

which roznamas is annexed at Exh-C of complaint. Record of roznamas for restoration of appeal dt. 22.02.12, 28.02.12, 05.03.12 and 07.3.12. Reinstatement of appeal granted after one year 08.3.2011 to 07.3.2012. Copies of roznamas for restoration of appeal is annexed at Exh-D colly of complaint.

b) Complainant states that O.P. vide email dt. 16.10.2011 discontinued her services for which she was paid professional charges of Rs.50,000/- for appeal + for 2 Notices of Motion + Rs.15,000/- for additional Notice of Motion (re. Passports). Complainant states that it is unfair business practice to discontinue her services after restoration of appeal on 7.03.2012 which was dismissed a year earlier on 08.3.2011 due to O.P. own negligence. Complainant states that he suffered loss having to engage another advocate which cost Complainant Rs. 50,000/-. Complainant states it is deficiency of service wherein O.P. failed to carry out rectification of order of Justice Dharmadhikari which O.P. had undertaken to do vide item 8 of instruction letter. Complainant states O.P. also failed to file Notice of Motion to expediate appeal with fixed dates before time limit of 30.11.2010 (when children will become major) causing frustration to Complainant, and depression suffered by his aged mother. Complainant states O.P. failed to file Vakalatnama for appearing in appeal right from 2009 through 2012, which is admitted by her email dt. 29.02.2012, which matter was challenged by Respondent (in appeal) in roznama dt.28.02.2012.

c) Complainant states it is unfair business practice that O.P. denies to refund fees of Rs. 65,000/- due to which he was made to suffer inconvenience, frustration and mental anxiety from 2009 until 2012, for which he relies on emails annexed at Exh-F colly which Complainant states shows his mental tension and anxiety. Complainant therefore prays that the professional fees paid by him be refunded along with compensation and costs.

3. After admission complaint. O.P. appeared and filed her reply to complaint. O.P. states the complaint is false, vexatious and malicious and deserves to be dismissed with heavy costs, as Complainant has not come with clean hands and concealed vital facts of the case. O.P. further states that cause of action arose in March 2011 and Complainant has not done anything since then. Further O.P. states that Complainant has filed a complaint with Bar Council of Maharashtra & Goa Disciplinary Case no. 1094 of 2012, but has failed and neglected to pursue that case after O.P. filed her reply to the complaint. O.P. states that Complainant was referred to her by one Rustom Khan in May 2009, who met her at BHC to discuss the case. Complainant informed O.P. about loosing the custody appeal of his two sons to his ex-wife, who told him that her fees would be Rs.50,000/- for final hearing, as the said Appeal was already admitted. O.P. states that Complainant complained to her about Adv. Franak Contractor and Adv. Anusuya Dutta, Nityaoh Mehta had alleged fleeced him by overcharging him. O.P. states Complainant had brought along his aged mother to create sympathy for himself. O.P. states that

Complainant also asked her to draft complaint against previous Advocates, which she refused.

4. After meeting Complainant he told O.P. to move Motions for certain reliefs, which were not part of the Appeal work, and accordingly O.P. agreed to file two Notice of Motions for additional fees of Rs.20,000/- O.P. states Complainant started bargaining with her on this aspect, and feeling sorry for his mother, who implored O.P. to help Complainant, she agreed on fees for Appeal as Rs.30,000/- and Rs.10,000/- per Notice of Motion. Both the Notice of Motions(Nos. 3231/2009 and 3768/2009) came for hearing before Justice Majmudar and Justice Chavan and vide order dt. 5.11.2009, they fixed hearing of main appeal and the 2 Notice of Motions on 05.10.2010.O.P. states that Complainant exploited her services and made her send correspondences to Sanobar Nanavati, Advocate for his ex-wife in Appeal, which O.P. agreed thinking it is one off letter, but O.P. states that correspondence became more frequent to a point that Complainant started hounding her. O.P. states that Appeal did not come for final hearing as assignment changed, and Notice of Motion No. 4293 of 2010 filed by Complainant ex-wife came for hearing before Justice Marlapalle and Justice Tahilramani, which was disposed vide order dt. 20.1.2010, and on request of O.P. the Appeal being for custody was placed for final hearing on 26.2.2010. On the date of hearing, O.P. argued for 1 hour 30 mins and put forth case of Complainant, and before passing order Justice Marlapalle stated he had heard enough and called for children to be interviewed. On this

