In Re: K.L. Gauba vs Unknown on 23 April, 1954

Equivalent citations: AIR1954BOM478, (1954)56BOMLR838, ILR1955BOM11

JUDGMENT

Gajendragadkar, J.

1. This is an application under our disciplinary jurisdiction against Mr. K.L. Gauba. It came to the notice of this Court that Mr. Gauba, who is an advocate of this Court, had entered Into an agreement with his client, one Amarnath Bhardwaj, which appeared to be champertous and this Court took the view that the circumstances under which the said agreement had been entered into and the terms of the agreement itself called for an investigation under the disciplinary jurisdiction, and so it was decided to refer this case to the Bar Council.

Accordingly, on May 1, 1953, the learned Chief Justice appointed three members of the Bar Council to constitute a Tribunal under S. 11 of the Bar Councils Act for inquiring into this case. Notice of the intended inquiry was served on Mr. Gauba in due course. He appeared before the Bar Council Tribunal, gave his explanation on July 10 and filed an additional statement on August 6, 1953. The matter was then heard by the Members of the Tribunal and they made the report on December 16, 1953. The Tribunal has held that the respondent had entered into an agreement with the client that he should be given half of the profits of the litigation in case of success and this in the opinion of the Tribunal amounted to professional misconduct. After this report was received, notice of the hearing of the present application was served on Mr. Gauba and the matter has thus come before us for final disposal.

2. The agreement which has given rise to these proceedings was entered into between the respondent and his client Amarnath on December 20, 1952. This is what the client wrote to the respondent:

> "Dear, Mr. Gauba, I hereby engage you with regard to my claim against the Baroda Theatres Ltd. for a sum of Rs. 9,400 (the balance due to me), Out of recoveries, you may take 50 per cent.
>
> of the amount recovered. I will by Wednesday deposit Rs. 200 in your account or give personally towards expenses.
>
> (Sd.) Amar Nath 20-12-1952."

3. It may be convenient to mention a few facts relevant to this agreement. It appears that on July 23, 1951, Mr. Amarnath, the client, had entered into an agreement with the Baroda Theatres, Ltd., to

work in their production for a remuneration of Rs. 15,000. Out of this amount of agreed remuneration the client had received only Rs. 3,000 and the balance of Rs. 12,000 still remained to be paid. The client demanded this balance from the Baroda Theatres, Ltd. The claim of the client to the extent of Rs. 9,400 was admitted and in fact a cheque for Rs. 2,000 towards part-payment was issued by the Baroda Theatres, Ltd., on October 15, 1952, but it was dishonoured on December 15, 1952. A notice was then served on the company by the client's attorneys, Messrs. Nandlal and Co., on December 17, 1952.

It was at this stage that the client approached the respondent on December 20, 1952. He was accompanied by Mr. Kavish, who happened to be acquainted with the respondent. The client explained his case to the respondent and pleaded that he was keen on taking immediate action against the company because he was apprehensive that the company might recover amounts due to them from their distributors and may eventually refuse to pay his balance to him. He was, therefore, anxious to take immediate action in order to safeguard his rights and he inquired what the respondent's fees would be for a suit in the City Civil Court for Rs. 9,400. The respondent told him that the out of pocket expenses for the suit and for a motion for attachment before judgment would be about Rs. 750 to Rs. 800, and that he would charge all-told Rs. 1,250 as his professional remuneration.

The client pleaded his inability to pay the respondent his fees at that time, but urged that he was very keen on engaging the respondent's services. He gave the respondent a graphic account of his financial difficulties and urged that it was utterly impossible for him to pay the fees or the expenses of the civil suit as mentioned by the respondent. The client earnestly appealed to the respondent to take his fees out of the realisations of his claim, adding that his claim was genuine and not bogus or false. The respondent yielded to the appeal of the client, but told him that the client would have to find a part of his fees immediately and that the expenses of the suit could not be put off. The client then expressed his total Inability to raise anything more than Rs. 200 and again appealed to the respondent to take up his cause.

The respondent then explained to the client that an alternative and cheaper remedy available to the client would be a winding up petition. The client was told that though this alternative remedy was cheaper, there was no certainty as to the amount which would ultimately be recovered in a winding up petition, since the other creditors of the company would claim their share in the company's assets. The client then stated that he would prefer to adopt this alternative remedy and he begged the respondent again and again to take up his case on the basis that whatever was recovered from his debt, the respondent might recover half towards his fees for his labours. The respondent was reluctant, but ultimately out of compassionate motives he agreed. The respondent then asked the client to put down the proposal and its terms in his own words and that is how the agreement in question came to be executed.

4. At this stage we may also add some more facts in connection with this case. The client had undertaken to produce Rs. 200 towards expenses on or before December 24, 1951 But he failed to do so. Eventually on January 8, 1953, the client paid the respondent only Rs. 150 towards expenses. The respondent then took up the cause of the client and gave notices to the company and entered

into correspondence with the attorneys of the company. It appears that on January 22, 1958 a conference was held in the High Court between the attorneys of the company and the respondent and his client and the respondent advised his client to accept Rs. 6,400 by way of settlement. Negotiations were carried on with the company on this basis and on January 23, 1953, the client agreed to the terms proposed by the company and signed the said terms.

Under this agreement the client was entitled to receive Rs. 6,400 from the company in full satisfaction of his claim. Rs. 6,400 were accordingly paid to the client. On February 4, 1953, the client approached the respondent and paid Rs. 800 in part payment. Thereafter disputes arose between the client and the respondent. The client engaged the services of Messrs. Smetham Byrne and Lambert and between the attorneys and the respondent bitter correspondence ensued. According to the respondent, on March 23, 1953, a talk took place for adjustment of the dispute between the respondent and his client and the idea was to bring about a settlement with the help of Mr. Daji and Mr. Petit, who is a partner of Messrs. Smetham Byrne and Lambert. This attempt, however, failed and the client apparently did not pay anymore amount to the respondent. That, in brief, is the story of the respondent's engagement by Mr., Amarnath in regard to his claim against the Baroda Theatres, Ltd.

5. Before the Tribunal the learned Government Pleader agreed to argue his case against the respondent on the basis of the facts as they had been set out by the respondent in his explanation. Even on this basis the learned Government Pleader contended before the Tribunal that the agreement in question amounted both to maintenance and champerty and as such it was Illegal and that by entering into such an agreement the respondent was guilty of professional misconduct. The members of the Tribunal did not think it necessary to consider this aspect of the matter because in their, opinion even if the agreement did not amount to maintenance and champerty, it constituted professional misconduct.

The learned Government Pleader attempted to raise before us the same point and he argued that he would be able to show that the agreement in question does amount to maintenance and champerty. If the matter had rested merely on the terms of the agreement, it may perhaps have been open to the learned Government Pleader to contend that the respondent had agreed to carry on the litigation of his client at his own cost, subject to the payment of Rs. 200 by the client.

It is the case of the respondent himself that the client was so completely broken financially at the material time that he frankly told the respondent that he would find it difficult to raise even Rs. 200. If the terms of the agreement are read in the light of this background, it can be said that the only liability which the client undertook was to pay Rs. 200, and that if any further amount had to be spent out of pocket, it was for the respondent to find that amount. The agreement does not refer to any further payment for out of pocket expenses, and though it does refer to the payment of Rs. 200 towards expenses, in the context of the financial position of the client it is possible to argue that the respondent had undertaken the liability to bear the additional out of pocket expenses if any.

But, in our opinion, it would not be fair to allow these contentions to be raised when it is remembered that the statement of facts contained in the explanation of the respondent was not

challenged by the learned Government Pleader before the Tribunal and was indeed accepted as the basis of the proceedings against the respondent. Now, if the statement of the respondent is taken as correct and true, then it would be difficult to hold that the respondent had agreed to bear out of pocket expenses in case these expenses exceeded Rs. 200.

It may be that the agreement was not as specific on this point as it should have been. But the respondent has clearly stated in his explanation that the understanding between him and his client was that the payment of his fees was to be postponed and was indeed made conditional on the success of the litigation but that the client would have to find all out of pocket expenses. Therefore, in our opinion, it would not be possible to hold that the respondent had undertaken to bear the out of pocket expenses and to finance the litigation of his client. If that be the true position, it cannot be said that the agreement in question amounts either to maintenance or to champerty.

