

*Privy Council Appeal No. 99 of 1928.*

Baboo Asharji Lal - - - - - *Appellant*

*v.*

The Judges of the High Court of Judicature at Allahabad - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

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REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH  
DECEMBER, 1929.

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*Present at the Hearing :*

LORD TOMLIN.

SIR LANCELOT SANDERSON.

SIR BINOD MITTER.

[*Delivered by* LORD TOMLIN.]

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This is an appeal from an order dated the 23rd January, 1928, of the High Court of Judicature, Allahabad whereby the appellant, a pleader practising at Agra, was suspended from practice for four years from the date of the order on the ground that he was guilty of professional misconduct in respect of three out of six matters charged against him.

The order was made after enquiry and report by the District Judge of Agra under Section 14 of the Legal Practitioners Act (XVIII of 1879). The jurisdiction of the High Court to suspend or otherwise punish a pleader practising in any subordinate Court arises after report by the Presiding Officer of such subordinate Court that the pleader has been guilty of any of the offences mentioned in Section 13 of the Act. These offences include fraudulent or grossly improper conduct in the discharge of his professional duty.

Of the six charges made against the appellant, the three upon which the High Court found him guilty were as follows :—

“(1) That having been standing Counsel of the Agra United Mills, Limited, employed by Kunwar Ganesh Sinha since 25th April, 1925, on 27th May, 1927, you filed a *vakalatnama* on behalf of Major A. U. John, a plaintiff in Suit No. 126 of 1926 in the Court of the Additional Subordinate Judge, Agra, against Kuer Ganesh Sinha, the Agra United Mills, Limited, and other defendants.

“(2) That having been standing Counsel of the Agra United Mills, Limited, for over six years under an agreement not to give advice or to conduct cases against the Mills, and having obtained an increment to your retainer on the express undertaking that you would not appear for Messrs. John against the Mills, you advised Messrs. John in preparing their Case No. 84 of 1927 against the Mills, and you got your junior, Mr. Baboo Lall, to file the plaint.

“(6) That in Suit No. 126 of 1926, in the Court of the Additional Subordinate Judge, Agra, you made an unfair use of your position as legal adviser of the Agra United Mills, Limited, and forced the Mills to agree to give you a fee of Rs. 12,000. That you did nothing for the Mills except to file your *vakalatnama*.”

At the end of the hearing before their Lordships' Board their Lordships being of opinion that the first and sixth charges had not been made out, but that the second charge was established, intimated that they would humbly advise His Majesty that the suspension should cease as from the 22nd November, 1929.

It is now necessary for their Lordships to give the reasons which led them to this conclusion.

For this purpose a statement of the relevant facts is required.

In 1920, Messrs. John Bros., the owners of a mill at Agra sold the mill to the Agra United Mills Company, Limited. The sum of 50 lakhs of rupees, the purchase price or part of the purchase price, was satisfied by the issue to the vendors of debentures of the Company. There was a debenture trust deed, of which Messrs. John Bros. were the trustees.

In January, 1921, the appellant was appointed standing counsel of the Company. He also from time to time acted on behalf of Messrs. John Bros. Their Lordships are satisfied that both the Company and Messrs. John Bros. were fully aware of the appellant's position and that neither of them raised any objection to it.

On the 31st January, 1924, the appellant wrote to the Company a letter setting out what he described as “the terms we settled the other day about my fees, etc., for Court cases.” The letter was not answered, but their Lordships are satisfied that in subsequent transactions fees were paid by the Company to the appellant upon the basis of the terms set out in the letter.

In 1924 a suit was launched by or in the name of the Company against the debenture holders, attacking the validity of the debentures. The suit was dismissed by consent on the 28th May, 1925. It does not appear that the appellant had any part on either side in this suit, but it may have brought to his mind

the possibility of conflict between the respective interests of the Company and Messrs. John Bros.

