

Legal and Ethical Dilemma of an Unpaid Lawyer

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Abstract: Every so often a client fails to pay to the lawyer for his services – at times because he cannot, at times because he does not want to. Even though the lawyer has a right to recover his fees; he is still bound by the duties and obligations under the Advocates Act. The paper discusses the remedies that a lawyer has in such an event. The paper primarily focuses on how the law, which uplifts other citizens not belonging to the legal profession in similar situation, bogs a lawyer down and makes him continue performing his duties (though indirectly) even when the client refuses to pay the fees. The paper argues how an ordinary citizen is better off in similar situation than a lawyer who has to perform his from legal and moral duties.

Keywords: duty, ethical, fees, lawyer, lien, unpaid.

I. INTRODUCTION

It is not uncommon to find a lawyer suing his own client as he was not paid for his services. However, what is interesting is that a lawyer is obliged to continue performing his duties. Case in point is that he must carry on appearing for his client till the client does not find a replacement. Moreover, a lawyer cannot exercise rights which a layman can in the event of non-payment of dues, example that of exercising lien over the documents or setting off his dues against any money that he may legitimately have of the client. In addition he is expected to behave like a professional otherwise he may be sued for misconduct.

II. RIGHT TO CLAIM FEES BY FILING A CIVIL SUIT

Now, it is not that a lawyer does not have a right to sue for his fees. He has a statutory right to do which has been in existence since long. The judgment of **Rama v. Kunji**^[1] of the year 1886 for the first time recognised the right of the legal practitioner to sue for the fee. It was ruled that the provisions of the Legal Practitioners' Act do not debar a pleader from recovering a fee from his client when no contract, in writing, was made.

In the case of **K.L. Gauba v. J. Vasica**^[2] it was held that under the Legal Practitioners (Fees) Act, 1926, the plaintiff had a right to contract for his fees under Section 4 and to enforce his claim in Court by appropriate proceedings. Again, in **R.D. Saxena v. Balram Prasad Sharma**^[3] the Supreme Court ruled that an advocate has the right to sue his client for his fees, if not paid, like any other professional.

In the case of **Rambabu Sharma v. State of Madhya Pradesh**^[4] the High Court of Madhya Pradesh observed that Advocates are not to be treated like daily wage-earners, to be dismissed at the whims and caprice of a person even if such a person be the State or functionary of the State. A counsel can be denied the agreed fees only when he makes default or is guilty of any misconduct. The case related to the non-payment of the fee to the petitioners. The lawyers were paid fees for cases which were disposed of. However, they were not paid for those cases which had not been disposed although the petitioners appeared and had taken steps in those cases for certain dates. The justification for denial of the fees to the petitioners was that the briefs were taken away from them because of policy decision of the Government that private counsel are not to be engaged in conducting excise cases as a prosecution Directorate had come into being.

The Court held that a totally hopeless and worthless justification has been set out by the respondents to deny what is constitutionally and rightfully due to the petitioners and thus directed payment to the petitioners of their dues.

III. DUTIES OF AN UNPAID LAWYER

Usually if a person's rights are injured he is expected to not discharge any duties. Yet a lawyer is expected to perform the following duties even when he has not been paid for his services.

A. *Give a timely notice to the client before refusing to act for him:*

A lawyer who is unpaid for his professional services must give a notice to his client within reasonable time before he withdraws from the case. This obligation is for the benefit of the client as it would allow him to either pay his current lawyer his dues or will give him time to find another lawyer. Importantly, it will not leave him stranded without any one representing him in the Court. It also helps avoiding unnecessary litigation.

In the matter of Gopeenath Mudduck^[5] where it was said that an Attorney, when he had taken a retainer to conduct a suit, must proceed as far as the money placed in his hands by his client would allow him and he could abstain from proceeding only on the ground that he was not being furnished by his client with sufficient funds, but he must, even in such a case, give timely notice that funds were needed. The importance of serving a notice was appreciated in the case of **Dogar Mal-Amir Chand v. P, a pleader**^[6], wherein the Court observed:

“When, the client is, for some reason or other, putting off the settlement and payment of fee, a legal practitioner would be well advised if he served a registered notice upon him in good time intimating to him that if the client did not settle and pay his fee he would repudiate all his responsibility as a pleader.”