6. It is not disputed by the respondent that he agreed to work for Mr. Amarnath on the terms mentioned in the agreement. This agreement clearly shows that the advocate has agreed to receive his fees only if his client succeeds in the litigation and even then the amount of his fees is stipulated to be 50 per cent, of the amount recovered by the client. In other words, the advocate has agreed with his client to accept as his fees or professional remuneration a specified share in the subject-matter of the litigation upon the successful issue of such litigation. The question is, whether the conduct of the respondent in entering into such an agreement amounts to professional misconduct or not.

There is consensus of judicial opinion on this point against the respondent. The decisions of all the Indian High Courts to which our attention has been invited are clearly and unambiguously in favour of the view which the Tribunal have taken in the present case; but the respondent contends that these decisions need to be re-axamined. He argues that the history of Indian legislation in regard to the lawyer's capacity to enter into private agreement with his client in respect of his professional fees would show that Legislature has consistently conferred upon the lawyer larger and larger latitude in this matter and that it would not be proper to import artificial considerations of maintenance and champerty in dealing with the validity or the propriety of such agreements.

It has also been urged before us that in dealing with the present question we must inevitably take notice of the fundamental rights guaranteed to Indian citizens including Indian lawyers. Any en-croaumnent on the freedom of the lawyer to enter into an agreement with Ins client in regard to the payment of his professional fees would be inconsistent with the provisions of the Constitution. The decisions which have taken a contrary view are criticised ay the respondent on the ground that they import, artificial notions of professional etiquette which are based on the technical rules of maintenance and champerty prevailing in England, and it is contended before us that in the context of changed times these artificial restrictions should not be allowed to prevail in respect of agreements made by Indian lawyers with their clients.

It would have been open to us to reject these contentions without an elaborate discussion on the ground that they are inconsistent with the decisions of this Court and are indeed inconsistent with the decisions of all the Indian High Courts. But we feet that the questions raised are of some

importance and we are anxious that there should not linger in the mind of any lawyer or lawyers any doubt as to the fundamental requirements of professional ethics in such matters. That is why we propose to deal with the arguments urged before us by Mr. Gauba at some length. Before dealing with these points, however, it would be necessary to consider two preliminary objections raised by Mr., Gauba before us.

7. Mr. Gauba contends that throughout these proceedings he has been asking for the copies of the orders passed by this Court and the learned Chief Justice under ss. 10(2) and 11(1) respectively and that his request has not been complied with. It is true that while the proceedings were pending before the Tribunal as well as when this application was placed on our Board for final disposal, Mr. Gauba requested the officers of this Court to produce for his inspection the said original orders. Mr. Gauba's argument is that unless a valid order has been passed under s. 10(2), the appointment of the Tribunal under s. 11(l) and all proceedings before the Tribunal would be without jurisdiction. And, says Mr. Gauba, he wants to be satisfied that there was a complaint made to this High Court on which the High Court decided to refer this matter to the Bar Council.

This argument obviously overlooks the fact that the High Court may on its own motion refer to the Bar Council any case in which it has reason to believe, otherwise than on a complaint, that an advocate on its rolls has been guilty of misconduct. During the course of his arguments Mr. Gauba fairly conceded that this was a purely technical matter and he did not wish to pursue it very far, because the present proceedings are a challenge to his character and Mr. Gauba was keen on vindicating his character on the merits. He just mentioned this technical point in order to ventilate his grievance that he was entitled to see the original orders in question.

In our opinion, there is no substance in this contention. The record clearly shows that when it came to the notice of this Court that Mr. Gauba had entered into a doubtful agreement and that his case deserved to be considered by the Bar Council, it was decided to refer this case to the Bar Council under S. 10(2), and accordingly a Tribunal was appointed under S. 11(1) by the learned Chief Justice of this Court.

8. The next contention which Mr. Gauba has raised before us is that in so far as his status as a Supreme Court advocate is concerned, his rights as such advocate are outside the Jurisdiction of this Court. There is no dispute that Mr. Gauba applied to be enrolled as an advocate of this Court in the first instance and after his application was granted and his name enrolled on the roll of this Court, he continues to be an advocate of this Court. He has also been enrolled as an advocate of the Supreme Court. In other words, he occupies a dual capacity and his argument is that as an advocate of the Supreme Court, this Court could have no jurisdiction to inquire into his conduct and to pass any orders as the result of any such inquiry.

Section 2 of the Supreme Court Advocates Act, XVIII of 1951, provides that notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not entered in the roll of advocates of a High Court may be permitted to practice in that High Court, every advocate of the Supreme Court shall be entitled as of right to practice in any High Court whether or not he is an advocate of that High Court.

The provisions of this section have been recently considered by the Supreme Court in -- 'Aswini Kumar v. Arabinda Bose', (A)'. The point which arose directly for the decision of the Supreme Court was substantially different; but incidentally the non-obstante clause in Section 2 fell to be considered. As to the construction of this clause and indeed as to the effect of the provisions of Section 2 itself there was a difference of opinion amongst the learned Judges of the Supreme Court. The Majority view which has been expressed by Patanjali Sastri C. J. as regards the construction of the non-obstante clause is however, in favour of the argument which has been urged before us by Mr. Gauba.

> "Having regard to the words 'anything contained' ", observes the learned Chief Justice, "and the preposition 'in' used after the disjunctive 'or', the qualifying clause cannot reach back to the words 'Bar Councils Act.'" In other words, on this view, so far as the rights of the supreme Court advocate are concerned, all the provisions in the Bar Councils Act are wholly inapplicable. And if that be so, the provisions of ss. 10 and 11 under which the present proceedings have been taken against Mr. Gauba would not affect his status as a Supreme Court advocate. It may be of some interest in this connection to point out that in his minority judgment Mr. Justice Das was at pains to point out that if the majority view was accepted, "a Supreme Court advocate may with impunity snap his fingers at the High Court, for under no provisions of law as it exists except S. 2 of the Act can the High Court exercise disciplinary jurisdiction on such advocates."

However, in view of the majority decision we must accept Mr. Gauba's contention that his status as a Supreme Court advocate cannot be impaired or adversely affected by the present proceedings taken against him under the Bar Councils Act and by the judgment which we are now delivering in the said proceedings. The position of an advocate who holds a dual capacity is in this respect somewhat anomalous. But in the present state of the law perhaps this anomaly is unavoidable. If the Supreme Court were to take action against a Supreme Court advocate under their disciplinary jurisdiction, R. 30 of Order IV of the Supreme Court Rules provides that the Registrar of the Supreme Court shall report the name of the advocate against whom action has been taken to the advocate's own High Court.

In other words, if an action is taken by the Supreme Court against an advocate, that action would be reported to the High Court on whose roll the advocate has been enrolled and the High Court would then proceed to take suitable action against him. A Supreme Court advocate is, under the rules, required to be an advocate of the requisite standing in one of the Indian High Courts and so every Supreme Court advocate would al-ways hold a dual capacity. If it comes to the knowledge of the High court on whose roll the advocate is enrolled that he has been guilty of professional misconduct, it would, we think, be open to the High Court to proceed against the advocate under the Bar Councils Act, and if at the end of the inquiry the High Court itself is satisfied that the conduct impugned amounts to misconduct, the High Court would be entitled to take proper and adequate action against the advocate in his capacity as an advocate of the High Court. When that is done, the judgment of the High Court may be forwarded to the Supreme Court with a request that the Supreme Court may in their turn take such action as they may deem fit against the advocate

concerned. This is the procedure which, we propose to follow in the present case.

In this connection we would like to mention the fact that this application had been fixed for hearing on March 12, 1954. But on March 10, 1954 Mr. Gauba requested us not to take up the matter for hearing on March 12 and to give him time to enable him to move the Supreme Court for an order of stay of the proceedings before us. We acceded to Mr. Gauba's request and adjourned the case for a fortnight. Mr. Gauba, however, changed his mind and did not apply to the Supreme Court as he had originally proposed to do and so the matter came before us for final disposal on April 8, 1954.

9. It is well settled that the English laws of maintenance and champerty are not applicable to India. This point was considered as early as 1876 by the Privy Council in -- 'Ram Coomar v. Chunder Canto', 4 Ind App 23 (B), and since then it has never been doubted that the validity of agreements under the Indian law of contract cannot be challenged on the technical grounds of maintenance and champerty as they are understood under the English law. It may, however, be added that even though the English laws of maintenance and champerty are not of force as specific laws in India, the judgment of the Privy Council in -- 'Ram Coomar Choondoo's case (B)' itself emphasises the fact that agreements of such a kind ought to be carefully watched, and when extortionate, unconscionable, or made for improper objects, ought to be held invalid.