At any rate, on the 25th September, 1925, the appellant wrote to the Company a letter in which he referred to the possibility of a conflict of interests between his two clients, and stated that he had decided to give up Messrs. John Bros. and act only for the Company.

Thereafter he ruled himself by the terms of that letter, and their Lordships do not accept his story that, notwithstanding the letter, he was to be free to advise Messrs. John Bros. in respect of their debentures in the Company.

On the 20th May, 1926, Messrs. John Bros. and other shareholders of the Company filed a suit in the Court of the Subordinate Judge at Agra against the Company and a number of firms, companies and individuals who had acted or were acting as managing agents of the Company or as directors or agents of such managing agents claiming for the benefit of the Company against the defendants other than the Company large sums alleged to have been fraudulently misappropriated by such defendants or some of them.

The defendants other than the Company held a majority of the shares in the Company and controlled the Company. The appellant as pleader for the Company received his instructions from Ganesh Sinha, one of such defendants—Ganesh Sinha was managing director of the Darbhanga Trust, Limited, the managing agents of the Company, and as such directed the affairs of the Company.

On the 4th August, 1926, the appellant, under instructions from Ganesh Sinha, made a statement to the Court to the effect that, as the suit was for the benefit of the Company, it was unnecessary for the Company to file any written statement.

Later on in August, 1926, a suit committee was set up by the majority shareholders, which apparently desired to get rid of the appellant as pleader on the record for the Company, and on the 24th January, 1927, an application was made to substitute on the record as pleader for the Company one Din Dayal in place of the appellant. The application failed, the judge saying "that, though figuring as a defendant, the Mills are virtually plaintiffs in the case."

In the meantime, the appellant had made a claim to Ganesh Sinha to be paid Rs. 15,000 as his fee as pleader for the Company in the suit, calculated in accordance with the terms of the letter of the 31st January, 1924.

Ultimately the claim was settled on the 17th March, 1927, by payment to the appellant of Rs. 12,000. It is this payment which is the subject of the sixth charge.

On the 21st March, 1927, the Company received a notice dated the 17th March, 1927, from the debenture holders of their intention to enforce their debentures.

On the 25th March, 1927, an answer to this notice was sent to the debenture holders. The answer was signed by Swarup, pleader for Ganesh Sinha. It is said to have been drafted by the appellant. This the appellant denies, but his denial was not accepted by the District Judge or the High Court. The matter is, in their Lordships' opinion, of little importance. In their Lordships' opinion, the appellant at this time or shortly afterwards made up his mind that in the debenture-holders' suit, which was then being threatened, he would act for the plaintiffs against the Company. At the same time, their Lordships are satisfied (and in this respect they differ from the High Court) that the appellant never intended to give up his position as pleader for the Company in the suit of 1926.

On the 13th May, 1927, the appellant informed Ganesh Sinha of his intention to act for the debenture holders, and about the same time he accepted a brief for such debenture holders.

On the 14th May, 1927, the plaint in the debenture-holders' suit was filed by one Babu Lal, who admittedly was the appellants' junior, acting under his directions.

On the 17th May, 1927, Ganesh Sinha wrote to the appellant, protesting against the appellant's action and pointing out in effect that the appellant had, while acting for the Company, received information which would necessarily embarrass him if he acted for the debenture holders. The appellant's answer on the 21st May, 1927, was a long and violent letter, in the course of which he said, "Please therefore note that I sever my connection with you absolutely from this date except that I insist on representing the unfortunate defendant Company, the Agra United Mills, Limited, in suit No. 126 of 1926, because I cannot resist the conclusion that if I am eliminated therefrom you will do your utmost to sacrifice it. Any effort to supplant me in order to serve your own dishonest ends will be resisted by all the force and energy I can command."

