, such findings, by themselves, were not leading to an inference as corollary that there had been any deliberate action or



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omission on the part of the Assessing Authority or the Registering Authority; or that any 'tactics' were adopted, as per the expression employed by the High Court. Every erroneous, illegal or even perverse order/action, by itself, cannot be termed as wanting in good faith or suffering from malafide.

14. In the present case, when admittedly the respondent No. 1 itself had applied for registration of the change of place of business nearly 11 months after the alleged event; and at the time of drawing up the assessment orders, the appellant as the Assessing Authority had no other registered address of the respondent No. 1 on record, his actions of passing ex parte assessment orders could not have been termed as being deliberate or wanting in good faith, particularly in view of the facts that attempts were indeed made from his office to get the notices served on the respondent No. 1 at its registered address and even at its alleged changed address at Ghaziabad. Even if such attempts, of serving notices, were held to be illegal or irregular by the High Court, its deduction that the impugned actions were deliberate or lacking in



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good faith is difficult to be endorsed.

14.1. The appellant, while functioning as an Assessing Authority could not have kept the assessment proceedings pending for an indefinite length of time. In this context, the aforementioned facts relating to shortcomings on the part of the respondent No. 1 in first of all not seeking registration of the changed business address for nearly 11 months and then, rejection of its belatedly made prayer by the competent authority (not the appellant) cannot be ignored altogether."

18. It is asserted by the 1st respondent/plaintiff that the actions taken by defendants 1 to 6 cannot be construed as done in good faith as the members of the disciplinary committee personally involved with one of the parties to the proceedings. In this regard he cited the decision of the Allahabad High Court held in **Bar Council of India, New Delhi-1 Vs.Manikant Tewari and others (cited supra)**.

19. In the above case the Allahabad High Court has held as under:

"28. Sri S.N. Verma, learned counsel for the appellant drew our attention to S. 48 of the



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Advocates Act and submitted that as no suit or other legal proceeding can lie against any Bar Council or any Committee thereof or a member of the Bar Council for any act, the issue No. 5 was bound to be decided in favour of the appellant S. 48 no doubt confers indemnity against legal proceedings but as indemnity is attached only to any act done in good faith, for being act to be in good faith, it is necessary that it must have been done honestly. If the act is not done honestly and a decision maker is personally involved with one of the parties, the decision may not be said to have been made exclusively on the merits. This issue for its decision, therefore, requires the evidence of the parties and it is not possible to adjudicate upon it without the same

29. In case the act complained against is not honest exercise of discretion, but on the contrary proceeded from malice or a corrupt or of improper motive, the plaintiff may seek relief in a court of law. No action lies in respect of any mere abuse of jurisdiction of a court of law. If a Judge does an act in the purported performance of his jurisdictional function and it was within its jurisdiction then any error committed in arriving at the finding will neither



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make him nor his judgment liable to damages. The Judge would be protected if he had been mistaken in his belief that he had power to act judicially, to such an act done in good faith attaches full immunity. So long as he does his work in the honest belief that it is within his jurisdiction, he is not liable to an action. He may be mistaken in fact he may be ignorant in law.

30. The above appears to be the settled position with regard to Judges. The principle behind this should also apply to the members of the Disciplinary Committee who do judicial work while dealing with a case referred to it. This principle of course applies only to a case where he acts in good faith."

20. By citing the above judgement, it is submitted that the conduct of the members of the Disciplinary Committee during the enquiry would reveal that they had acted in a biased manner in favour of one party and they even preponed the hearing without notice to the 1st respondent/plaintiff. The 1st respondent/plaintiff has alleged bias in the minds of the members of the Disciplinary Committee because he happened to see one of the Disciplinary Committee members calling the



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7th defendant on a hearing date and made the plaintiff to wait until he came. While making such an allegation, it is also stated by the 1st respondent/plaintiff that one of the staff members of the Bar Council, first made a call to the 7th defendant and thereafter, he handed over the phone to a Member.