Even so, it may be conceded in favour of Mr. Gauba that in dealing with the character of his agreement with Mr. Amarnath we should not import the strict and artificial considerations of the English law of maintenance and champerty, indeed, the Tribunal has found against Mr. Gauba even though they have expressly stated that they have not considered the question as to whether the agreement in question is champertous or not. The objectionable character of the agreement proceeds, according to the Tribunal, not on considerations of champtety, but on principles of professional decency and ethics which are of fundamental Importance and are in a sense universal in application.

10. Mr. Gauba contends that the legislative history in the matter of lawyers' liberty to enter into agreements with their clients as regards their professional fees shows that the Legislature has left this matter at large without any artificial restraints as to champerty and maintenance. Charging a client professional fees in terms of a certain percentage of the value of the subject-matter is wholly unexceptionable, says Mr. Gauba, and is indeed recognised by several statutes on the subject. Section 62 of the Bombay Regulation II of 1827 regulated the fees to be paid to lawyers according to the rates specified in Appendix L, and this specification was in terms 01 the valuation of the subject-matter, sub-section (3) of S. 52 allowed a lawyer to enter into a private agreement with his diem for either a larger or smaller sum than the established fee.

The provisions of the Legal Practitioners Act, I of 1846, imposed certain limitations in the matter of private agreements between lawyers and their clients. Section 8, for instance, provided that such private agreements shall not be enforced otherwise than by a regular suit. But the liberty to charge fees on an agreed percentage of the value of the subject-matter still continued. Certain additional limitations were imposed on such private agreements by the provisions of ss. 28, 29 and 30 of the Legal Practitioners Act, XVIII of 1879.

Section 28 provided that such an agreement would not be valid unless it is made in writing, signed by the client and is within 15 days from the day on which it is executed filed in the Court in which the client's suit is pending. Section 29 conferred on the Court power to modify or cancel such agreements and S. 30 excluded any further claims when such agreements were enforced. Section 17 of the Bombay Pleaders Act, XVII of 1920, similarly allowed private agreements between a pleader and his client and S. 19 made adequate provisions for the amount payable by the client to his pleader. The computation of pleader's fees under the provisions of this Act was made in terms of the value of the subject-matter.

It would thus be seen that law recognised the right of the lawyer to charge as his professional fees an amount larger or smaller than the fees prescribed by the statute. Attempts were made by Legislature from time to time to impose some limitations on private agreements between lawyers and their clients and the policy underlying these limitations obviously was to protect the litigant from an unreasonable claim on the part of the lawyer. These limitations were, however, removed and the provisions in respect of them were repealed by Act XXI of 1926.

Section 3 of this Act expressly provides that any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services. Section 4 conferred upon the legal practitioner the right to sue for his fees and S. 5 imposed upon the legal practitioner the corresponding liability to be sued by his client, section 6 repealed ss. 28 to 31 of the Legal Practitioners Act, XVIII of 1879, and ss. 17, 19 and 28 of the Bombay Pleaders Act, XVII of 1920.

Mr. Gauba has relied very strongly on the provisions of S. 3 of this Act. He contends that this section amounts to a Magna Carta of the lawyers' rights in the matter of settling their fees with their clients. It removed the anomaly which till then prohibited barristers from suing their clients for the recovery of their fees. It removed any possible restraint on the ceiling of the fees and the requirements as to filing these private agreements and as to getting them executed in a proper way were dispensed with.

After this Act came into force, the freedom of the lawyer to enter into a contract with his client for the payment of his fees in any manner he likes is assured and it would not be possible now to contend that an agreement by which the lawyer stipulates for contingent payment of fees is inconsistent with professional ethics. That, in short, is the principal ground on which Mr. Gauba has sought to support his conduct, indeed, Mr. Gauba even suggested that the several decisions on which reliance is placed by the learned Government Pleader should be reconsidered, because the effect of S. 3 of India Act XXI of 1926 has not been specifically considered in those decisions.

Mr. Gauba seeks to strengthen his arugment by referring to the provisions of the fundamental rights. If any artificial limitations are imposed upon the freedom of the lawyer to enter into a contract with His client, says Mr. Gauba, the restraint would offend the provisions of art. 14 of the Constitution which guarantees equality to all citizens before law. Similarly, art. 19 of the Constitution guarantees freedom to a lawyer to practise his profession without restraints, and if restraints have to be imposed, argues Mr. Gauba, it would only be in the manner provided by clause

(6) of art. 19.

Section 31 of the Indian Contract Act recognises contingent contracts as valid, and the contract of the client with Mr. Gauba is no more than such a contingent contract. All that he has done is to undertake the work of the collection of a debt on percentage basis, and if an agreement has been made in respect of such an undertaking, that cannot be said to be illegal or improper. This is another way in which Mr. Gauba has placed his argument before us.

11. In our opinion, these arguments are entirely misconceived. When the propriety of Mr. Gauba's conduct is brought into question, none of the rights to which Mr. Gauba has referred is really challenged in the way suggested by him. In considering the scope and effect of the freedom of contract, we cannot forget the provisions of S. 23 of the Indian Contract Act. If the consideration or the object of an agreement is in the opinion of the Court opposed to public policy, the agreement becomes invalid under the provisions of S. 23. The freedom of the citizen, as indeed the freedom of the lawyer, to enter into a contract is always subject to the overriding considerations of public policy as enunciated in S. 23 of the Indian Contract Act. That freedom is also subject to the other considerations set out in S. 23.

But in the present case we are concerned only with considerations of public policy and no other. The provisions in the Constitution in regard to fundamental rights have been recently invoked to challenge the validity of several statutory provisions; but fortunately Mr. Gauba did not challenge, and we think rightly, the validity of s. 23 of the Indian Contract Act on the ground that its provisions are inconsistent with any fundamental rights, it would, therefore, be idle to suggest that the freedom of contract is absolute and unfettered. It is no doubt wide in its realm; but the exercise of this freedom must always be subject to the considerations mentioned in S. 23 of the Indian Contract Act, If a contract is opposed to public policy, it would be treated as invalid by Courts in India, and this conclusion cannot be challenged on the ground that it involves an encroachment on the citizen's freedom to enter into any contract he likes. Lawyers are at liberty and are indeed entitled to follow their profession. But that does not mean that in following their profession they are not subject to the rules of professional etiquette or conduct, and professional ethics or that they can disobey the rules of conduct framed by the Courts whose officers they claim to be. In our opinion, therefore, the argument based on the unfettered right of the lawyer to enter into any contract he likes with his client can be accepted subject to the important proviso that the agreement must not trespass on the provisions of S. 23 of the Indian Contract Act. In view of the fact that S. 23 applies to all contracts whatsoever, it was hardly necessary for the Legislature to import the same provisions while enacting S. 3 of the Legal Practitioners (Fees) Act, XXI Of 1926.

Mr. Gauba relied upon the fact that the Legislature had not imported limitations of public policy & allied matters which are mentioned in S. 23 while they enacted S. 3 of Act XXI of 1926. But, in our opinion, this argument is wholly fallacious because even without specific reference to S. 23 of the Contract Act, it is clear that these provisions would apply to all contracts, and so the applicability of considerations of public policy to the contracts between a lawyer and his client cannot be successfully resisted. It is in the light of the paramount requirements of public policy that the conduct of the respondent must, therefore, be considered.

12. It is perfectly true that the expression "public policy" is somewhat vague and the Courts should not be astute to invent newer and newer grounds of public policy. But, on the other hand, the construction of the clause "opposed to public policy" in the context of administration of justice does not present any difficulty. All agreements that obstruct or affect administration of justice would be treated as invalid under S. 23 of the Indian Contract Act. The agreement between a lawyer and his client is directly concerned with the administration of justice. It is an agreement between a lawyer, who is an officer of the Court and who is given the privilege of audience by the Court, and his client, who is a suitor in Court and has a cause to be tried by the Court. If such an agreement tends either directly or indirectly to affect the administration of justice or sully its course, it would always be declared to be invalid.

