1940

JASWANT SINGH v. EXECUTIVE OFFICER, MUNICIPAL BOARD, MEERUT

plaintiff must have a remedy in these circumstances. No remedy is provided for him in the Municipalities Act. He is therefore entitled to seek redress in the civil court.

It may be observed that the fee which the municipal authorities have demanded from the plaintiff was not in any sense of the term an assessment. Under the Act and bye-laws framed thereunder the duty is cast upon the owner of a vehicle plying for hire or kept within the municipality to apply for a licence. If he fails to do so the municipality under their rules may prosecute him and he may be fined. In the present instance the conduct of the servant of the municipality in exacting payment of a licensing fee from a person who was not under the bye-laws bound to take out a licence was quite irregular.

In the result the appeal is allowed, the order of this Court is set aside and the decree of the trial court restored. The plaintiff is entitled to his costs throughout.

SPECIAL BENCH

Before Sir John Thom, Chief Justice, Mr. Justice Rachhpal Singh and Mr. Justice Ismail

1940

February, 5

IN THE MATTER OF AN ADVOCATE OF AGRA*

Advocate—Professional misconduct—Gross negligence—Not professional misconduct unless disgraceful or dishonourable conduct—Neglecting to certify in court realisation of decretal amount though undertaking to do so—Bar Councils Act (XXXVIII of 1926), section 10.

Mere negligence, even of a serious character, does not amount to professional misconduct unless there is an element of moral delinquency and the conduct is such as would be regarded as disgraceful or dishonourable by advocates of good repute and competency.

So where the decree-holder's advocate was paid the decretal amount by the judgment-debtors and he gave a receipt for the money stating that the payment had been, or rather would forthwith be, certified by him in court, but in fact he failed to make the certification, and it was found that there was no dishonest motive, it was *held* that the failure to make the certifica-

*Miscellaneous Case No. 524 of 1939.

tion amounted to gross negligence but did not amount to professional misconduct.

The Advocate-General (Dr. *N. P. Asthana*), for the Crown.

Mr. *Gopi Nath Kunzru*, for the opposite party.

THOM, C.J., RACHHPAL SINGH and ISMAIL, JJ.:—On the 23rd April, 1937, one Mazhar Alim filed a complaint against Babu Prem Narain, a legal practitioner practising in the civil courts of Agra. His complaint was referred to the Bar Council which framed the following charge against Babu Prem Narain: "That you Babu Prem Narain being the counsel for the complainant Mr. Mazhar Alim in civil suits Nos. 217 and 218 of 1929 in the court of the Munsif of Agra and appeals therefrom, and having determined to be counsel after the decision of the appeals, realised out of court costs from the respondents, awarded to the complainant, without his consent, knowledge and instructions and failed to account for the same to the said complainant or to certify it in court and thereby committed an act of professional misconduct." It will be observed that although one charge only was framed against Babu Prem Narain that charge really comprises two; firstly a charge of having realised money due under a decree in favour of his client and having failed to account for the amount realised to his client; and secondly of having failed to certify the realisation in court.

The Tribunal of the Bar Council which heard the case has held the first charge not proved, but has recorded a finding of unprofessional conduct on the second.

Briefly the facts are as follows. Mr. Mazhar Alim was the defendant in the two suits (Nos. 217 and 218 of 1929). These suits were decreed in the Munsif's court. On appeal, however, the District Judge recalled the order of the Munsif and dismissed the suits with costs. The costs due to Mr. Mazhar Alim amounted to Rs.88-14-0 in all.

Babu Prem Narain, who had represented Mr. Mazhar Alim the complainant, was not paid his fee in connection

1940

IN THE MATTER OF AN ADVOCATE OF AGRA

with the appeals in the court of the District Judge. The fee to be paid to him had been agreed at Rs.25 in respect of each appeal. The position was, therefore, that when the appeals were allowed and the suits against Mr. Mazhar Alim were dismissed the sum of at least Rs.105 was due by Mr. Mazhar Alim to Babu Prem Narain. Babu Prem Narain had not been paid his fees and he had paid the costs in connection with the appeals out of his own pocket under an agreement between him and his client. In these circumstances Babu Prem Narain realised the amount due under the decree and thereafter according to his own statement asked Mr. Mazhar Alim to meet him with a view to settling his account. Whether Mr. Mazhar Alim was invited by Babu Prem Narain to settle the account or not is uncertain; the evidence upon the point is not conclusive. Be that as it may, Mr. Mazhar Alim was due to pay Babu Prem Narain the sum of Rs.105 in respect of his fees and the costs of the two appeals in the court of the District Judge. Babu Prem Narain had realised under the decrees for costs the sum of Rs.88-14-0 only. This left a balance still due to him. In appropriating the Rs.88-14-0 as he undoubtedly did to the payment of his account, the Bar Council have held, and we think rightly in the circumstances, that Babu Prem Narain was not guilty of professional misconduct.

The charge of failure to certify, however, stands in an entirely different position. The amount due under the decrees namely Rs.88-14-0 was realised from the two judgment-debtors on the 31st March, 1930. When the money was paid to him Babu Prem Narain granted two receipts and both these receipts certify that the realisation of the decretal amounts had been certified in court. It is a matter of admission that at the time when the realisation was made there had been no such certification but it was understood by the judgment-debtors that Babu Prem Narain would immediately certify the payments. In fact Babu Prem Narain did not certify the

1940

IN THE MATTER OF AN ADVOCATE OF AGRA

payments and on the 17th April, 1930, Mr. Mazhar Alim who had then employed another lawyer filed an application for the execution of his decrees for costs. This application was dismissed on the 16th May, 1930, because the applicant had failed to file along with the application certified copies of the decrees which he sought to execute.