21. The call made by one of the staff members may be to ensure the presence of the other party for the enquiry. Though it is not obligatory on the part of either staff or the member of the Bar Council of Tamilnadu to call a party or his counsel through phone and to get their assurance for attending the proceedings, under certain compelling circumstances, the counsels are called by the staff themselves just in order to presume a time-plan by having only those ready cases alone on board for the day. Had the staff or the member had any ulterior motive to make a call to the 7th defendant, the calls would not have been made publicly and it would have been made behind the back of the 1st respondent/plaintiff. Obviously, the circumstances, in which, the call was said to have been made to the 7th defendant or his counsel is just to get confirmation and nothing else. With the above conduct on the part of the staff of the Bar Council or the member himself, one



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cannot arrive at a conclusion that the disciplinary action taken against the 1st respondent / plaintiff, was taken only with some *mala fide* intention.

22. The other allegation made by the 1st respondent/plaintiff is that despite the date of hearing was fixed originally on 22.06.2013, all of a sudden it was preponed to 21.06.2013 without notice to the 1st respondent and on which date he was set ex-parte. In its order dated 22.06.2013, the Disciplinary Committee has stated the reasons for advancement of the hearing and it is reproduced below:

" 2.....The above matter was posted for the evidence of the respondent on 22.06.2013 and it was advanced to 21.06.2013 after sending prior notice to both parties by way of Franch Express on 17.06.2013 as the period of one year for the dispose of the complaint ends with 22.06.2013. As per the Receipt No.1102470980 the said change of hearing date notice was sent to the respondent to his 123,Additional Law Chambers, High Court, Chennai 600 014. But the respondent as well as his counsel were not present on the said date to give evidence on his side. The above



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matter was taken at 11.00 am and passed over the same for the presence of the respondent as he was absent. Again it was called at about 12.00 noon and at that time also the respondent was absent. He was set ex-parte. But the complainant was present with his counsel Mr.J.Selvaraja and he was heard. ”

So the above order dated 22.06.2013 will show that the advancement of hearing was done made for certain specific reasons. Since the unreasonableness of the above order for advancement of the hearing has already been raised as a ground for appeal and contested before the Bar Council of India, this Court cannot once again discuss the merits of the order for advancing the hearing from 22.06.2013 to 21.06.2013.

23. The appeal remedies are provided to parties to the disciplinary proceedings, whenever a party aggrieved is not satisfied with the order and intends to assail the order on the grounds of bias, perversity, irregularity or illegality. The 1st respondent/ plaintiff has also taken such a recourse by way of preferring an appeal before the

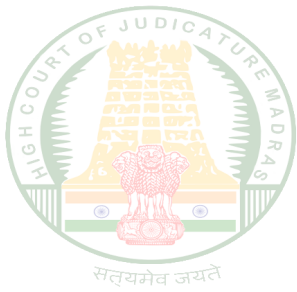


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WEB C Bar Council of India and got the order of the Bar Council of Tamilnadu set-aside. While invoking the appeal remedy to challenge the order of the Disciplinary Committee of the Bar Council of Tamilnadu, the 1st respondent/ plaintiff was always at liberty to raise grounds like bias, attitude, perversity, irregularity or illegality of the actions of Disciplinary Committee of the State Bar Council. From the order of the Bar Council of India, it is not known whether the 1st respondent/plaintiff had raised all these grounds in the appeal preferred by him.

24. Had the 1st respondent/plaintiff made those allegations before the Bar Council of Tamil Nadu and grounded his Appeal, it would have been possible for the Bar council of India to record any observation or finding on those grounds. In the order of the Bar Council of India, it is observed that the State Bar Council was in a hurry to dispose the case at the impending expiry of one year. It is observed further that the opportunity given to the 1st respondent is not sufficient. On those reasons the order of the State Bar Council was setaside.

25. The learned counsel for the revision petitioners submitted that while reversing the order of the State Bar Council, the Bar Council



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of India has not imposed any costs and has chosen to make the following explicit order in respect of cost.