In dealing with such agreements we are not relying on any technical rules of maintenance and champerty; but we are, on the other hand, relying on considerations which are general in character and which are of paramount importance for the purity of the administration of justice. In this connection it must be remembered that when he enters into an agreement with his client, the lawyer is not acting merely as a citizen but is acting as an officer of the Court. An agreement by a citizen to help a litigant in his cause even by supplying him with funds would not be regarded as invalid under the Indian law unless it otherwise appears to be extortionate, unreasonable or based on improper motives. It would not be possible for a lawyer to claim that he should be given the same liberty to finance the litigation of his client.

Mr. Gauba had to admit that If his argument as to the lawyer's freedom to enter into any contract like any other citizen was carried to its logical conclusion, he would have to say that an agreement by a lawyer to finance the litigation of his client should not be regarded as invalid. Mr. Gauba, however, hesitated to take his argument to this logical conclusion, and naturally so because there is consensus of judicial opinion in England, in America and in this country that such agreements between lawyers and their clients would be invalid. That illustrates that the contract between a lawyer and his client is not exactly similar to other contracts between citizen and citizen. This contract is inevitably concerned with the administration of justice as it is made between an officer of the Court and a suitor before the Court. That is why though under the Indian law a citizen may be at liberty to finance another's litigation in a reasonable way, the same liberty cannot be claimed by the lawyer.

13. Mr. Gauba, however, contends that his agreement is not of a champertous kind and so it should be considered on its merits without importing artificial considerations of champerty & maintenance. Mr. Gauba conceded that it is not very pleasant for a lawyer to enter into such an agreement for the payment of contingent tees. Indeed, he himself characterised this agreement as 'distasteful'. But there are many litigants in this country who have a just cause, but no finances to establish it, and if a lawyer takes up such a just cause and agrees to receive his professional fees in case of success, his conduct should not be condemned; but, on the other hand, commended as constituting an act of compassion and humanity.

Thus presented the argument may appear superficially plausible and attractive. But when the Question which it raises is fully considered, there would be no difficulty in rejecting it as unsound and even dangerous. There may be a few cases in which a pauper with a just cause may persuade a

lawyer to help him. But if the lawyer is actuated by feelings of humanity and compassion, there is nothing to prevent him from foregoing his fees altogether. Indeed, the Legal Aid Societies are intended to help such paupers. Even the Legislature gives its helping hand to the paupers by foregoing the Court fees which other litigants have to pay. Therefore, it would be fallacious to test the validity of professional ethics on the strength of a few hypothetical cases.

As against these hypothetical cases of paupers, there may be a large number of cases where litigants might tempt lawyers to take up their cause and see it through on the lawyers agreeing to share the proceeds of the litigation. The propriety of the agreements must be considered, apart from any hypothetical cases, on first principles; and when we apply first principles to such agreements, we necessarily come to the conclusion that they are inconsistent with the highest traditions of professional ethics.

A lawyer is given the privilege of audience by the Court and as such he is an officer of the Court. We often speak of the rule of law as the most significant and distinguishing feature of a democratic State. The majesty of law depends not only on the efficiency, integrity, impartiality and independence of the judiciary; it also needs the assistance of a strong, competent, fearless and incorruptible Bar. it is the privilege of the Bar and indeed their duty to press their clients' cases strenuously and to the best of their ability. A lawyer must, no doubt, give his very best to every cause that he pleads in Court. But in the discharge of his duties he is always expected to exercise his discretion in the selection of his points. The art of advocacy consists in making a proper selection of points to be pressed before the Court and in making such selection the lawyer is at full liberty to exercise his own discretion in the matter.

This aspect of the duties of the profession of advocacy postulates that however keenly a lawyer may fight his client's cause, he cannot and should not identify himself too much with his client. Detachment and objectivity are indeed the basis of the strength of the Bar, and when a lawyer agrees to share in the profits of litigation, he can never retain due detachment and objectivity while advocating the cause. An agreement which makes the payment of lawyer's fees conditional upon the success of the suit and which gives the lawyer an interest in the subject-matter of the suit itself would necessarily tend to undermine the status of the lawyer as a lawyer.

It would not be difficult at all to imagine how in such a case a conflict between self-interest and duty would immediately arise. A search for shortcuts to secure the speedy termination of the litigation would in many cases be a necessary consequence of such an agreement. The amount of fees stipulated is in terms of a certain percentage of the realisation from the suit and the longer the litigation is protracted, the more irksome would it be for the lawyer who acts under such an agreement.

A desire to compromise the cause may also overtake the lawyer in such cases. Temptation to adopt doubtful or devious means in order to win the case would be difficult to resist, because the lawyer becomes personally interested in the subject-matter of the suit and is no better than the litigant himself. In fact, a lawyer, who is in part a litigant in such cases, ceases to be a lawyer properly so called. A person arguing a case in such circumstances is in many respects a litigant masquerading as

a lawyer in professional robes.

In our opinion, there is no doubt whatever that such agreements are bound to affect the detachment of the lawyer and to impair his status as an officer of the Court, to a very large extent. That is why an agreement between a lawyer and his client which creates in the lawyer a financial interest in the subject-matter of the cause, & that too on a successful determination of the suit, has always been condemned as unworthy of the legal profession.

14. Mr. Gauba frequently referred to considerations which would be relevant in the context of to-day. He criticised the English notions of maintenance and champerty as artificial and he suggested that these notions which had been brought over to this country from across the seas should now be discarded while dealing with the question of professional ethics in our country. The considerations to which I have referred are not based on any technical concept, of maintenance and champerty.

In course of time many changes may take place in our country in the administration of justice. The prescribed professional dress for the Bar may change. The language of the Court may and should change in due course; and in due course the artificial division of lawyers into different classes and categories and considerations of professional etiquette based solely on these artificial divisions should and must disappear and the dream of one homogenous common Bar for the whole of the country should and must be realised at an early date. But these arc matters which do not affect the fundamental requirements of professional ethics.

It is necessary to emphasise that the primary and the fundamental notions of professional ethics must always remain unimpaired. The standard of professional honesty and integrity and of rules of professional conduct that are relevant in that be-half must never be relaxed or scaled down. In the observance of these primary rules lies the strength and the importance of the status of the Bar.

Amongst the rules which are treated as of fundamental importance in professional ethics, a place of pride has always been given to the rule which prohibits a lawyer from entering into an agreement with his client that he will accept as his fees a specified share in the subject-matter of the litigation upon the successful issue of such litigation. In our opinion, therefore, the respondent has violated this important rule of professional ethics. He has entered into an agreement which is opposed to public policy and his conduct must, therefore, be held to amount to professional misconduct. It now remains to refer briefly to the decisions to which our attention has been invited.

15. I have already indicated that so far as the Indian decisions are concerned, they are unanimous in condemning agreements like the one with which we are concerned as constituting professional misconduct. In 1874 Couch C. J. and Jackson J. of the Calcutta High Court condemned an advocate for having entered into a contract which was contrary to public policy. By the contract in question the advocate had agreed to receive as his professional fees a certain share in the subject-matter of the suit.--'In the matter of Moung Htoon Oung', 21 WB 297 (Cal) (C).

The same view was expressed by a Full Bench of the Calcutta High Court in 1900 in -- 'In the matter of an Advocate', 4 Cal LJ 259 (D). Chief Justice Maclean, who delivered the principal judgment of the Full Bench observed that it is professional misconduct for an advocate to agree with his client to accept as his fee a share of the property, fund or other matter in litigation for his services as advocate in such litigation upon the successful issue thereof.

In -- 'R, An Advocate, In re', AIR 1939 Mad 772 (E) a Full Bench of the Madras High Court has held that for an advocate to enter into an agreement by which he was to accept for his fees a certain proportion of the subject-matter of the suit amounted to professional misconduct of which the Court would take serious notice. In this case there were two agreements which the advocate had made with his client. By the first agreement the advocate had undertaken the liability to maintain the client and carry on the litigation. But by the second he had merely agreed to receive for his fees a certain share in the proceeds of the litigation. His conduct was condemned not only in respect of the first agreement, but also in respect of the second. The Punjab High Court have expressed the same view in -- 'In the matter of a Pleader of the Chief Court of the Punjab', 69 Pun Re 1904 (F) and -- 'Ganga Ram v. Devi Das', 61 Pun Re 1907 (FB) (G).