point, O.P. on instructions from Complainant informed the Bench that children had been tutored and Complainant was skeptical about interview of children, to which the bench assured it was well versed in custody proceedings and nothing untoward would happen. However Complainant turned down the offer and the bench treated the hearing as null and void as assignment would change thereafter, and as Complainant refused to the interview, no Orders could be passed. Thereafter O.P. states on instructions of Complainant she filed Notice of Motion No. 740/2010, before Justice Deshmukh and Justice Kingaonkar, which was disposed vide order dt. 07.4.2010. O.P. filed Notice of Motion No. 1488/2010 on instructions of Complainant which was heard by Justice Deshmukh and Justice Sondur baldota and disposed off on 09.6.2010, and appeal was placed for final hearing in August 2010.

5. O.P. states assignment changed once again, and she had become weary about actual purpose of filing appeal, as it was more on point of ego than on merits. O.P. states that Complainant wanted to modify order of Justice Dharmadhikari which was matter of Appeal, with respect to bearing expenses of minor children, stating that since he does not have custody of children he did not wish to bear their expenses. Despite O.P. making Complainant understand about the various merits, she states that he only seemed to be concerned of his money, and at every stage kept stating how Ms. Contractor and Ms. Dutt had taken excessive fees and wished to take them to task. O.P. states that she even went out of her way to introduce Complainant to

a match maker, but his ego was so huge that he could not digest the fact that his children chose their mother and step father over him. O.P. states thereafter Complainant and his mother approached her and suggested they wished to appoint a senior counsel who would have face value before Justice Deshmukh, and O.P. suggested names of Mr. Sanjeev Gorwadkar and Mr. Jamshed Cama. O.P. states Complainant chose Mr. Cama being from the same community over other, and met Mr. Cama on his own, fixed fees and gave O.P. brief to him as he did not wish to spend more money on Xeroxing. O.P. states that Mr. Cama appeared in court on one occasion in November 2010, but matter did not reach the board and thereafter Appeal did not come up for hearing. O.P. states that by then seeing the conduct and behavior of Complainant, she realized that she was putting efforts for an ungrateful person and also who had caused wrong to his children, and realized that children were undergoing turmoil. O.P. states that even Mr. Cama suggested resolution of issue amicably, but ego of Complainant did not permit him to see reason.

6. O.P. states Complainant constantly hounded her and there were approximately 200 emails exchanged between them, but Complainant has chosen to only produce a few. O.P. states the Appeal appeared on board in March 2011, but as she filed her Vakalatnama across the bar in court, her name did not appear for Appellant. O.P. states she made several requests to departments as well as benches about her name not appearing, and due to her name not appearing on board the Appeal was dismissed. O.P. states that on gaining knowledge

of dismissal, she immediately filed a motion No.1079/2011 for restoration. After filing motion Complainant agreed to meetings for amicable settlement, and O.P. corresponded with the Advocate of Complainant ex-wife for the same. O.P. states two settlement meetings were held but in vain, and Complainant even insulted Advocate of his ex-wife during the meeting. In March 2011, O.P. informed Complainant that she would not represent him, but Complainant made his friend one Mr. Palia speak to O.P. and convince her to complete the case. Accordingly O.P. agreed to restore Complainant Appeal and move precipe for motion to be placed on board. The Appeal came for hearing before Justice Deshmukh and Justice Potdar when Advocate for Complainant ex-wife stated O.P. Vakalatnama was not on record. O.P. states this issue was never raised before, not even when she argued for 1.5 hours before Justice Marlapalle and Justice Tahilramani. Therefore on directions of the bench O.P. once again filed her Vakalatnama, and even the appeal was restored vide order dt. 07.3.2012, as the Hon'ble Bench of BHC went through the papers and noticed O.P. appearance in matter since 2009, and her name in all Orders and several Notices of Motion. O.P. states that now Complainant chooses to side with Advocate of his ex-wife for his own gain, when all along he was cursing her. O.P. states that on the Appeal being restored on 07.3.2012, she handed over her No Objection Letter to Complainant on same day outside court premises, and the brief was handed over in 2010 itself when Complainant had taken to give it to Mr. Cama. O.P. states she also handed over all correspondence exchanged between her and Advocate of Complainant ex-wife, and she has no documents of Complainant in