"with no order as to costs"

26. The learned counsel for the petitioner further submitted that if the decision of the Subordinate court or any other judicial or forum is modified, reversed or affirmed by the Appellate forum, the order of the lower forum merges with the order of the appellate forum. In support of his submission on the doctrine of merger, the learned counsel cited upon the decision of the Hon'ble Supreme Court in the case of **Kunhayammed and others Vs. State of Kerala and another (cited supra)**.

27. In the judgement of **Kunhayammed and others Vs. State of Kerala and another (cited supra)**, the Hon'ble Supreme Court has held as under:

"28. Incidentally we may notice two other decisions of this Court which though not directly in point, the law laid down wherein would be of some assistance to us. In Shankar Ramchandra Abhyankar Vs. Krishnaji



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Dattatraya Bapat AIR 1970 SC 1, this Court vide para 7 has emphasized three pre conditions attracting applicability of doctrine of merger. They are : i) the jurisdiction exercised should be appellate or revisional jurisdiction; ii) the jurisdiction should have been exercised after issue of notice; and, iii) after a full hearing in presence of both the parties. Then the appellate or revisional order would replace the judgment of the lower court and constitute the only final judgment. In Sushil Kumar Sen Vs. State of Bihar AIR 1975 SC 1185 the doctrine of merger usually applicable to orders passed in exercise of appellate or revisional jurisdiction was held to be applicable also to orders passed in exercise of review jurisdiction. This Court held that the effect of allowing an application for review of a decree is to vacate a decree passed. The decree that is subsequently passed on review whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. The distinction is clear. Entertaining an application for review does not vacate the decree sought to be reviewed. It is only when the application for review has been allowed that the decree under review is



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vacated. Thereafter the matter is heard afresh and the decree passed therein, whatever be the nature of the new decree, would be a decree superseding the earlier one. The principle or logic flowing from the above-said decisions can usefully be utilised for resolving the issue at hand. Mere pendency of an application seeking leave to appeal does not put in jeopardy the finality of the decree or order sought to be subjected to exercise of appellate jurisdiction by the Supreme Court. It is only if the application is allowed and leave to appeal granted then the finality of the decree or order under challenge is jeopardised as the pendency of appeal reopens the issues decided and this court is then scrutinising the correctness of the decision in exercise of its appellate jurisdiction.

....

...

33. Doctrine of merger and review :-

This question directly arises in the case before us.

34. The doctrine of merger and the right of review are concepts which are closely inter-linked. If the judgment of the High Court has come up to this Court by way of a special



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leave, and special leave is granted and the appeal is disposed of with or without reasons, by affirmance or otherwise, the judgment of the High Court merges with that of this Court. In that event, it is not permissible to move the High Court by review because the judgment of the High Court has merged with the judgment of this Court. But where the special leave petition is dismissed - there being no merger, the aggrieved party is not deprived of any statutory right of review, if it was available and he can pursue it. It may be that the review court may interfere, or it may not interfere depending upon the law and principles applicable to interference in the review. But the High Court, if it exercises a power of review or deals with a review application on merits - in a case where the High Courts order had not merged with an order passed by this Court after grant of special leave - the High Court could not, in law, be said to be wrong in exercising statutory jurisdiction or power vested in it."

28. Since the Disciplinary Committee of the Bar Council of Tamil Nadu performs quasi judicial functions and the proceedings before the



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WEB Disciplinary Committee are deemed to be considered as judicial proceedings, anyone affected by its orders has to challenge the same by invoking the Appeal remedies provided under the Advocates Act. And once the appellate forum reverses the order of the lower forum, the order of the appellate forum replaces the order of the lower forum by having the order of the lower forum set aside. So, even if the Subordinate Forum has acted in a biased or short sighted manner, a person aggrieved is not without any remedy.