16. So far as this Court is concerned, this question has been authoritatively decided by a Full Bench of this Court over which Sir, Lawrence Jenkins presided: -- 'In re Bhandara', 3 Bom LR 102 (H). It is true that the agreement of the advocate in this case was extremely objectionable in many ways. He had accepted a brief from one party and then had communicated with his opponent; thereby he had extorted from his client an unreasonably high amount for his fees and this too tended to create in the lawyer an interest in the subject-matter of the litigation.

Though the facts on which the point of the advocate's professional misconduct was considered are substantially different from the facts before us, Jenkins C. J. made some general observations and they are of utmost importance. Having considered the several points which arose for the decision of the Full Bench, the learned Chief Justice deliberately went out of his way to make these general observations for the guidance of the profession in this State.

> "I consider", said the learned Chief Justice, "that for an Advocate of this Court to stipulate for, or receive, a remuneration proportioned to the results of litigation or a claim whether in the form of a share in the subject-matter, a percentage, or otherwise, is highly reprehensible, and I think it should be clearly understood, that whether his practice be here or in the mofussil he will by so acting offend the rules of his profession and so render himself liable to the disciplinary jurisdiction of this Court." (p. 113). It may be, as Mr. Gauba argues, that these observations are 'obiter'. But considering the context in which these observations have been deliberately made and considering the very high esteem in which Sir Lawrence. Jenkins is held both by the Bench and the Bar, we feel no hesitation in relying on these observations for our guidance in deciding the point before us.

17. There is only one decision which may perhaps appear to give some support to Mr. Gauba's contention, and that is the decision in -- 'Nathoo Lall v. Budree Pershad', 1 NWPHCR 1 (I). This is a

judgment of the Allahabad High Court in a suit by a pleader against his client to enforce a contract which provided for the payment to the former of a large remuneration for his services, including a portion of the property in suit. Chief Justice Morgan and Mr. Justice Roberts held that such a contract stands on a different footing from one between private persons and that the Court before enforcing it should require the plaintiff clearly to show its fairness, and that no undue advantage has been taken of the client.

The learned Judges distinguished such a contract from an officious intermeddling in the suits of other persons or acts tending to promote unnecessary litigation, it must, however, be pointed out that the observations made in this judgment are not directly in point and besides these observations were made before the enactment of the Indian Contract Act. In other words, the question as to whether a given contract offends against public policy and so falls within the mischief of S. 23 of the Indian Contract Act could not have been considered by the learned Judges in this case. Thus it would be clear that the reported decisions of the Indian High Courts which have been cited at the Bar are all against Mr. Gauba's contention.

18. Mr. Gauba has, however, referred us to some American decisions in support of his argument that a contingent contract for the payment of lawyer's fees is not invalid and cannot amount to professional misconduct. So far as we have been able to ascertain the position of the American law on the question of maintenance and champerty, it appears, that certain contracts are expressly allowed under the American law and, therefore, American decisions which are consistent with this provision of the American law may not be of much assistance in deciding the point which arises before us. It appears that under the American law, "A bargain for maintenance though the bargain includes an agreement to pay the expense of litigation, is not illegal if entered into from charitable motives and without an intention to make a profit, or in order to determine a question on which a right or duty of the maintaining party depends; but if such a bargain is entered into for the purpose of annoying another it is illegal."

It also appears that "a bargain to endeavour to enforce a claim in consideration of a promise of a share of the preceeds, or of any other fee contingent on success, is illegal, if it is also part of the bargain that (a) the party seeking to enforce the claim shall pay the expenses incident thereto, or that (b) the owner of the claim shall not settle or discharge it. A bargain to conduct a criminal case or a proceeding for divorce or annulment of marriage in consideration of a promise of a fee contingent on success is illegal, but a bargain to endeavour to enforce by litigation or otherwise any other kind of claim in consideration of such a promise is not, because of that single fact, illegal." (Restatement of the law of Contracts, Vol. II, Ch. 18, Ss. 541, 542, pp. 1045-1047).

We do not, therefore, propose to consider the American decisions to which Mr. Gauba referred. We would only cite the Editor's note to which our attention was invited by Mr. Gauba himself. The Editor's note in -- 'McMicken v. Perin', (1856) 18 How 507 (J) runs as follows:

> "A contract with his client that an attorney shall at his own cost and charge prosecute a claim, for a certain part of the subject in litigation, is clearly champertous, illegal and void.

> An agreement that amounts to champerty cannot be supported at law or in equity. Where an attorney purchases from his client the whole subject-matter of controversy for his own benefit, it is champerty, though he has some interest of his own.
>
> So a contract with an attorney that he shall prosecute suits for the recovery of property and receive part of the property recovered for his services, and that no compromise shall be made unless he join in it or to indemnify against costs.
>
> However, an agreement by a client to pay his attorney a certain sum for his services in case of success, is held to be valid, and the agreed sum may be recovered."

It is on this last statement of the law that Mr. Gauba seeks to rely. Since we are concerned with the words of S. 23 of the Indian Contract Act, we do not think any useful purpose would be served by considering the American decisions bearing generally on this point on the aforesaid statement of the law on which Mr. Gauba relies in particular.

19. On the other hand, it would appear that under the Attorney's and Solicitors' Act, 1870, in England, S. 4 allows the remuneration of attorneys and solicitors to be fixed in terms of percentage. But S. 11 expressly prohibits the making of an agreement by which an attorney or solicitor secures an interest in the subject-matter of the litigation. Indeed, in England, the technical doctrines of maintenance and champerty prevail and a person who was guilty of maintenance or champerty was liable to be punished for what was technically known as barratry. This part of the law is, according to Halsbury, now practically obsolete. Even so, the provisions of S. 11 of the Attorneys' and Solicitors' Act expressly prohibit an agreement of the kind with which we are concerned.

In our opinion, the contention raised by Mr. Gauba that the provisions of S. 11 of the English Act should not be invoked in deciding the present case obviously overlooks the fact that these provisions are ultimately based on considerations of public policy which have been consistently and uniformly regarded by all the Indian High Courts as sound, wholesome and healthy so far as the administration of justice is concerned for over three quarters of a century; it is these principles which must be applied in interpreting and administering the provisions of S. 23 of the Indian Contract Act in relation to such contracts between lawyers and their clients.

20. That leaves only one question to be decided and that is, what would be the proper order to pass in this case. In all reported decisions to which our attention was invited, the advocate concerned did not seek to justify his conduct so far as we can gather. In the present case Mr. Gauba has challenged the report of the Tribunal and has argued before us that his conduct in taking the agreement from Mr. Amarnath is not inconsistent with the requirements of professional ethics. It is true, he argued his case with restraint; but throughout his argument he never expressed a feeling of penitence or even regret. He was attempting to justify his conduct and that is a factor which we must take into account in deciding the form which the final order should take.

The conduct of Mr. Gauba, in our opinion, is highly objectionable. It is totally inconsistent with the requirements of professional ethics and it has been condemned by no less a person than Sir

Lawrence Jenkins as being "highly reprehensible." Even so, it may be relevant to take into account the fact that since the time when Sir Lawrence Jenkins addressed his warning to the members of the Bar, there has been no reported lapse from professional ethics in that behalf. That is a matter which gives us profound satisfaction and would undoubtedly give the Bar a feeling of just pride.

In dealing with this question we may also have to take into account the fact that though Mr. Gauba had stipulated to receive as his fees half the amount which the client may realise, he has actually received Rs. 800 only instead of Rs. 3,200. Thus, by the non-payment of a substantial amount Mr. Gauba has been indirectly penalised for entering into this agreement. Even so, in our opinion, a reprimand, however severely administered, would not adequately express our disapproval of the conduct of Mr. Gauba. We, therefore, think that it is necessary that Mr. Gauba should be suspended from practice for six months from today 'as an advocate of this Court'. While passing this order against Mr. Gauba we wish to make it clear that in case any such lapse on the part of a member of the Bar is brought to our notice hereafter, we would unhesitatingly deal with it more severely than we have done in the present case.

21. As I have already pointed out, the present proceedings including our judgment may not affect Mr. Gauba's status as a Supreme Court advocate. We would, therefore, direct that a copy of our judgment should be submitted to the supreme Court with a request that the Supreme Court may take such action in the matter as they may deem proper.

22. The learned Government Pleader has pressed for his costs. We see no reason why he should not be awarded his costs. We would accordingly direct that Mr. Gauba should pay the costs of the Government Pleader.

