

## **SERVICES RENDERED BY AN ADVOCATE DO NOT COME WITHIN THE SCOPE AND AMBIT OF COMMERCIAL DISPUTES AS DEFINED UNDER THE COMMERCIAL COURTS ACT, 2015**

### **INTRODUCTION:**

The Delhi High Court in a recent decision in **Atmastco Ltd. Vs Mandeep Kalra**<sup>1</sup>, held that a dispute between a lawyer and his client where the former was seeking recovery of professional fees, could not be held to be a 'commercial dispute' withing the meaning of Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015.

### **FACTS:**

Sometime in or around the year 2017, the Petitioner retained the professional services of the Respondent as legal counsel and as the representative of the Petitioner before the Supreme Court of India.

The Respondent duly represented the Petitioner in legal proceedings and issued proforma invoices upon the Petitioner for services rendered by the Respondent. The Petitioner, however, defaulted in paying the Respondent despite multiple reminders and assurances.

Thereafter, the Petitioner unilaterally terminated the retainership between the parties and claimed that it stood terminated sometime around December 2019. The Respondent alleged that the retainership was terminated on 29<sup>th</sup> May, 2020.

Due to the refusal of the Petitioner to clear the outstanding Legal and Professional Fees of the Respondent, the Respondent (Original Plaintiff) instituted a suit against the Petitioner (Original Defendant), before the Learned Additional District Judge, Patiala House Courts, Delhi ("**Trial Court**"), seeking recovery of outstanding Legal

and Professional Fees on account of legal representation and services offered by the Respondent to the Petitioner to the tune of Rs. 18,56,511/- along with *pendente lite* interest @2% per month from the date on which the right to receive the payment accrued until realization.

The Petitioner raised a preliminary objection as to the maintainability of the suit on the ground that the dispute raised by the Respondent was a 'commercial dispute' governed under the Commercial Courts Act, 2015 in as much as the relationship between the Petitioner and the Respondent constituted an 'agreement for provision of services' falling within the scope of Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015 ("**CC Act**").

Accordingly, the Petitioner filed an application under Order VII Rule 11 of the Civil Procedure Code, 1908, before the Trial Court, for dismissal of the suit on the ground that the Trial Court, being a regular civil court, was barred by the CC Act from exercising jurisdiction over the said dispute alleged to be commercial in nature, and on the ground of non adherence to the

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<sup>1</sup> C.R.P. 53 of 2024

mandatory provision of pre-institution mediation under Section 12A of the CC Act.

The Trial Court vide an Order dated 5<sup>th</sup> August, 2023, dismissed the application filed by the Petitioner ("**Impugned Order**"). The Trial Court inter alia observed that services rendered by a lawyer to his/her client could not be termed to be a commercial activity falling within the ambit of Section 2(1)(c)(xviii) of the CC Act.

Being aggrieved by the Impugned Order, the Petitioner preferred a Civil Revision Petition before the Delhi High Court.

### **ISSUE FOR CONSIDERATION:**

The main issue for consideration before the Delhi High Court was as follows:

Whether a suit for money decree for breach of a Retainership Agreement for providing legal services came within the ambit of Section 2(1)(c)(xviii) of the CC Act, i.e., agreements for sale of goods or provision of services?

### **SUBMISSIONS ON BEHALF OF THE PETITIONER:**

It was submitted on behalf of the Petitioner that the State or its agencies do not carry out any "commercial activities" as such, but a dispute arising out of such non-commercial activities would still fall under the scope of the CC Act by virtue of the explanation clause of Section 2(1)(c) of the CC Act, in a similar fashion, the dispute arising out of the services involved in the present petition should also be deemed to be "commercial" in nature even though it arose in the course of a non-commercial activity.

The Petitioner relied on the decision in **Mohit Saraf vs Rajiv K Luthra**<sup>2</sup> and submitted that even though lawyers do not carry out

commercial activity, when two lawyers enter into partnership agreement and a dispute arises out of such a partnership agreement, then such dispute has been held to be a "commercial dispute" within the CC Act, even though it does not arise out of commercial activity.

It was further submitted by the Petitioner that the term "services" used in Section 2(1)(c)(xviii) of the CC Act should be given an unrestricted interpretation.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

The Respondent submitted that the Petitioner was posited upon the misconceived and erroneous understanding that the suit in question was a suit for recovery arising out of a "commercial dispute".

The Respondent further submitted that the scope of revisional powers of the revision Court were very narrow and that the present case required no exercise of such powers since no jurisdictional error was manifest in the Impugned Order.

### **JUDGMENT:**

The Delhi High Court observed that a dispute arising out of an agreement for sale of goods or provision of services would qualify to be a "commercial dispute" that would be exclusively triable by the Commercial Courts.

The Delhi High Court observed that the plea advanced by the Petitioner that a suit for recovery of legal fees for the 'services rendered by advocates/lawyers' would be a 'commercial dispute' within the meaning of Section 2(1)(c)(xviii) of the CC Act deserved to be rejected.

<sup>2</sup> O.M.P. (I) (COMM) 339/2020

It was observed that the dispute arising out of the nature of services that were envisaged to be rendered by the Respondent could never be termed as a “commercial dispute” or a “dispute between a master and servant” or in the nature of a “contract of service” as understood in the legal jurisprudence.

It was observed that Section 2(1)(c) of the CC Act enumerated different kinds of commercial contracts and transactions which had to be construed in a plain grammatical manner in order to ascertain whether the same are commercial disputes. The crux of the matter was that the expression “provision of services” in Section 2(1)(c)(xviii) of the CC Act was used disjunctively from the expression “sale of goods” but the overall theme and its purport was that it would mean to be a “provision of services” when used in the realm of commerce.

The Delhi High Court relied upon the decision of the Apex Court in **Bar of Indian Lawyers through its President v. D.K. Gandhi PS National Institute of Communicable Diseases**<sup>3</sup>, wherein the Apex Court was required to consider the issue whether “professional services” rendered by Advocates could fall within the meaning of term “service” contained in Section 2(1)(o) of the Consumer Protection Act, 1986 and in Section 2(42) of the Consumer Protection Act, 1986. The Apex Court inter alia observed that a professional could not be treated equally or at par with a businessman or a trader or a service provider of products or goods as contemplated in the Consumer Protection Act, 1986. Similarly, the services rendered by a businessman or a trader to the

consumers with regard to goods or products could not be equated with the services provided by a professional to his clients with regard to his specialized branch of profession. The legislative draftsmen are presumed to know the law and there was no good reason to assume that the legislature intended to include the professions or professionals or the services provided by the professionals within the ambit of the Consumer Protection Act, 1986. Any interpretation of the Preamble or the scheme of the Consumer Protection Act, 1986 for construing “Profession” as “Business” or “Trade” or “Professional” as “service provider” would be extending the scope of the Consumer Protection Act, 1986 which was not intended and would have a counter productive effect. It was held that the services rendered by professionals such as lawyers did not fall within the scope and ambit of the Consumer Protection Act, 1986.

The Delhi High Court observed that lawyers and advocates are supposed to be professional legal experts and major stakeholders in the “adversarial justice delivery system” who render legal advice and services to their clients but have larger duties as officers of the Court whenever they are engaged for providing legal representation to their clients in the Courts of law.

In view of the aforesaid, the Delhi High Court observed that any dispute between a lawyer and his client where the former was seeking recovery of professional fees, could not be held to be a “commercial dispute” and dismissed the revision petition.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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<sup>3</sup> Civil Appeal No. 2646 of 2009