29. In the case in hand, the first respondent who was aggrieved by the order of the State bar Council has exhausted his appeal remedy by challenging the order of the State bar council before the Bar council of India and got it reversed. Since the grounds of appeal before an appellate forum should include all the shortfalls in the order of the lower forum and the appellate order forum while considering the appeal, does the purging function and removes the dirt or deficiency in the order of the lower forum and passes an order on merit either by setting aside or confirming the order of the lower forum. Once an order is passed by an appellate forum and it is accepted by the appellant, it is deemed that the aggrieved had exhausted his appeal



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WEB COPY remedy. Unless one chooses to challenge the order of the first appellate forum also before the next rightful forum, there can not be any more grievance left out.

30. As stated already, the 1st respondent /plaintiff has rightly filed an appeal before the Bar council of India and got the order of the state bar council set aside. If he feels that his grievance is not yet redressed or just partially redressed, the next course open to him is to challenge the order of the appellate forum before the Supreme Court of India, by invoking Section 38 of the Advocates Act.

31. Apparently, the order of the Bar Council of India, which reversed the order of the Disciplinary Committee of the State Bar Council did not make any observations or rendered any finding that there was malice on the part of *the* defendants 1 to 6 to take up the disciplinary proceedings against the first respondent. The 1st respondent/plaintiff seems to have got satisfied with the order of the Bar Council of India. And he has not chosen to take up those unattended grievances, or those matters now pleaded in this petition, before the Supreme Court by way of filing appropriate proceedings in

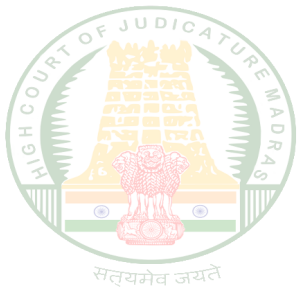


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WEB COPY
accordance with the scheme of the Advocates Act. At the risk of repetition it is reiterated that when the order of the lower forum merges with the order of the Appellate forum and if the appellant has chosen to accept the order of the Appellate forum, that would only mean that his grievance is properly addressed and resolved.

32. Under such circumstances, the first respondent can not once again come and say that the action taken by the State bar council against him while exercising their statutory function was lacking in good faith and hence they are not entitled to be guarded with the statutory indemnity provided under Section 48 of the Advocates Act. The Disciplinary Committee has exercised its power and initiated disciplinary action against the 1st respondent/plaintiff not *suomoto*, but on a complaint given by the 7th defendant.

33. The word '*good faith*' means to believe something to be true. When the complaint is made before the Bar Council of Tamil Nadu with *prima facie* materials and if it satisfies the appropriate authority of a Forum that the allegation are believable on the face of it, the Forum has to initiate action. Any such statutory forum cannot refrain itself from



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WEB COURT initiating action and thereby abstain from doing its statutory function, even after getting satisfied on the prima-case presented before it.

34. As stated already, the 7th defendant, who is the complainant, is the son of the 1st respondent/plaintiff's long standing client. After the sons of the erstwhile client of the 1st respondent/plaintiff were inducted into their father's business, they also started interacting with the 1st respondent/plaintiff by keeping his as their counsel. So, the complaint has originated from the relationship of the 1st respondent/ plaintiff with the family of the 7th defendant in the course of his profession as an advocate. Obviously the Bar Council of Tamilnadu is totally unconnected to whatever happened between the 7th defendant and the 1st respondent/plaintiff.

35. The pattern of action before the Bar Council is similar to that of actions taken by the Courts on receiving complaints. There may be instances where an order of the court tainted with bias or prejudice. Only because there are probabilities for imperfection in the order of the lower forum, the legal system does not make the order of the lower forum as an ultimate one, but provide opportunities for appeal. The



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WEB COPY error, illegality or perversity in the orders passed by the lower forum can be corrected by the Appellate forum in the interest of justice. Once the interest of justice is served and the imperfections or the impurities in the order of the lower forum are dealt and purified, the order of the lower court disappears and loses its identity. This is especially so, when the order of the lower forum is reversed or modified. In case, the order of the lower forum is confirmed by the appellate forum, the order of the lower forum does not get vanished but stands firmer with an added strength.