Vyas, J.

23. I, agree with my learned brother.

24. The facts have been stated by my learned brother in his judgment. At the outset, Mr. Gauba has raised two preliminary contentions. The first contention is that these disciplinary proceedings against him under Ss. 10, 11 and 12 of the Indian Bar Councils Act, 1926, are misconceived since no complaint was made to the High Court by any Court or by the Bar Council or by any other person that Mr. Gauba was guilty of misconduct.

Mr. Gauba's contention is that, unless there is a complaint against an advocate, unless the said complaint is judicially considered by the High Court and unless the High Court upon that judicial consideration passes an order referring the case to the Bar Council, the Bar Council does not derive jurisdiction to proceed in the matter at all. This objection has no force since S. 10 of the Indian Bar Councils Act in terms provides that the High Court may of its own motion refer to the Bar Council or, after consultation with the Bar Council, to the Court of District Judge any case in which it has otherwise, i.e. otherwise than upon a complaint made to it, reason to believe that an advocate has been guilty of misconduct.

Mr. Gauba contends that in this case there has in fact been no reference made by the High Court to the Bar Council since there is no order of the learned Chief Justice to that effect on the record of these proceedings, although when the matter was pending before the Bar Council, Mr. Gauba had made several applications for being supplied with a copy of the order, if any, passed by the learned Chief Justice in this connection.

Here again, the submission of Mr. Gauba must fail. We have before us, on the record of these proceedings, a letter from the Registrar of the High Court to the Hon. Secretary of the Bar Council in which it was pointed out by the Registrar to the Hon. Secretary of the Bar Council that a letter was received by the learned Chief Justice from the Prothonotary and Senior Master of the High Court, stating that Mr. Gauba had appeared to have entered into a champertous agreement with his client Amarnath Bharadwaj, under which agreement Mr. Gauba was to get as professional remuneration a share of the property to be recovered from the Baroda Theatres, Limited.

The Registrar's letter further pointed out that the learned Chief Justice, upon being moved in the matter, was pleased to appoint Messrs. Rege, Banji and Pardiwala, Members of the Bar Council, to constitute a tribunal under S. 11 of the Bar Councils Act, 1926, for enquiring into the case. This, in our view, is sufficient compliance with the provisions of S. 10 of the Bar Councils Act.

25. The next preliminary objection of Mr. Gauba is that he is not subject to the disciplinary jurisdiction of the High Court in that he is an advocate of the Supreme Court in addition to being an advocate of this High Court, and in this connection he has relied upon the provisions of S. 2 of the Supreme Court Advocates (Practice in High Courts) Act, 1951 (Act No. XVIII of 1951). Section 2 lays down:

> "Notwithstanding anything contained in the Indian Bar Councils Act, 1926 (XXXVIII of 1926), or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court, every Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of that High Court."

Mr. Gauba contends that the adjectival clause "regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court" relates only to the words "any other law" and cannot relate back to the words " anything contained in the Indian Bar Councils Act, 1920" and therefore the provisions of the Indian Bar Councils Act, 1926, are wholly inapplicable to the advocates of the Supreme Court.

The learned Government Pleader on the other hand contends that the clause "regulating the conditions etc." relates not only to the words "any other law", but also reaches back to the words "anything contained in the Indian Bar Councils Act, 1926" and therefore only such provisions of the Indian Bar Councils Act, as regulate the conditions subject to which a person not entered in the roll of advocates of a High Court may be permitted to practise in that High Court, are hit by S. 2 of the Supreme Court Advocates (Practice in High Courts) Act and the provisions of Ss. 10, 11, 12 and 13 of the Indian Bar Councils Act remain unaffected. This point was considered in -- '' and the learned

Chief Justice delivering the majority Judgment of the Bench observed (p. 376):

> "Having regard to the words 'anything contained' and the preposition 'in' used after the disjunctive 'or,' the qualifying clause cannot reach back to the words 'Bar Councils Act'."

In this connection, it may be relevant to note that Mr. Justice Das who delivered a minority judgment in this case pointed out (p. 400):

> ".....a Supreme Court Advocate may with Impunity snap his fingers at the High Court, for under no provisions of law as it exists except section 2 of the Act can the High Court exercise disciplinary jurisdiction on such advocates."

The point, however, is concluded by the majority judgment and we must, therefore, uphold Mr. Gauba's contention that the clause "regulating the conditions etc." cannot reach back to the words "anything contained in the Indian Bar Councils Act, 1926." This would, however, not help Mr. Gauba's contention that he is not subject to the disciplinary jurisdiction of this High Court and that therefore no action can be taken against him in pursuance of the provisions of Ss. 10, 11 and 12 of the Indian Bar Councils Act. Every advocate of a High Court is subject to the disciplinary jurisdiction of that Court and S. 2 of the Supreme Court Advocates (Practice in High Courts) Act does not say that he will not be so subject.

Undoubtedly, the effect of S. 2 would be that the exercise of its disciplinary jurisdiction by a High Court over an advocate of that Court and the order passed by the High Court in the exercise of the said jurisdiction would be rendered ineffective or infructuous if the advocate concerned also happens to be an advocate of the Supreme Court. The result of the provisions of S. 2 of the Supreme Court Advocates Act in effect would be that, notwithstanding any order which the High Court may pass against an advocate of that Court in the exercise of its disciplinary jurisdiction, reprimanding, suspending or removing from practice the advocate concerned, the said advocate, if he is also an advocate of the Supreme Court, shall as a matter of right be entitled to practise in the High court. This is an unfortunate anomalous position which cannot be helped.

When the Supreme Court in the exercise of its disciplinary jurisdiction over the advocate of that Court takes disciplinary action against the said advocate, it gives a notice of the action taken by it to the High Court for the guidance of the High Court. In my opinion, it would be open to the High Court in the exercise of its disciplinary jurisdiction over the advocate of that Court to take disciplinary action against the advocate under Ss. 10, 11 and 12 of the Indian Bar Councils Act and to forward a copy of the judgment recorded by it to the Supreme Court with a request that the Supreme Court may take such action as it deems it against the advocate.

26. I now proceed to the main question which is raised before us in these proceedings and the main question is as to the nature of the agreement entered into by Mr. Gauba with his client Amarnath. The agreement reads :

> "Dear Mr. Gauba, I hereby engage you with regard to my claim against the Baroda Theatres Ltd., for a sum of Rs. 9,400 (the balance' due to me).
>
> Out of recoveries, you may take 50 per cent of the amount recovered. I will by Wednesday deposit Rs. 200 in your account or give personally towards expenses.
>
> Sd. Amar Nath.
>
> 20-12-1952."

The learned Government Pleader contends that this agreement amounts to maintenance and champerty and also to professional misconduct. According to the learned Government Pleader, Mr. Gauba by virtue of this agreement had agreed to finance Amarnath's litigation and bear out-of-pocket expenses. I am of the opinion that that was not really the agreement. The agreement did not contemplate that Mr. Gauba was to meet the out-of-pocket expenses or the expenses of the litigation, himself. The question of Mr. Gauba financing the litigation or bearing the out-of-pocket expenses was not included in the agreement at all.

It may be noted in this connection that the written statement filed by Mr. Gauba is the basis of these disciplinary proceedings against Mr. Gauba. Amarnath has not been examined on behalf of the complainant and it is conceded by the learned Government Pleader that the statements made by Mr. Gauba in his written statement may be assumed to be true for the purpose of these proceedings. Now, if we turn to Mr. Gauba's written statement dated July 10, 1953, it would clearly appear that it was Amarnath who had to bear the expenses of the litigation. In paragraph 3 of the written statement, Mr. Gauba has said:

> "Client begged the undersigned to take his fees out of the realisations of his claim which was a genuine one and not bogus or a false claim."

Paragraph 4 of his written statement reads thus:

> "To these representations the undersigned (Mr. Gauba) stated that although he might be willing to wait for a part of his fees, the client would have to find a part and the suit expenses could not be put off."

It is thus obvious that there was a clear distinction maintained between the fees and the expenses of the litigation in the minds both of Mr. Gauba and Amarnath, at the time of entering into the agreement, the terms whereof have been quoted above. So far as Mr. Gauba's fees were concerned, they were to be recovered from the realisation of Amarnath's claim, but so far as the expenses of the litigation were concerned Amarnath was to bear them himself. In paragraph 4 of the written statement, Mr. Gauba goes on to say:

> "The client stated that he was at the moment so hard up that he was not able to produce even the amount of suit expenses."