On the 25th May, 1927, Ganesh Sinha cancelled the appellant's *vakalatnama*, and applied to the Court in the suit of 1926 to remove his name from the record as the Company's pleader, and on the following day his name was removed on the ground that his *vakalatnama* had been cancelled. In the course of the hearing of this application Ganesh Sinha made a declaration to the effect that the Company had always been treated as a plaintiff and would continue in future to accept the status of co-plaintiffs.

On the day on which the last-mentioned application was made the appellant applied by petition to the District Judge for advice as to whether he could properly appear for the plaintiffs in the debenture suit. This petition was forwarded to the High Court by the District Judge, and on the 31st May, 1927, the High Court told the District Judge that the appellant must decide this matter for himself.

On the 26th May, 1927, the Company, acting through Ganesh Sinha, petitioned the District Judge under the Legal Practitioners Act to take action against the appellant on the ground that he had been guilty of professional misconduct. The charges were further expanded in a second petition on the 28th May.

On the 27th May, 1927, the appellant filed a *vakalatnama* in the suit of 1926 on behalf of one of the plaintiffs. The Company, through Ganesh Sinha, at once applied to the Court to prevent the appellant from doing so. The Subordinate Judge refused to interfere, saying, "I do not think there is anything to preclude him from doing so, as the Mills Company has been and is being treated virtually as a co-plaintiff, the suit being for its benefit."

Subsequently the defendants in the suit of 1926 raised upon the pleadings an issue as to the validity of the debentures, and this apparently led the Additional Subordinate Judge to take the view that the appellant could not continue to act for one of the plaintiffs in that suit.

Out of this confused welter of happenings one thing only emerges clearly, that the appellant had no true appreciation of the principles which should govern the conduct of a professional legal adviser. This is the more apparent because, in regard to the matters the subject of the first and second charges, he affected no concealment in what he did, but openly asserted his right to pursue the course he had marked out for himself.

Their Lordships are of opinion that the appellant, in making himself responsible for the filing of the plaint in the debenture-holders' suit and in accepting a brief from the plaintiffs in that suit at a time when his exclusive retainer in favour of the Company was still running, acted in violation not only of the principles which govern the conduct of a legal adviser, but of the ordinary principles of good faith as between man and man. Their Lordships do not think that such a course would have been justified in the circumstances of the present case even if the retainer had been first determined. In their Lordships' judgment, the conduct of the appellant was irregular in form and improper in substance, and was "grossly improper conduct in the discharge of his professional duty" within the meaning of the Act.

Their Lordships therefore think that the second charge was made out.

With regard to the first charge, based upon the appellant having acted for a plaintiff in the suit of 1926 after his retainer for the Company was determined, their Lordships are impressed by the contemporaneous facts that the Subordinate Judge approved the course pursued by the appellant, and that Ganesh Sinha had declared to the Court that there was no conflict of interest in the suit of 1926 between the Company and the plaintiffs. The view taken by the learned Subordinate Judge does not commend itself to their Lordships, but they do not think that in the circumstances which have been indicated the conduct of the appellant