Meanwhile an appeal had been taken by the plaintiffs in suits Nos. 217 and 218 of 1929 to the High Court. These appeals were eventually dismissed on the 12th December, 1934. After the dismissal of the appeals in the High Court Mr. Mazhar Alim filed another application for the execution of his decrees for costs. The judgment-debtors appeared and protested that they had paid to Babu Prem Narain the full amount due under the decrees against them as in fact they had. It further appears that Babu Prem Narain deposed in the execution proceedings that he had in fact received payment. Inasmuch as, however, the payment had not been certified the decree-holder Mr. Mazhar Alim proceeded with his application for execution and on the 4th April, 1935, he obtained a warrant of arrest against the judgment-debtors. The result was that the judgment-debtors were again forced to pay the sum of Rs.88-14, this time to Mr Mazhar Alim. This sum they eventually recovered in a suit in which they also obtained a decree for damages against Mr. Mazhar Alim. The loss which he has sustained, Mr. Mazhar Alim alleges, was due to the misconduct of Babu Prem Narain.

After a consideration of the evidence which was adduced before the Bar Council we find it very difficult to understand the failure of Babu Prem Narain to certify the payment of the decretal amounts to him by the judgment-debtors on the 31st March, 1930. The receipts which he granted clearly bore that the certification had in fact been made. It was the imperative duty of Babu Prem Narain in these

1940

IN THE MATTER OF AN ADVOCATE OF AGRA

circumstances immediately to certify in court that the decretal amounts had been realised. By the 12th December, 1934, when Mr. Mazhar Alim made his final application for execution no such certification had been made by Babu Prem Narain. We cannot see what motive Babu Prem Narain had in delaying the certification of the realisation of the decretal amounts. So far as we can see he had nothing whatever to gain by refusing to certify. After a consideration of all the facts and circumstances and having heard counsel for Babu Prem Narain and the Advocate-General, we are satisfied that the failure of Babu Prem Narain to certify the realisation of the decretal amounts was due either to stupidity or to negligence or to both. If it be negligence no doubt the negligence was gross negligence; but there was no element, we are satisfied, of moral delinquency in this dereliction of duty on the part of Babu Prem Narain.

Mere negligence is not sufficient in itself to found a charge of professional misconduct. In this connection we refer to the decisions in the cases *In re A Vakil* (1) and *In re Satyanarayanamurthy* (2). We further refer to the case of *Myers* v. *Elman* (3) and in particular to the observations of Viscount MAUGHAM, L.C., at page 488. The case was one of a solicitor against whom a charge of professional misconduct had been preferred. In the course of his speech the LORD CHANCELLOR observes: "Apart from the statutory grounds, it is, of course, true that a solicitor may be struck off the rolls or suspended on the ground of 'professional misconduct', words which have been properly defined as conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency: *In re A Solicitor* (4). Mere negligence, even of a serious character, will not suffice."

We are unable to hold after a review of the facts in the present case that Babu Prem Narain, though

(1) (1925) I.L.R. 49 Mad. 523.
(2) A.I.R. 1938 Mad. 965.
(3) (1939) 4 All Eng. Rep. 484.
(4) [1912] 1 K. B. 302.

1940

IN THE MATTER OF AN ADVOCATE OF AGRA

undoubtedly guilty of negligence, has been guilty of conduct which would be regarded as "disgraceful or dishonourable" by solicitors of good repute and competency.

Upon the whole matter we are satisfied that the Bar Council Tribunal's finding that Babu Prem Narain has been guilty of professional misconduct cannot be sustained.

In the result the rule is discharged.

APPELLATE CIVIL

Before Mr. Justice Rachhpal Singh

KISHNI (CREDITOR) *v.* MURLI SINGH AND OTHERS (APPLICANTS)*

1940
February, 15

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 9(3) (as amended); 13—Period within which written statement of claim can be filed—Appeal or revision filed from order rejecting written statement as being beyond time—Section 13 cannot come into play before decision of such appeal or revision.

Section 13 of the U. P. Encumbered Estates Act cannot come into play, in those cases in which an appeal or revision has been filed against the order of a Special Judge rejecting a written statement of claim as being beyond time, before the decision of such appeal or revision.

Where a written statement of claim was rejected as being filed beyond the period allowed by the provisions of section 9(3) of the U. P. Encumbered Estates Act as they formerly stood, and during the pendency of the appeal those provisions were amended, the case was sent back to the Special Judge to be dealt with in the light of the amended section 9(3).

Mr. *J. Swarup*, for the appellant.

Mr. *S. B. L. Gaur*, for the respondents.

RACHHPAL SINGH, J.:—The principal point for determination in these cases is as to whether the order of the court below holding that the claim was barred by limitation in view of the provisions of section 9, clause (3) of the Encumbered Estates Act was correct.

*First Appeal No. 298 of 1938, from an order of A. P. Ghildial, Special Judge, First Grade of Aligarh, dated the 16th of August, 1938.