This again would emphasise the fact that both, Mr. Gauba and Amarnath understood that, so far as the expenses of the litigation were concerned, they were to be borne by Amarnath himself and that so far as Mr. Gauba's fees were concerned, they were to come out of the realisation of Amarnath's claim. In para. 6 of the written statement, we find this:

> "Client. ...begged the undersigned again and again to take his case on the basis that whatever was recovered from his debt, he might retain one half towards his fees for his labours."

Here again, there was no inclusion of the suit expenses. Out of the realisation of Amarnath's claim, 50 per cent, was to go towards the fees of Mr. Gauba. The matter is made even clearer in paragraph 7 of the written statement, arid paragraph 7 says this:

> "The client undertook to produce Rs. 200 towards expenses but wanted time even for this amount and agreed to pay by Wednesday following."

We have no doubt that, if according to the agreement entered into by Mr. Gauba with Amarnath, Mr. Gauba himself was to finance the litigation, it would have been wholly unnecessary to say that the amount of Rs. 200 towards the expenses would be produced by Amarnath. In that case, there would have been no question at all of the production of the suit expenses by Amarnath. If Mr. Gauba were to bear the suit expenses also, the entire amount spent by him for that purpose as also his fees would have been recoverable from the realisation of Amarnath's claim. But, that clearly is not the position according to the written statement of Mr. Gauba, which I may repeat is the basis of these proceedings. I have, therefore, no doubt that the agreement did not contemplate that Mr. Gauba was to finance Amarnath's litigation or was to bear the out-of-pocket expenses. That being so Mr. Gauba could not be held guilty of maintenance and champerty.

27. There is, however, no doubt that Mr. Gauba's conduct in entering into the abovementioned agreement with Amarnath was a gross professional misconduct and a grave abuse of his position as an advocate. Although the English laws of maintenance and champerty are not of force as specific laws in India, it has been well-settled that if an agreement is extortionate, unconscionable or made for improper objects, it ought to be held invalid '4 Ind App 23 (PC) (B)'.

In this particular case, the agreement was one, whereby Mr. Gauba, in the event of the client's claim succeeding, was to receive as his fees 50 per cent, of the claim amount recovered by the client from the Baroda Theatres, Ltd. The client was anxious to engage the professional services of Mr. Gauba for recovering his claim from the Baroda Theatres, Ltd., but Mr. Gauba had flatly said that he would not take up his case unless the client in the event of his success was prepared, to pay him as his fees 50 per cent, of the amount of the claim realised by him.

In other words, the agreement was that the client, in the event of his claim succeeding, was to give to Mr. Gauba a half share in the property which was the subject-matter of the litigation itself and to which the client alone was exclusively entitled. As the client (Amarnath) wanted to have the benefit of Mr. Gauba's professional skill, he had no alternative but to accept Mr. Gauba's demand for 50 per

cent, share in the amount Of the claim recovered by him from the Baroda Theatres, Ltd. This was thus an agreement by an advocate who, instead of being satisfied with his legitimate fees commensurate with his professional skill and industry required by the case, insisted upon receiving a half share in the litigant's property. As a result of the agreement, Mr. Gauba became interested in winning the litigation for his personal pecuniary benefit and virtually fell to the level of becoming the litigant himself.

An advocate must undoubtedly give the best of his professional skill to the cause of his client, but that is not to say that he must discard detachment -- an attitude of aloofness and objectivity which as an officer of the Court it is essential for him to maintain -- and become personally involved in the pecuniary results of the litigation. If an advocate enters into an agreement to charge fees on percentage basis, such as the agreement which Mr. Gauba entered into with Amarnath, he becomes, not professionally, but personally and pecuniarily interested in the result of the litigation, thereby surrendering his position as an advocate and becoming a litigant in the garb of an advocate.

An advocate who, in his professionl dealings with a client, forgets the principles which are the bedrocks of his profession and insists upon having a personal stake in the result of the litigation, becomes indifferent to the high ethical standards of his profession and can make no useful contribution to the traditions of his profession or to the administration of justice. On the other hand, he does grave disservice to the cause and course of justice. Once detachment and objectivity are lost and the advocate becomes subjectively and personally interested in winning the litigation for himself, he falls from his standards and becomes prone to adopt questionable methods to gain his object. He may take short cuts to finish the litigation or have recourse to compromises or may even fall a victim to the temptation of taking money from both sides. In such a case, pecuniary gain for himself, and not justice, becomes his objective. If such a practice is tolerated, it results in the contamination of the springs of justice, and once the springs of justice are contaminated, the rule of law is shaken to its foundation and the effects of this on the social structure will be far-reaching and appalling. It is, therefore, that such a practice has in India been universally condemned by the judicial authorities as being opposed to public policy.

28. A country's constitution cannot function efficiently or for the orderly progress of its people unless the administration of justice is pure and efficacious, and the administration of justice cannot be pure and efficacious unless not only the judiciary but also the members of the Bar, who too are officers of the Court, do their duties and discharge their obligations in a manner absolutely above reproach or suspicion. Now, there is no doubt that, if an advocate contracts with his client for a share in the latter's property, which is the subject-matter of litigation, and thereby transforms his character as an advocate into a character of a litigant, he departs from the etiquette and ethics of his profession. Such conduct on the part of an advocate must in its ultimate analysis strike at the very foundation of the rule of law on which the structure of the society rests, for rule of law, properly so-called, is an impossibility if advocates enter into bargains with their clients and, as a result of the bargains, cease to be advocates and become litigants themselves.

29. Mr. Gauba has contended before us, in the defence of his conduct, that the case of Amarnath was a hard case, in that he was a poor person having no sufficient means to bear the expenses of the

litigation or to pay his fees for prosecuting his claim and yet entreating him to take up his case. Mr. Gauba says that it was therefore that he had entered into the agreement that he would charge fees only if Amarnath succeeded in his claim and the fees in that event would be 50 per cent, of the claim amount realised by Amarnath. According to Mr. Gauba, Amarnath's claim was a just claim which was within limitation and Amarnath could not possibly fail in the litigation.

Now, there is no doubt that what Mr. Gauba calls the "hardness' of a particular case is not a measuring rod to measure the standard of honesty, rectitude, professional etiquette and ethical propriety. Honesty and rectitude are principles which" are not subject to any sliding scale. They are not dependent upon the varying circumstances and merits of different cases. Honourable standards of the legal profession cannot go up nor slide down according to what Mr. Gauba calls the "hardness" of a. ease.

The point is that, what Mr. Gauba characterises as the "hardness" of a case is not determinative of the fairness and justice of a principle. It scarcely requires a statement that the principle of charging fees on percentage basis, i.e. the principle of virtually- claiming a share in the litigant's property, sullies the stream of justice and strikes at the root of professional ethics. It is a grossly improper and reprehensible principle.

For a member of a Bar to insist by way of his fees upon a share in his client's property is to be grossly indifferent to his obligations to the client and to his loyalty to the legal profession. By insisting upon his fees on a percentage basis, an advocate secures to himself an advantage out of all proportion to the professional skill and industry which he may bring to bear upon the case. Take an example. If the advocate insists on charging as his fees 50 per cent, of the successful claim of his client and if the successful claim is to the extent of Rs. 10,000, the advocate would insist of being paid Rs. 5,000 as his fees though in fairness and justice, having regard to his professional skill and measure of industry bestowed by him upon a particular case, he might be entitled to even less than Rs. 1,000.

An advocate who indulges in the practice of charging his fees thus on a percentage basis is obviously indifferent to the ethics of his profession, upon the observance of which rest the prestige, dignity and the high standards of his profession. Mr. Gauba says that his kindly instinct was moved when Amarnath begged of him repeatedly to take up his case, telling him all the while that he had no money to pay him his fees, and that it was purely on considerations of compassion and humanity that ultimately he (Mr. Gauba) agreed to take up the case on condition that if the client succeeded in his claim, he should pay him 50 per cent, of the amount realised by him. All this sounds attractive, but there is only an imaginary elegance about it. Essentially and inherently, the submissions of Mr. Guaba in this connection are unsound.