This duty is not cast on a lay person. Example, a professional working in a company or firm can quit for the reason of non-payment of salary without giving his employer any notice.

B. *No right to retain the file or lien over client's money:*

A lawyer in India has no right to claim any lien over the money or the clients' money, even if his fee remains unpaid. The question of advocate's lien over his client's money in his hands arose in the Supreme Court in the case of **In re M, an Advocate**^[7]. In this matter the client deposited Rs 750 in the Court for printing charges. Rs 242 remained unpaid which the lawyer withdrew without the permission of his client and did not intimate about it. However, when the client became aware he asked for a refund. The lawyer first denied having the balance amount and thereafter refused to return the money claiming that he had it appropriated it towards his fees. The question was whether a lawyer can exercise the right of lien and appropriate the amount which had come legitimately in his hands as his fees. The Court though did not give any decision as to whether the advocate has a lien over his client's money but held:

“Even if he has a lien on such moneys, it would be improper for him to retain, i.e., to appropriate the same towards his fees without the consent, express or implied, of his client or without an order of the Court.”

The case is significant as the Court is expecting the lawyer to fulfill the moral obligations in the absence of legal duty towards the client. The Court clearly expects a lawyer to hold the high standards of his profession and expects that when the moneys of the client come into the possession of an Advocate, he has to treat himself as in the position of a trustee for the client. The Court thus held that the lawyer was guilty of professional misconduct. The Court cited with approval the following paragraph from **In the matter of Mr.'G', a Senior Advocate of the Supreme Court**^[8] highlighting that the standards expected from a lawyer are different from other lay persons:

“ He (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action.”^[9]

Similarly, in the case of **R.D. Saxena v. Balram Prasad Sharma**^[10] the Court held that the principle of lien as given under Section 171 of the Contract Act, 1872 will not apply to an unpaid lawyer. Moreover, it held that the refusal to return the files to the client when he demanded the same amounts to misconduct under Section 35 of the Advocate Act.

C. *Duty to appear in the proceeding even when unpaid:*

Even if the client does not pay the fee, this does not entitle the lawyer to refuse to appear in the case i.e., till he is lawfully discharged he is duty bound to appear. The earliest judgment on this issue dates back to the year 1900 of **Basanta Kumar Mitter v. Kusum Kumar Mitter**^[11], wherein Sale, J held that the advocate unless discharged by the lawyer must

continue to act for his client even in absence of payment of fees. This was again affirmed by the same High Court in **Atool Chandra Mukerjee v. Shoshee Bhusan Mukherjee**^[12] wherein Ameer Ali, J., held:

“An attorney who once undertakes to conduct the conduct of a case is bound, whether the client supplies him with funds or not, to proceed with due diligence in prosecuting the case.”

An interesting situation came up **In the matter of F., a Mukhtar**^[13], where the lawyer promised to file the criminal appeal on the condition that the client's relatives will pay his fees. The advocate was not paid and which led to him filing the appeal after the statutory period had expired. The Court refused to accept the argument of non-payment as a reason and held that want of remuneration does not absolve the lawyer from his duties and his duties are not conditional upon the payment of fees, especially for poor clients in criminal cases.

In the case of **In Re: Mahbub Ali Khan**^[14], Mahbub Ali, an advocate, having filed his vakalatnama on behalf of 13 accused in murder case failed to attend the Court on the dates of hearing and that the case had to be adjourned. The advocate argued that he could not attend the Court on the dates of hearing as he was not paid his travelling and boarding expenses. Again the Court after citing various authorities concluded:

“The advocate is bound to appear and conduct the case even if the fee or any portion thereof remains unpaid. It is the duty of the advocate concerned to intimate the client beforehand to enable him to make other arrangements. The conduct of the advocate in absenting himself and not taking such a step would, in our opinion, amount to deviation from duty.”