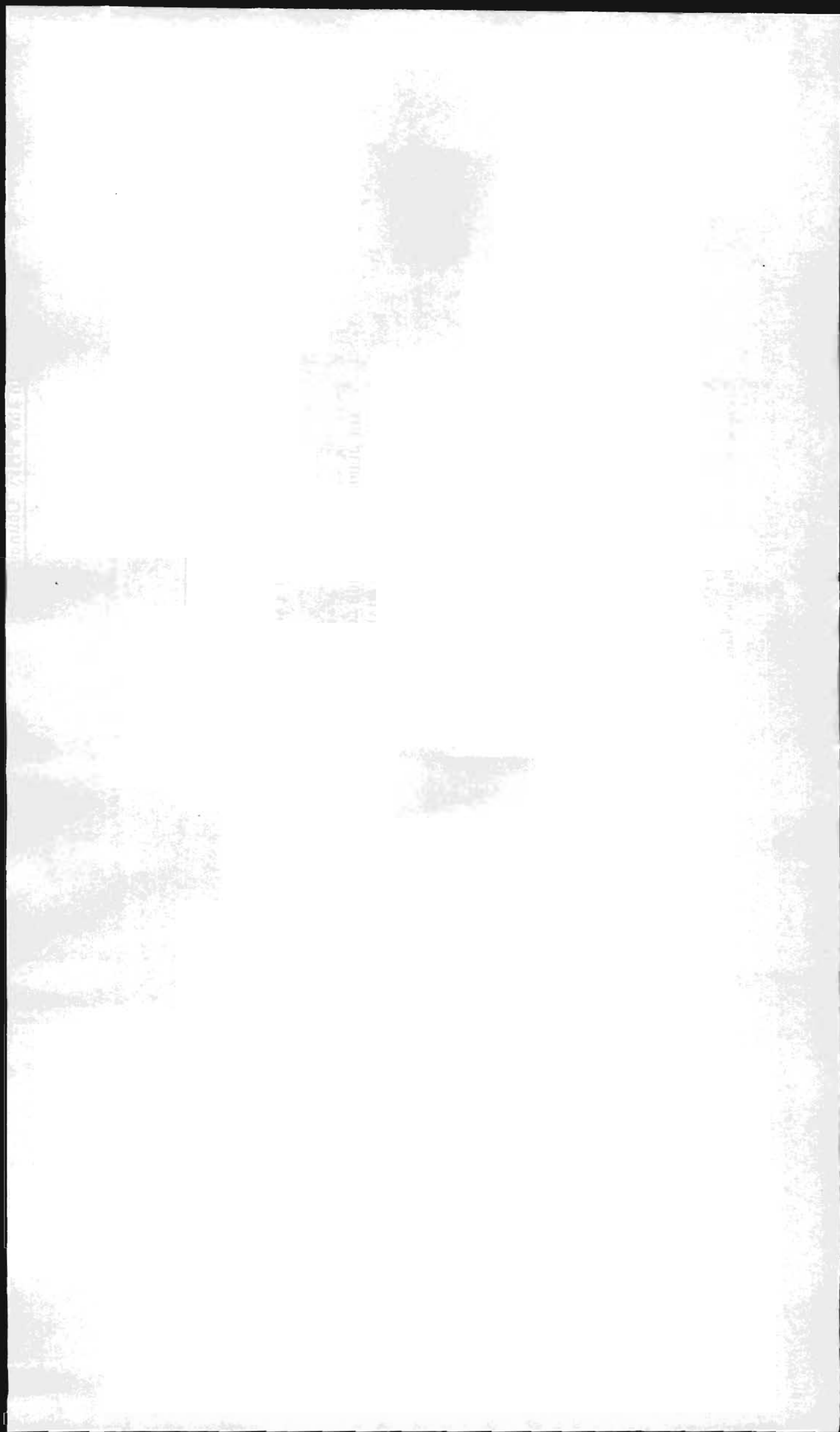
in this matter, though unwise and to be regretted, amounted to "grossly improper conduct in the discharge of his professional duty."

The sixth charge is of a different character. It is in the nature of a criminal charge. It is one which demands precision in statement and strictness in proof. It was in fact framed in vague terms, giving no indication of the real gravamen of the charge, and in their Lordships' opinion the evidence adduced was insufficient to establish it.

The appellant has been suspended from practice since the 23rd January, 1928. Their Lordships are of opinion that the appellant will have been adequately punished if the suspension ceases as from the 22nd November, 1929, and that the order of the High Court should be varied accordingly, but without any variation in that order so far as it relates to costs.

Their Lordships will therefore humbly advise His Majesty accordingly.

There will be no costs of this appeal.



In the Privy Council.

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BABOO ASHARFI LAL

v.

THE JUDGES OF THE HIGH COURT OF  
JUDICATURE AT ALLAHABAD.

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DELIVERED BY LORD TOMLIN.

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