36. In the case in hand, the order of the Disciplinary Committee of the Bar Council of Tamil Nadu is found to be falling short of merit due to the insufficiency of the opportunity given to the first respondent and for that reason order of the Bar council of TamilNadu was set aside. When a party gets the remedy from the Appellate forum, it would only mean that they have got what actually due to them from the lower forum itself. Or in other words, the order of the lower forum got merged with the order of the Appellate Forum and lost its identity. The 1st respondent /plaintiff has not challenged the order of the Bar Council of Tamilnadu before the Supreme Court. Since the 1st



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WEB COPY respondent/plaintiff had omitted to avail the statutory remedy by knocking at the next door in the hierarchy he is accepted the order of the bar council, he is estopped from alleging bias or lack of good faith on the part of the defendants 1 to 6.

37. Hence, the 1st respondent/plaintiff cannot have any cause of action as against defendants 1 to 6. So far as the private 7th defendant is concerned, the cause of action as against the 7th defendant is not barred by any Act. So, it is up to the 1st respondent/plaintiff to prove malice if any against the 7th defendant for giving the complaint.

38. The application under Order VII Rule 11 of the Civil Procedure Code has been filed to reject the plaint in *toto*. For the reasons now discussed, if the plaint is rejected, then the 1st respondent/plaintiff will not be able to pursue the case as against the 7th defendant, for whom there is no statutory indemnity. At the best it can be held that the revision petitioners/ defendants 1 to 6 are not necessary parties to the suit, since there is no cause of action against them. As per Order I Rule 9 of the Civil Procedure Code, no suit shall be defeated by reason of misjoinder or nonjoinder of the parties. Just because defendants 1 to



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6 have been included in a suit filed by the first respondent/plaintiff for claiming damages for malicious prosecution initiated by the 7th defendant against the 1st respondent / plaintiff, the suit itself cannot be struck off in entirety. However, the Court may, at any stage of the proceedings, pass orders to strike out the parties to the suit proceedings for appropriate reasons. Since defendants 1 to 6 have been improperly added in a suit where the plaintiff can have a cause of action only against the 7th defendant, the names of defendants 1 to 6 alone need to be struck out.

It is learnt that defendants 5 and 6 had died. But it is not known whether the trial Court has recorded abatement against D5 and D6 or ordered for steps, if any. In order to avoid any further complications, it is appropriate to strike out the names of the deceased D5 and D6 along with D1 to D4.

In view of the above stated reasons, the Civil Revision Petition is **allowed** and the order and decretal order of the learned V Additional Judge, City Civil Court, Chennai dated 15.03.2022 made in I.A.No.2 of 2021 in OS.No.5174 of 2020 is set aside and modified to the extent that the defendants 1 to 6 are struck out from the plaint filed by the

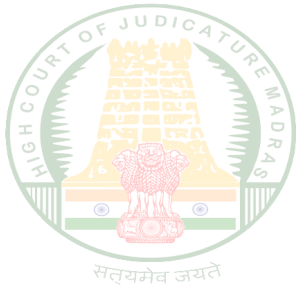


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WEB COPY first respondent in OS.No.5174 of 2020. No costs. Consequently
connected miscellaneous petition is closed.

22.08.2022

Index: Yes
Speaking
Index :Yes
jrs

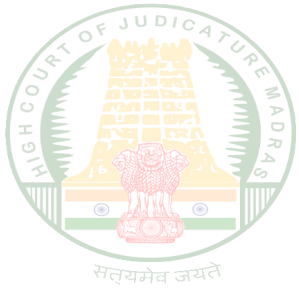


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To

The Secretary,
Bar Council of Tamilnadu and Puducherry,
High Court Building, Chennai 600104.



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R.N.MANJULA, J

jrs

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22.08.2022