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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21<sup>ST</sup> DAY OF JULY 2008

PRESENT

THE HON'BLE MR. DEEPAK VERMA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE A.S. BOPANNA

WRIT PETITION NO.1367/2008 (GM-CPC)

BETWEEN :

- 1 SRI C V SUDHINDRA  
S/O.LATE.SRI C B.VENKOBA RAO,  
AGED ABOUT 53 YEARS,  
NO.63, 1ST FLOOR,  
OLD KANAKAPURA ROAD,  
BASAVANAGUDI,BANGALORE-04.
- 2 SRI NARENDRA P R  
S/O RAMALINGA REDDY P.V.  
AGED ABOUT  
NO.63, 1ST FLOOR,  
OLD KANAKAPURA ROAD,  
BASAVANAGUDI,BANGALORE-04.
- 3 SRI RAMESH GOWDA A  
S/O.ASHWATHAPPA,  
AGED ABOUT 29 YEARS,  
NO.63,1ST FLOOR,  
OLD KANAKAPURA ROAD,  
BASAVANAGUDI,BANGALORE-04.

... PETITIONERS

(BY SMT. K. DHANALAKSHMI, ADV.)

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AND :

- 1 M/S DIVINE LIGHT SCHOOL FOR BLIND  
REP.BY ITS PRESIDENT,  
MR.THOMAS,PATTANDUR AGRAHARA,  
WHITEFIELD,K.R.PURAM HOBLI,  
BANGALORE EAST TALUK,  
BANGALORE.
- 2 SRI K C NARASIMHULU  
S/O.LATE.K.HANUMANTHAPPA,  
AGED ABOUT 51 YEARS,  
NO.14/411,KALANAGAR,  
NEW TOWN,ANANTAFUR,  
ANDHRA PRADESH.
- 3 SRI ANEES PASHA  
S/O.K.S.ABDUL KHADER,  
AGED ABOUT 41 YEARS,  
NO.55,OPP:CAR POLICE QUARTERS,  
MYSORE ROAD,  
BANGALORE-18.
- 4 MRS URCILA TENNYSON  
W/O.LATE.TENNYSON M FERNANDEZ,  
AGED ABOUT 72 YEARS,  
NO.TC-32/1140,  
ALL SAINT COLLEGE BEACH,  
TRIVANDRUM,KERALA.
- 5 MR MARKOSE TENNYSON  
S/O.LATE.TENNYSON M FERNANDEZ,  
AGED ABOUT 50 YEARS,  
NO.TC-32/1140,  
ALL SAINT COLLEGE BEACH,  
TRIVANDRUM,KERALA.
- 6 MR JOHN JEFFRY TENNYSON  
S/O.LATE.TENNYSON M FERNANDEZ,  
AGED ABOUT 44 YEARS,  
NO.TC-32/1140,

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ALL SAINT COLLEGE BEACH,  
TRIVANDRUM, KERALA.

- 7 MR KENNEY TENNYSON  
S/O. LATE. TENNYSON M FERNANDEZ,  
AGED ABOUT 42 YEARS,  
NO. TC-32/1140,  
ALL SAINT COLLEGE BEACH,  
TRIVANDRUM, KERALA.
- 8 SRI K RAJENDRA  
S/O. LATE. V. KRISHNAN,  
AGED ABOUT 56 YEARS,  
NO. 59, KRUMBIGAL ROAD,  
BANGALORE-04.
- 9 MR N H RUSTUMJI  
S/O. NOT KNOWN,  
AGED MAJOR,  
G-15 & 16, GROUND FLOOR,  
RICHMOND TOWERS, NO. 12,  
RICHMOND ROAD,  
BANGALORE-25.

... RESPONDENTS

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO GRANT OR TO MOULD SUCH RELIEF OR RELIEFS THAT IN THE OPINION OF THIS HON'BLE COURT MAY DEEM PROPER TO PROTECT THE INTEREST OF BLIND AND THE DISABLED HAVING REGARD TO THE PECULIAR FACTS AND CIRCUMSTANCES OF THE CASE; SET ASIDE THE ORDER DATED 20.12.2007 VIDE ANNEXURE-X. PASSED BY THE HON'BLE II ADDL. CIVIL JUDGE (SR.DN.) BANGALORE RURAL DISTRICT, BANGALORE, IN O.S.NO.1538/2005; TO ALLOW THE APPLICATION FILED BY THE PETITIONERS AS PER ANNEX.M. AND O.

This Petition coming on for preliminary hearing, this day, **DEEPAK VERMA, ACTING CHIEF JUSTICE**, made the following :

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**ORDER**

This writ petition is filed under Articles 226 & 227 of the Constitution of India against the order dated 20.12.2007 passed by the learned II Addl. Civil Judge (Sr.Dn.), Bangalore, in O.S.No.1538/05. On the said date, two applications namely I.A.Nos. 18 and 19 came to be considered and disposed of by the learned trial Judge by a common order. The petitioners herein are advocates by profession. It appears that they were engaged by respondent No.1 (arrayed as defendant No.7 in the suit) for appearing on its behalf in various cases pending in different Courts.