If Mr. Gauba was really and truly moved on compassionate grounds to help his client, he should not have entered into any agreement at all with the client. If he were really compassionate, he need not have charged any fees to Amarnath irrespective of success or failure in the litiagtion. The ironical part of the so-called compassionate action of Mr. Gauba is that, although Mr. Gauba says that he was moved solely by considerations of humanity and compassion, no sooner Amarnath realised Rs. 6,400 from the Baroda Theatres Ltd., Mr. Gauba demanded 50 per cent, of the said amount. This in

our view was conduct most unexpected of one who tells us that in taking up the case of his client he was not actuated by the unworthy considerations of any pecuniary gain, but was really moved by considerations of compassion and humanity.

30. In '3 Bom LR 102 (FB) (H)' an advocate of this Court had accepted a retainer from Gyangir. Thereafter, the opposite party Sirdar Ali approached him and asked him to show some way to get out of the difficulty easily and the advocate asked Sirdar Ali to pay him 20 per cent, of whatever amount he might be saved from paying Gyangir. Having done that, he held out a threat to Gyangir and told him that if he appeared on the other side, Gyangir would lose his monies and securities. As a result of that threat, Gyangir .was alarmed and was compelled to accede to the advocate's demand for ten thousand rupees.

Jenkins C. J. delivering the judgment of the Full Bench in that case observed -- and these with respect are weighty observations -- that it was highly reprehensible for an advocate of the High Court to stipulate for, or receive, a remuneration, proportioned to the results of litigation or a cliam, whether in the form of a share in the 'subject-matter," a percentage or otherwise. The learned Chief Justice pointed out that an advocate, whether practising in the Presidency town or in the mofussil, will, by so acting, offend the rules of his profession and so render himself liable to the disciplinary jurisdiction of the High Court.

The above mentioned case -- 'In re Bhandara (H)' would show that it is not merely an imaginary position, but a possibility that an advocate who departs from the code of professional ethics, Who is not content with his legitimate fees, but is keen on charging fees on percentage basis or on claiming a share in the subject-matter of the litigation, may, upon grounds which he may well know to be thoroughly unsound, persuade and prevail upon his client to compromise a perfectly just claim of his for a smaller amount, say for instance a claim of Rs. 20,000 for Rs. 10,000. The client not posted with legal technicalities may be led by his advocate to think that it would be better to succeed to the extent of Rs. 10,000 rather than take the risk of losing the whole claim and may under that misguided impression agree to the compromise. In such a case, out of Rs. 10,000 an advocate of the type mentioned above would get Rs. 5,000.

Once an advocate deviates from the honourable traditions of his profession, discards his position as an advocate and becomes a litigant himself, there is no knowing how far or how low the deviation would go. He might also have previously arranged with the opposite party, as the advocate did in the abovementioned case -- 'In re Bhandara (H)' that since they were bound to fail if the litigation were fought to the end, they might consent to the compromise of the claim of Rs. 20,000 at Rs. 10,000, may pay Rs. 5,000 to himself and might yet be better off by Rs. 5,000. The opposite party might agree if they have no defence to the claim. The result would be that the advocate would get Rs. 5,000 from one party (50 per cent, of Rs. 10,000) and Rs. 5,000 from the other party without using any professional skill or industry at all -- the result which must in the end inevitably shake the confidence of the litigating world in the administration of justice.

31. In -- 'AIR 1939 Mad 772 (FB) (E)' an advocate originally entered into an agreement with a lady, who had instituted a suit for maintenance, by which he was to be paid 14 per cent, of whatever was

received in the suit. Later, he agreed to be remunerated on the basis of the taxed costs which might be recovered from the other side and the payment out of the decretal amount of what he had advanced, with the result that in either case he was to receive nothing unless the suit was successful. It was held by the Full Bench of the Madras High Court that for an advocate to enter into an agreement of the nature of either of the said agreements amounted to professional misconduct of which the Court would take serious notice.

The learned Chief Justice who delivered the judgment of the Full Bench said (p. 774):

> "... .To allow conduct of this nature to pass without punishment would only lead to the encouragement of agreements of this nature. The Court must take steps to prevent Advocates speculating in litigation, and that is what the respondent has done."

32. In -- '4 Cal LJ 259 (FB) (D)', also it was held that it was professional misconduct for an advocate to stipulate for or agree with his client to accept as his fee or professional remuneration a share of the property, fund, or other matter in litigation for his services as advocate in such litigation upon the successful issue thereof. It was observed by Mr. Justice Hill that any arrangement between counsel and client which brings the personal interests of the former into conflict with his duty as an advocate was unprofessional.

Now, that is precisely what has happened in the case of Mr. Gauba. The agreement was that, upon the successful result of Amarnath's claim against the Baroda Theatres, Ltd., Amarnath was to pay to Mr. Gauba as his professional remuneration 50 per cent, share in the property which was litigated upon.

33. In -- 'Kathu v. Vishvanath', AIR 1925 Bom 470 (K) Javdekar and Deo were engaged as pleaders by Kathu in a suit which was brought by Bhagwan against Kathu. When Kathu signed a vakilpatra in favour of Javdekar and Deo, he agreed to pay Rs. 500 in cash and further undertook to convey a certain property to them for being used for religious purposes in the event of their carrying the litigation to full success. The learned Chief Justice, who delivered the judgment of the Bench, observed that the agreement that the pleader should be given a part of the property in dispute in the suit in which he was engaged was contrary to public policy and therefore unlawful under S. 23 of the Indian Contract Act.

In that case, the advocates, in addition to the legitimate fees, also endeavoured to have a certain property of their client conveyed to them under the pretext that it would be used for religious purposes. Even so, the learned Chief Justice observed that the contract was contrary to public policy and was therefore unlawful. In the case before us, Mr. Gauba made no bones about what he wanted. He clearly told his client that what he wanted was a 50 per cent, share in the property litigated upon in the event of the client's success, and that if the client was not prepared to pay him that much amount, he would not take up his case.

34. In -- 'Advocate General v. Rustamji B. Sunawalia', 14 Bom LR 691 (L) also, the Pull Bench consisting of Scott C. J. and Russell and Chandavarkar JJ. took the view that it was unprofessional for an advocate to stipulate with his client for an "inam" or a present, in addition to the agreed fee, in case he is successful in the case. It would thus be obvious that the High Courts in India have for 50 years and more consistently deprecated the practice of an advocate charging as his fees a certain amount of share in the property which is the subject-matter of the litigation itself.

35. Mr. Gauba has invited our attention to S. 3 of the Legal Practitioners (Fees) Act (XXI of 1925) and S. 3 says:

> "Any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services."

Mr. Gauba's contention is that the section does not prohibit a legal practitioner from entering into an agreement, such as the agreement with which we are concerned in the present case. It is to be remembered, however, that the provisions of S. 3 of the Legal Practitioners (Fees) Act have ob-viously got to be read subject to S. 23 of the Indian Contract Act. Section 23 of the Contract Act provides that agreements which are against public policy are void. Section 3 of the Legal Practitioners (Pees) Act does not say that, notwithstanding the provisions of S. 23 of the Indian Contract Act, a legal practitioner can enter into any sort of a private agreement with his client.

In enacting the Legal Practitioners (Fees) Act, l926, the Legislature could not have overlooked the obvious, namely that the agreement between an advocate and a client 'whereby the advocate would insist upon claiming a share in the client's property, which is the subject-matter of the litigation itself, is against public policy and could not have intended to give a sanction to agreements which in India since many years have been condemned by the judicial authorities as being against public policy.

36. Mr. Gauba has invited our attention to several American cases in support of his contention that the Courts in America have always upheld agreements such as the agreement in this case. It would however appear that under the American law "the bargain for maintenance, though the bargain includes an agreement to pay the expenses of the litigation, is not illegal if entered into from charitable motives and without the intention to make a profit or in order to determine a question on which a right or duty of the maintaining party depends, but if such a bargain is entered into for the purpose of annoying another, it is illegal."

It would thus seem that the American decisions are based upon the statutory law upon the subject as obtaining in America. In India, however, we have got the provisions of S. 23 of the Indian Con-tract Act according to which the agreements like the agreement in this case being against public policy must be deprecated.

37. I, therefore, agree with my learned brother that Mr. Gauba's conduct in this case was grossly unprofessional and most objectionable. I agree, to the order proposed by my learned brother.

38. Advocate suspended.