her possession. She also informed Advocate of Complainant ex-wife to correspond directly with Complainant himself, however despite having informed Complainant on 22.3.2011 and 11.10.2011 that her role would be to merely to restore the appeal, and that he should appoint another advocate, Complainant instructed O.P. to carry on correspondence with Advocate of his ex-wife.

7. O.P. states that she started receiving indirect and indecent threatening emails from Complainant making allegations that she should refund fees of Rs.50,000/-, as he had allegedly paid Mr. Cama Rs.50,000/- which was not as per knowledge of O.P., as she was not present when terms of appointment of Mr. Cama were discussed. O.P. states that when Complainant started demanding refund of his fees, she asked Mr. Rustom Khan who had referred him the issue to be involved, but Complainant backed out. O.P. states that she has done following work in Appeal No. 194/2009:

- (i) Filed Notice of Motion no. 3231/2009 decided on 05.11.2009
- (ii) Filed Notice of Motion no. 3768/2009 decided on 05.11.2009
- (iii) Defended Notice of Motion no. 4293/2009 decided on 20.01.2010
- (iv) Filed Notice of Motion no. 740/2010 decided on 07.04.2010
- (vi) Filed Notice of Motion no. 1488/2010 decided on 09.06.2010
- (vii) Conducted hearing and final arguments on 26.02.2010 for period of one and half hours
- (viii) Filed Notice of Motion no. 1079/2011 disposed on 07.03.2012

O.P. states that since August 2009 to March 2012 she has appeared in various Notice of Motions, made several correspondence, appeared in conference with Mr. Cama, appeared for settlement talks with Ms. Nanavati, for fees of Rs.65,000/- which Memo of Bill has been given to Complainant. O.P. states that she has not been paid for Appeal nor the multiple correspondences exchanged with lawyer of ex-wife or conferences held with Complainant. O.P. states that Complainant has misused her generosity and exploited her services, and under no stretch of imagination can the services rendered by her be called against professional conduct. O.P. states she is not liable for fees paid to senior counsel. O.P. has denied all the allegations made by Complainant and pray for the complaint to be dismissed with exemplary costs.

8. Complainant and O.P. have filed their Affidavit of Evidence, which is repetition of the same averments made in the complaint as well as the reply of O.P. Complainant had filed an application praying for costs to be awarded in the complaint, to which O.P. filed reply opposing the same, and stating that the said application was filed 2 years after she filed her Written Statement in the matter, which has been accepted by this Forum without any objections, and that the present application is moved with ulterior motives and malafide intention, and deserves to be dismissed with costs. Vide order dt. 13.12.2016 of this Forum, the said Application was to be decided at the time of final hearing. Complainant filed a pursis to consider his Written Arguments as oral arguments, and despite giving numerous

opportunities to O.P. to orally argue the matter, she has remained absent, and the matter was closed for judgement.

9. After going through all documents in the matter the following points arose for our consideration :

| Sr.no. | Points | Findings |
|--------|---|--------------------|
| 1. | Whether Complainant proves deficiency of service and unfair trade practice on the part of Opposite Party? | No |
| 2. | Whether the Complainant is entitled to get reliefs they have prayed for? | Does not arise |
| 3. | What order? | As per final order |

REASONS

10. As to Point No. 1& 2: Complainant has filed present complaint, stating O.P. did not complete Item 7 & 8 of letter dt.16.08.2009 sent by him, and that she abandoned his Appeal filed in BHC after restoration in 2012. In her defense O.P. has laid out the various things done by her, discussed in the body of judgment Para 7, between years 2009 and 2012, and prays for dismissal of present complaint for being frivolous and malicious.

