

MOOT COURT PROBLEM- 1

Ram Rahim & anr. v. Kumar

Facts of the case:

Kumar, resident of Devanahalli, who owned 10 acres of agricultural land situated at Devanahalli, under Survey No.10/5 filed a suit numbered as O.S.239/2010 before the Civil Judge (Jr. Dn.), Devanahalli, for Declaration and Injunction against Neeraj on the ground that he is the sole owner of the agricultural land in dispute. On receipt of summons, Neeraj appeared before the said Court and engaged a lawyer to conduct his case. Neeraj not only opposed the suit claim but also filed a counter claim against Kumar for Declaration and injunction in respect of the said property.

The suit was decreed in favor of Kumar declaring him as the owner of 10 acres of agricultural land and restrained Neeraj from interfering with peaceful enjoyment of the said agricultural property by Kumar.

Aggrieved by the judgment and decree in O.S.239/2010 Neeraj filed Regular Appeal before the First Appellate Court. On receipt of Appeal Notice, Kumar engaged Sri. Ram Rahim, a famous civil lawyer in Devanahalli, to represent and argue his case before the Appellate Court. Kumar paid Fifty Thousand rupees as initial fee to Sri. Ram Rahim.

When the Appeal was posted for hearing, Advocate representing Neeraj argued the matter and completed his side. However, Sri Ram Rahim sought several adjournments to argue on behalf of Kumar. He did not turn up to argue even when it was posted for final argument.

The Appellate Court reversed the finding of the trial court and decreed the counter claim of Neeraj in O.S.239/2010. The Appellate Court in its judgment noted the absence of Respondent's advocate (Sri. Ram Rahim) during the course of argument and pointed out that the Court had no assistance from Respondent's Advocate in deciding the matter.

The judgment of the Appellate Court was death knell for Kumar as the land in dispute was life line for him and his family.

Kumar enquired with his Advocate about his absence during hearing of the Appeal but did not get a satisfactory answer. However, Sri. Ram Rahim advised Kumar to file Second Appeal against the Judgment of the First Appellate Court and referred the name of Sri. Ajathshatru. Kumar followed his advice and engaged Sri. Ajathshatru for filing Second Appeal and paid rupees One Lakh as initial fee.

Sri. Ajathshatru took his own time to file Second Appeal and by the time Second Appeal was filed, the limitation period was over. Thereafter, he filed Second Appeal along with an Application to condone the delay.

The Second Appellate Court dismissed the Appeal on the ground of limitation period since no sufficient cause was shown for condoning the delay. Sri. Ajathshatru advised Kumar to approach the Supreme Court.

Kumar virtually had no means to continue the litigation before the Supreme Court as he had lost all the money in litigation. Neeraj spared no time to execute the decree passed in his favor by the First Appellate Court and took possession over the land in dispute.

Having lost agricultural land, which was life line for him and his family due to inefficiency and negligence of his Advocates, Sri. Ram Rahim and Sri. Ajathshatru , Kumar filed a case against them before the National Consumer Disputes Redressal Commission (NCDRC), at New Delhi for deficiency of service and claimed One crore rupees as compensation.

Kumar argued that there was 'deficiency of service' on the part of both the Advocates who failed to pursue his case before the Appellate Courts in an efficient and professional manner. He also contended that both the advocates were highly negligent, one of them did not argue his case before the first Appellate Court and the other advocate failed to file Second Appeal in time before the High Court and got it dismissed at the threshold, as result of which he had lost his property and means of livelihood. On notice, both the advocates appeared and argued that,

advocates are immune from any legal action under the Consumer Protection Act, 1986, as Kumar is not a 'consumer' under the Act and their relationship as client and advocate is a 'contract of personal service' and not a 'contract for personal service.' They argued that they are merely his agents and represented him in the Court and are Officers of the Court and no legal action can be initiated for actions done in the course of judicial proceeding. Further, it was argued that, it is for the Court to decide the case on its merit and no advocate can guarantee the result.

The NCDRC, however, allowed the claim of Kumar holding that there was 'deficiency of service' and awarded One crore rupees as compensation and directed both the advocates to pay together the award amount within two months from the date of the order.

The said Order created havoc among the legal fraternity and became national news. Within two months of passing of this Order there were two thousand cases filed against advocates across the country before consumer forums for deficiency of service.

Both the advocates approached the Supreme Court against the award of NCDRC and contended that among other things that the said award is also in violation of Article 19 (1) (g) of the Constitution of India. The Supreme Court issued stay against the operation, execution of the award.

Now the case is set for hearing before the Supreme Court.

Issues:

1. Whether the Advocates fall within the provisions of the Consumer Protection Act, 1986?
2. Whether the award is in violation of the fundamental right to practice any profession, or to carry on any occupation as contemplated under Article 19 (1) (g) of the Constitution of India?