However, where a pleader signs a vakalatnama on the distinct understanding that a sum paid to him is really in the nature of a part payment, and that the client will settle the proper fee afterwards, and if the client fails to do so, it follows that the acceptance of vakalatnama cannot cast upon the pleader the duty of defending the case.^[15]

The position thus seems to be that an advocate is bound to act on instructions even if he has not received his fee, wholly or in part, unless the client terminates the contract or the terms of engagement contain a provision that the advocate is under no obligation to act unless his fee is paid.

D. Lawyer cannot deduct his fee from the amount received on behalf of the client:

Another onerous compulsion on the lawyer is that he cannot deduct his fee from the amount that he receives on behalf of the client. This prima facie seems to be unfair as law otherwise allows the principle of set-off, but a lawyer being a professional bound by the ethical duties is not permitted to take what he is entitled to, even though the money is in his hands.

A Full Bench of Arunachal Pradesh High Court in **Butchi Rao, In re**^[16] had to consider the question whether a pleader who withdraws money from the Court on behalf of his client can legitimately appropriate any amount towards his fee without his client's consent. That was a case where the pleader had withdrawn certain amount from the Court, had appropriated the same without informing the client and did not pay back till after the matter was placed before the authorities. The court observed thus:

“We would wish to add that unless the client has expressly instructed the pleader to appropriate towards his fees the moneys cannot be diverted at the will of the pleader for the reason that for services rendered by him or to be rendered by him thereafter he has to be compensated by way of fees.”

Similarly, in the case of **The State v. Nrusingla Naik**^[17] the learned Court held:

“Both according to the law in England and the law here, it is clear that the pleader is not entitled to appropriate, use, or pay himself moneys which he holds in lien because the Legislature enables the pleader to sue for his fees.”

Again a lay person in any other profession would be permitted to set off his claim against any money that he may have of the other party. However, a lawyer cannot do so.

E. Lawyer cannot refuse to give consent for change of lawyer:

Sometimes the client loses confidence in the engaged lawyer and wants to change his lawyer. However he does not clear the dues of his current lawyer. The question then is can his current lawyer insist that his fee must be paid before he gives consent to such a change?

The Courts in various decisions have refused to accept such a suggestion, making it mandatory for the lawyer to give consent and ensure a smooth transfer of case from him to the new lawyer. To substantiate, in **Rajah Muthu Krishna**

Yachendra Bahadur v. W. H. Nurse^[18] the defendants refused either to file the written statement themselves or to consent to another vakil being brought on the record unless they were paid Rs. 1,000/- towards the costs of the suit which they alleged the defendant had agreed to pay at the earlier stage of the case. The Court admonished the lawyers by remarking:

“A vakil is not entitled to refuse to take necessary step in the case, because his own fees have not been paid, and at the same time refuse his consent to he transfer of the case to another vakil.”

Similarly, in the case of **C. S. Venkatasubramanian v. State Bank of India**^[19] the question was whether the Court should give a conditional leave to counsel to appear on behalf of the respondent-bank for conducting the suit. However, the respondent bank lost confidence in the appellant and asked for 'no objection certificate' from him to engage another counsel. The appellant however insisted on payment of his fees or he would not give consent to engage another counsel. The Court held that the appellant cannot insist on fees as condition to give consent and directed the appellant to give unconditional consent to engage another advocate.

IV. CONCLUSION

A lawyer though entitled to sue for his remuneration has been bestowed with lot of duties even when has not been paid. This is contrastingly different from the expectations from any ordinary citizen of any other field. A lawyer on the other hand may be held for professional misconduct if he fails to discharge his duty of appearing for the client because of non-payment of fee. The reason behind these onerous legal and ethical duties is because of the nature of the profession of a lawyer or what is known as *profession paradigm* i.e. profession is poles apart from the usual business like activity. It is the perfect illustration of profession trade dichotomy. Law is a noble profession, which a person takes up not for earning profit but for rendering his services to the society. Thus a lawyer will be judged to higher standards of expectations and he will have to make a fine balance of his legal and ethical duties.

REFERENCES

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