2. Respondent No.1-Divine Light School for Blind is running a school for blind children. It also appears that it has several properties in and around Bangalore. Some of the properties are subject matter of litigations and to represent the interest of respondent No.1, services of the petitioners as advocates were taken and in the present suit the petitioner-advocate was engaged to represent them since they were

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arraigned as defendant No.7. On account of losing faith and confidence by the litigant on the petitioners/advocates, they filed a memo seeking permission to withdraw the vakalath and to engage some other advocates on their behalf. Not only the petitioner filed objection to the memo but also filed application in I.A.No.18 seeking to reject the prayer of defendant No.7. The perusal of impugned order passed by the trial Judge shows that while filing objection to the said application, serious allegations have been made by defendant No.7 against the petitioners which is noticed in para 7 of the said order. I.A.No.19 was filed by the petitioners under Order 26 Rule 9 of CPC as if they were parties to the suit. Both the applications filed by the petitioners were dismissed. Against the said order, this writ petition has been filed and the question of an advocate's right to continue was raised as a question for consideration and as such the matter was referred to a Division Bench. In our view, the questions raised at the outset do not constitute any question of great importance, therefore what is only to



be examined is as to whether the trial Court was justified in dismissing the application wherein the petitioners had sought for their right to continue to remain on record.

3. In an attempt to assail the impugned order passed by the trial Court, the learned counsel appearing for the petitioners contended that the trial Court was not justified in dismissing the applications filed by the petitioners herein since in the present case the contract of engagement of the Advocate was not on usual terms but paragraph 3 and 4 in the vakalath form had been altered suitably whereunder the petitioners had agreed to represent the interest of the blind and disabled and such work was undertaken to be done without charging any professional fees. The learned counsel also referring to the letters dated 24.8.2005, 16.9.2005 and 4.1.2006 produced at Annexures-B to D stated that the work undertaken by the petitioners on *pro-bono* basis had been appreciated by the 7<sup>th</sup> defendant. In that context, the learned counsel contended that the vakalath could not have

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been terminated and such termination is due to certain illegal activities of the trustees and therefore the petitioners require to remain on record to protect the interest of the blind children for whose benefit the 7<sup>th</sup> defendant is established. According to the learned counsel the said aspects have not been properly appreciated by the trial Court.

4. In this backdrop, before making our own assessment of the documents at Annexures-A to D referred by the learned counsel, we would advert to the order passed by the trial Court on the said applications. While doing so, we cannot lose sight of the fact that the petition is one under Article 227 of the Constitution of India and as such the correctness or otherwise of the order passed by the trial Court would have to be viewed from the limited scope available while exercising the supervisory jurisdiction. In that regard, a perusal of the order would indicate that the trial Court has taken note of the serious nature of the

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allegations made by the 7<sup>th</sup> defendant in response to the applications filed by the petitioners. The defendant No.7 has alleged that the first petitioner after collecting the records and the documents is trying to blackmail the defendant-Trust, stating that he would remove all the existing Trustees and bring in new Trustees or otherwise the Trust would have to pay Rs.10,00,000/- (Rupees Ten Lakhs) as bribe. Further when the trustees demanded return of the case papers, the first petitioner demanded Rs.10,00,000/- before the President of the Trust. No doubt in the application filed by the petitioners and in the present petition the petitioners have also made certain allegations against the Trustees stating that they are acting contrary to the interest of the Trust. Be that as it may, neither the trial Court in the present suit nor this Court in this petition would be required to go into the correctness or otherwise of the said allegations and counter allegations except to reckon the same to notice that the Advocates on record and their clients have been trading charges against each other, which alone is sufficient

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for a client to lose confidence and faith in the Advocate so as to choose to terminate the vakalathnama and seek for return of the file. The very fact that the Advocate is clinging on to the file without initiating any other action which would have been open to them in law, if in fact the Trustees had acted contrary to the interest of the Trust would indicate that the contentions put forth before the trial Court was not bonafide, at least in so far as claiming a right to remain on record as saviours of the first respondent when the first respondent has been in existence from the year 1958 as indicated from their letterhead and have taken care of themselves. In this background, the perusal of the order passed by the trial Court would indicate that the trial Court has adverted to all the contentions urged by both the parties and has noticed the decisions cited before it and on analysing the same has come to the conclusion that the application in IA Nos.18 and 19 are liable to be dismissed. We do not find that such an order has been passed either

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without jurisdiction or is there any material irregularity or perversity so as to call for interference.