11. We have perused the email correspondences annexed to complaint, which we note is very selective in nature, and do not contain the entire body text, trailing mails of the attached emails. At Exh-A is letter dt. 16.08.2009, after which the emails attached are directly from years 2011 and 2012, of which the contents are basically allegations and counter-allegations, which in our opinion cannot be considered as deficiency of service and unfair trade practice as laid down under the Act.

12. The moot point for our consideration therefore is - whether it was deficiency of service on the part of O.P. that caused dismissal of Notice of Motion No. 1079/2011 vide order dt.08.03.2011, and whether O.P.'s refusal to continue handling matter of Complainant after restoration of appeal vide order dt. 07.3.2012. O.P. has explained at length the course through which her dealings with Complainant has progressed in Appeal No. 194/2009, none of the averments made by O.P. has been denied by Complainant, which can be considered as corroboration to averments made by O.P. Therefore in our opinion, the reasons stated by O.P. for her name not appearing on the BHC board and the subsequent dismissal of Notice of Motion No. 1079/2011 can be considered correct. Be that as it may, it is a fact that O.P. has taken steps to restore the appeal, despite all that has transcribed between her and Complainant. Such restoration on part of O.P. and further dismissal of Notice of Motion in our opinion doesn't have any ingredient of deficiency of service or unfair trade practice.

13. Complainant also states that abandoning his Appeal in BHC after restoration would constitute deficiency of service. O.P. in her Affidavit in reply has laid down that she had argued before the bench of Justice Marlapalle and Justice Tahilramani for 1 hour 30 minutes on 26.2.2010, and when directions were given by the bench to produce children before the bench for interview, it was turned down by Complainant, Complainant has not denied this averment made, and thereafter he has asked O.P. to file certain Notices of Motion, sought assistance for appointment of Senior Counsel, made certain attempts at settlement of matter out of court and so on, as laid out in detail in the body of judgment Para 7. Thereafter there has been some bad blood between Complainant and O.P. due to the matter before BHC, which has resulted in O.P. feeling insulted and she made the decision to not continue as Advocate for Complainant in BHC. Complainant is before us praying for refund of Rs.65,000/- paid to O.P. in Appeal No.194/2009 along with compensation and costs. The work done by O.P. for the said remuneration has been laid down in a nutshell in Para 7 hereinabove, which in our opinion is commensurate for the fees taken by her. It appears the Complainant was under the impression that he has hired O.P. for life by paying the said fees, and she would continue handling his Appeal until he gets a favourable outcome/order in his favour. In our opinion this complaint is before us due to Complainant's non-understanding of legal procedures, more so the rigmarole of BHC, and he has a certain sense of entitlement for the money paid by him despite the efforts taken by O.P., which in our

opinion does not constitute deficiency of service or unfair trade practice. We answer Point Nos. 1 & 2 accordingly.

14. All pleadings in present case is made in English, hence the judgment is pronounced in English. Considering the facts and circumstances we proceed to pass the following order :

ORDER

1. The Consumer Complaint No. CC/131/2014 is dismissed.
2. No order as to compensation or costs.
3. Copy of the final order be given to all parties as per provisions of Consumer Protection (Consumer Commission Procedure) Regulations, 2020 Regulation 21(1) and Regulation 18(6).
4. Certified copy of the final order be given to all parties as per provisions of Consumer Protection (Consumer Commission Procedure) Regulations, 2020 Regulation 21(1) (3).

Date :- 17/03/2023

Place :- Bandra – Mumbai.

Sd/-

(Shraddha M. Jalanapurkar)

Member

Sd/-

(Preethi Chamikutty)

Member

gmp/-

