

NEW INDIA ASSURANCE CO. LTD.

v.

A.K. SAXENA

NOVEMBER 7, 2003

[S.N. VARIAVA AND DR. AR. LAKSHMANAN, JJ.]

*Advocate—Claim for fee—Withholding papers of client—Advocate seeking leave of court to be discharged as counsel of party—Stating that he will return the papers of the client on payment of his fees—High Court granting leave for being discharged and directing the party to pay full fees of the Advocate—Held, it is not for supreme Court, as it was not for the High Court, to adjudicate upon a disputed question of fact—High Court should not have given the directions it did also because at the time the High Court passed the order, a writ petition regarding claim for fees of the Advocate was pending before it—It will be open for the Advocate to file appropriate proceedings for recovery of his fees—Advocate—Lien over papers of client.*

*R. D. Saxena v. Balram Prasad Sharma*, [2000] 7 SCC 264, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8957 of 2003.

From the Judgment and Order dated 3.4.2002 of the Allahabad High Court in C.M. Application No.97056/2001 F.A From O.No. 24 of 1999.

Dr. A.M. Singhvi, J.R. Medha and Pranab Kumar Mullick for the Appellant.

Pramod Swarup, Ms. Pareena Swarup and Praveen Swarup for the Respondent.

The following Order of the Court was delivered :

Leave granted.

This appeal is against a judgment of the High Court dated 3rd April, 2002. Briefly stated the facts are that the respondent was an advocate on panel of the appellants. As such a number of matters used to be assigned to

A him It appears that some dispute arose between the appellants and the respondent as a result of which the respondent was asked to return all papers. The respondent was willing to return the papers provided that all his fees were paid.

B It appears that when appeal from Order No. 24 of 1999 was on the Board of the High Court, the respondent moved an application before the High Court saying that he has been asked to return the files and therefore he may be discharged on payment of his full fees. On such application, the High Court relying on earlier judgments passed the following order:

C “In view of the above decisions of this Court, the application of Sri A.K. Saxena is allowed and he is granted leave for being discharged as counsel for the appellant. However, the appellant New India Assurance Co. Ltd., shall pay his full fees. On payment of full fees, he will immediately return the files as required by the appellant company in letter, Annexure 2.”

D After this appeal was filed, by an order dated 9th October, 2003, this Court directed the respondent to return all the files. We are informed that all the files have been returned. Learned counsel for the respondent insists that full fees for all the matters must be paid to him.

E Learned senior counsel for the appellants states that no fees is payable to the respondent. In our view, it is not for this Court, as it was not for the High court, to adjudicate upon such a disputed question of fact. The High Court should not have given the directions it did also because at the time the High court passed the impugned order, a writ petition No. 27380 of 2001 was pending. In this writ petition the respondent had claimed payment of his fees.

F This case is fully covered by a decision of this Court in *R.D. Saxena v. Balram Prasad Sharma* reported in [2000] 7 SCC 264 wherein this Court has held that advocates have no lien over the papers of their clients. It is held that at the most the advocate may resort to Legal remedies for unpaid remuneration. It has been held that the right of the litigant to have the files returned to him is a corresponding counterpart of the professional duty of the advocate and that dispute regarding fees would be a lis to be decided in an appropriate proceeding in Court.

G H We do not go into this question as to whether or not fees are payable

to the respondent. It will be open for the respondent to file appropriate proceedings for recovery of his fees. The fact that, because of the impugned order, he has withdrawn his earlier writ petition would not preclude him from filing any other appropriate proceeding. In view of the above, the impugned order is set aside. The appeal is allowed. There will be no order as to costs. A

R.P.

Appeal allowed B