5. Since we have not found any error in the order of the trial Court that alone would have been sufficient to dismiss this petition, yet as stated above, we would also notice the documents at Annexures -A to D since heavy reliance has been placed on the same by the learned counsel in support of her vehement contention. In this regard, no doubt we notice that certain modifications have been made to the regular format of the vakalathnama. Para Nos. 3 and 4 on which reliance has been placed read as under:

"3. The Applicant has agreed that the Advocates shall represent the interest of the Blind and the disabled and to proceed against all notwithstanding their association with the Trust either as Trustees or otherwise.

4. The above named advocates having regard to the nature of engagement have waived their

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professional fees as they stand committed to the cause of the blind and disabled.”

6. A perusal of the same at the outset would not in any event indicate a different relationship other than that of an Advocate and a client. The learned counsel tried to interpret it by stating that para 3 would indicate that they were also required to protect the interest of the blind and the disabled and therefore they should continue to remain on record to do just that. However, the contents of para 3 according to us is more of a commitment taken from the Advocates to be more considerate to the brief and not to treat the same like any other brief. Therefore that alone does not mean that the modification of the contents of the vakalath had put them on a higher pedestal than that of the Advocate representing the Trust based on instructions by the Trustees. In so far as the letters addressed by the trust at Annexures B to D, the same have been addressed as far back as in the year 2005 and during January 2006 whereas the memo seeking termination of the vakalath has been filed on 4.10.2007. Therefore on



the face of it, there is a gap of nearly 2 years between the two and what has been stated 2 years earlier need not be the same impression if several other intervening circumstances have taken place in between and as such the Annexures-B to D cannot be flashed as a certificate of merit for all time to come. In fact the allegations made in the objections to the IA itself would indicate that the Trustees had a different impression at this point in time. In any event merely because such letters had been addressed and even if the petitioners had agreed to do the work without professional fee, the same does not mean that the vakalathnama cannot be terminated.

7. We are therefore of the considered opinion that the contract of vakalathnama can be withdrawn by the client at any time. There is nothing known as irrevocable vakalathnama. Precisely the same right has been exercised by respondent No.1 herein (defendant No.7 in the suit) who had earlier engaged the petitioners on their behalf as Advocates to represent them. When faith and confidence of

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the client is lost in their performance as Advocates, there is no other choice but to seek permission to engage some other Advocate. In fact as and when any such unfortunate situation arises, the learned Advocate who has been appearing for such a client, should on his own free will come forward to advise the client to take back the file and should express lack of interest to appear on their behalf. That is why, this profession is known as honourable profession. In fact the Hon'ble Supreme Court in the case of R.D.SAXENA VS. BALARAMPRASAD SHARMA (AIR 2000 SC 2912), though was considering a case relating to the Advocate refusing to return the papers for non-payment of fees, has during the course of the judgment observed thus:

\*At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees is yet to be paid. This right of the litigant is to be read as the corresponding

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counterpart of the professional duty of the advocate. Therefore the refusal to return the files to the client when he demanded the same amounts to misconduct under Section 35 of the Act."

(emphasis supplied by us)

8. The said position has been reiterated by the Hon'ble Supreme Court in the case of *NEW INDIA ASSURANCE CO. LTD VS A.K.SAXENA* (AIR 2004 SC 311). No doubt as noticed, in the said cases the Hon'ble Supreme Court was dealing with the situation of non-payment of fees which may not be the situation in the instant case, but the right of the litigant to receive back the papers as enunciated by the Hon'ble Supreme Court as a corresponding counter part of the professional duty of the Advocate, in our view, would hold good for every case wherein the litigant seeks return of the brief so as to make alternate arrangement to conduct the case. In such a situation, even if the Advocate feels that he has any genuine claim or grievance against his client, the

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appropriate course is to return the brief with endorsement of no objection and agitate such right in an appropriate forum, in accordance with law and not indulge in arm twisting methods by holding on to the brief.

9. But in the instant case, the petitioners have brought this action up to this stage by not only filing an application before the trial Court but also by challenging the order passed by the learned trial Judge whereby respondent No.1 (defendant No.7 in the suit) has been permitted to engage another Advocate on its behalf. It is also pertinent to mention here that as far as the fees and other expenses of the petitioners are concerned, the same has been sufficiently safeguarded by the trial Court even though it was the case of the petitioners that no professional fee was payable.

10. For all the above stated reasons, we find no illegality or perversity in the impugned order passed by the learned trial Judge. The petition is absolutely without merit



and substance and it is hereby dismissed. However, it is clarified that the petitioners herein obviously, in the light of the aforesaid order would return all papers and give no objection to enable defendant No.7 to engage any other Advocate, failing which they would be committing professional misconduct as held by the Hon'ble Supreme Court in the decision noticed supra, for which the aggrieved party would be at liberty to take action in accordance with law.

Accordingly, the petition stands dismissed.

Sd/-  
Acting Chief Justice

Sd/-  
Judge.

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