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MADHAV M. BHOKARIKAR

v.

GANESH M. BHOKARIKAR (DEAD) THROUGH LRS.

MARCH 11, 2004

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[R.C. LAHOTI AND DR. AR. LAKSHMANAN, JJ.]

*Advocates Act, 1961:*

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*S.35(3)(c)—Advocate—Alleged to have taken dealership of petroleum products—Disciplinary Committee of State Bar Council found the charge proved.—Pending proceedings, advocate entered into a partnership with his younger brother stipulating that advocate would remain a sleeping partner and his younger brother would look after the business—State Bar Council held the Advocate guilty of professional misconduct and directed his license to practice to be suspended for one year—Bar Council of India enhanced the punishment by suspending the licence for five years—It also directed that on lapse of five years advocate will not be allowed to resume practice unless he satisfies the State Bar Council that he has abandoned the business in toto and/or will become the sleeping partner—In the appeal before Supreme Court, the Advocate submitted that he has suffered the punishment inasmuch as he has*

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*not practiced for more than 5 years—Held, the appellant is allowed the liberty of approaching the State Bar Council and satisfying it that the appellant had discontinued engaging himself actively in the business of petroleum products and he would confine himself only to the profession of advocacy—On such an application being made and the requisite material being produced by the*

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*appellant to the satisfaction of the State Bar Council, the latter would take a sympathetic view on the appellant's prayer and expeditiously dispose of his application so as to enable him to resume the practice as an advocate—Bar Council of India Rules—r. 47.*

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*not practiced for more than 5 years—Held, the appellant is allowed the liberty of approaching the State Bar Council and satisfying it that the appellant had discontinued engaging himself actively in the business of petroleum products and he would confine himself only to the profession of advocacy—On such an application being made and the requisite material being produced by the*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1532-1533

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of 1999.

From the Judgment and Order dated 25.8.1998 of the Disciplinary Committee of the Bar Council of India, New Delhi in D.C.A. Nos. 42 and 42-A of 1996.

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Shivaji M. Jadhav for the Appellant. A

V.B. Joshi for the Respondents.

The following Order of the Court was delivered :

These are two appeals under Section 38 of the Advocates Act, 1961. B

The appellant is an advocate duly enrolled under the provisions of the Advocates Act, 1961 (herein after referred to as 'the Act' for short). Proceedings were initiated against the appellant by the Disciplinary Committee of the State Bar Council on a complaint made by the respondent accusing the appellant of having taken dealership of a retail outlet of petroleum products. On enquiry, the Disciplinary Committee of the State Bar Council found the charge proved. According to the State Bar Council, the appellant, though a practising advocate, applied for the dealership and subsequently secured a letter of intent in his favour. Thereafter, the petrol pump was also started. The complaint was made after about two years of the retail outlet having remained in operation. During the pendency of the enquiry against the appellant, he entered into a partnership with his younger brother wherein the mutual arrangement arrived at between the two partners was that the appellant would remain a sleeping partner and his younger brother would actively and wholly look after the business. On 20.6.1998, the State Bar Council having held the appellant guilty of professional misconduct, directed his license to practice to be suspended for a period of one year under clause (c) of sub-section (3) of section 35 of the Act. C D E

Feeling aggrieved by the order of the State Bar Council, the appellant as well as the complainant preferred two appeals; while the appellant sought for the order of the State Bar Council being set aside, the complainant sought for enhancement of punishment. Both the appeals have been disposed of by a common order dated 25.8.1998. The appeal preferred by the appellant has been dismissed while the complainant's appeal has been allowed. The operative part of the order has been so constructed by the Disciplinary Committee of the Bar Council of India : F G

"We order suspending Shri Madhav Mareshwar Bhokariker from practice for a period of five years enhancing the punishment awarded by the Bar Council of Maharashtra for a period of one year. Even after the lapse of five years, he will not be allowed to resume the practice automatically unless and until he satisfies the Bar Council of H

A Maharashtra that he has abandoned the business *in toto* and/or will become the sleeping partner and in case the Bar Council of Maharashtra considers that business can be constitutionally carried on as contemplated under Rule 47, only in that event suspensions would stand revoked. Otherwise, the same shall continue and the Advocate concerned will not be entitled to practise.”

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D The learned counsel for the appellant initially submitted that on the facts and circumstances, the appellant should not have been held guilty of professional misconduct specially in view of the fact that the complaint was made by his own uncle who was in litigation with the appellant with respect to some property. However, a little later, the learned counsel for the appellant submitted that the appellant has entirely suffered out the punishment awarded by the Bar Council to him in as much as he has not practised for a period of more than five years. He submitted that the interest of the appellant would be protected if the appellant is allowed liberty of satisfying the State Bar Council in terms of the order passed by the Disciplinary Committee of the Bar Council of India and in accordance with Rule 47 which is extracted and reproduced hereunder :

E “An advocate shall not personally engage in any business but he may be a sleeping partner in a firm doing business provided that, in the opinion of the appropriate State Bar council the nature of the business is not inconsistent with the dignity of the profession.”

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G Keeping in view the submission made by the learned counsel for the appellant, we allow the appellant the liberty of approaching the State Bar Council and satisfying it that the appellant has discontinued engaging himself actively in the business of petroleum products and he would confine himself only to the profession of advocacy. On such an application being made and the requisite material being produced by the appellant to the satisfaction of the State Bar Council, we have no reason to assume why the State Bar Council would not take a sympathetic view on the appellants' prayer and expeditiously dispose of his application so as to enable him to resume the practice as an advocate.

Subject to the aforesaid observations, the appeals are dismissed.