

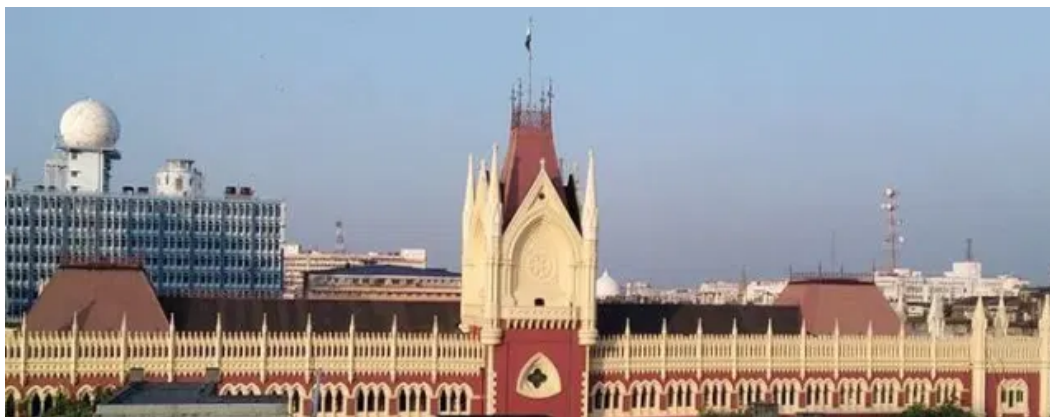
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TUESDAY, JUNE 29TH, 2021

CIVIL

A document drafted by a lawyer may be written out by his licensed clerk-Deed writer is not mandatory in WB



23-12-1994 – In case of a type-written deed prepared by an advocate the deed is required to be signed by the typist who typed the deed, under rule 18 (ii) of the West Bengal Registration (Deed Writers) Rules, 1982 as quoted earlier, as well as by the Advocate who prepared the deed. In such case the deed writer does not at all come into the picture. Similarly, rule 18(iii) of the said Rules also provides that when any document is drafted by a lawyer such document shall bear the full name and signature of the lawyer in addition to his registration number and the name of the Bar Council to which he is attached. This also visualises a situation where a lawyer drafting a deed in his professional capacity may get it written by his licensed clerk and it is not necessary that the lawyer concerned, after preparing the draft in connection with his professional assignment, will have to send it to a licensed deed writer instead of getting the same written out by his own licensed clerk according to the draft prepared by him. Therefore, I find nothing wrong or illegal in the impugned circulars where it is stated that a document drafted by a lawyer may be written out by his licensed clerk. In such cases however the registration authorities may very legitimately require the licensed clerk writing out the deed, not only to record on the document declaration under his signature that it has been written by him and disclose the particulars of his licence as lawyer's clerk, but may also further require the clerk to record in writing the name of the advocate whose licensed clerk he is. Similarly, the advocate concerned also may be required to certify on the deed that the same has been drafted by him and written out by his licensed clerk recording the name of such clerk

(1995) AIR(Calcutta) 372 : (1995) 1 CalHCN 444 : (1995) 1 CALLT 120 : 99 CalWN 314

CALCUTTA HIGH COURT

SINGLE BENCH

(Before : Gitesh Ranjan Bhattacharjee, J)

COACH BIHAR DIST. DEED WRITERS' ASSN. AND ANOTHER — Appellant

Vs.

DISTRICT REGISTRAR OF COACH BIHAR AND OTHERS — Respondent

C.O. No. 2369 ® of 1993

Decided on : 23-12-1994

Constitution of India, 1950 – Article 226

Registration Act, 1908 – Section 32, Section 36, Section 52, Section 57, Section 61

JUDGMENT

G.R. Bhattacharjee, J.—This is a writ petition under Article 226 for quashing certain circulars issued by the respondents and for relief's intended to exclude the lawyers' clerks from doing any function of deed writer in the Registration Offices. The petitioner No. 1 is the Coach Bihar District Deed Writers' Association of which the petitioner No. 2 is the Secretary. The petitioner No. 2 is himself also a licensed deed writer. Under memo No. 5060-(17) dated the 11th May, 1984 which is Annexure A to the writ petition the Inspector General of Registration, West Bengal issued certain clarifications about which the petitioners are aggrieved. The clarifications given by the Inspector General of Registration in the said memo is thus :

(i) A Law Clerk has got no right to act as a deed writer independently of his employer, that is, Advocate or Pleader.

(ii) A document drafted by a lawyer may be written out by his licensed clerk in view of the fact that the drafting and preparation of documents for registration being a part of the professional duties of a lawyer, the help and assistance or in other words the service of his licensed clerk in doing so, may be available to him.

The other impugned document is Annexure B to the writ petition which is memo No. 3073 (11)/D.W. dated the 9th December, 1992 issued by the District Registrar, Coach Bihar, clarifying that the lawyers' clerks have been forbidden to write any document independently, but as before there is no bar of writing documents by lawyers' clerks provided such document is certified by the concerned lawyer to the effect that the document has been drafted by him and such certificate is followed by the signature of the lawyer concerned and his registration number. Both these memos have been challenged by the deed writers in this writ petition on the ground that the lawyers' clerks are not entitled to write out any deed and as such the impugned memos authorising or permitting the lawyers' clerks to write out deeds drafted by their lawyers for registration are bad in law and, therefore, liable to be quashed. It is the further contention of the petitioners that the lawyers' clerks cannot do any work of deed writer in the Registration Office.

2. Section 32 of the Indian Registration Act, 1908 provides that except in the cases mentioned therein every document to be registered under the Act, whether such registration is compulsory or optional, shall be presented at the proper registration office, (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or (b) by the representative or assign of such person, or (c) by the agent of such person, representative or assign, duly authorised by power of attorney executed and authenticated in the required manner. Section 36 of the said Act prescribes the

procedure for summoning the executor of the deed or witness where appearance of such person is desired. Section 52 inter alia requires the signature of the person presenting a document for the registration to be endorsed on every such document at the time of presenting the deed, and it also requires that a receipt for such document shall be given by the Registrating Officer to the person presenting the same. Section 61 inter alia requires that on completion of the registration of the document the same shall be returned to the person who presented the same for the registration or to such other person, if any, as he has nominated in writing in that behalf on the receipt mentioned in section 52. Thus in view of section 61 anyone can be nominated in writing by the person presenting the document for registration on the receipt mentioned in section 52 for taking delivery of the document from the Registration Office. Obviously, it is not necessary that if the person presenting the document does not personally come to take back the document on completion of registration, he shall have to nominate in writing anyone who must be a licensed deed writer. Such nomination can be made in writing in favour of any person. Although there are some restrictions about supply of copies and search in respect of certain records mentioned in sub-sections (2), (3) and (4) of section 57, sub-section (1) of the said section however permits inspection by any person applying to inspect certain records mentioned therein and also to obtain copies of entries in such books.

3. Now we look to certain provisions of the West Bengal Registration (Deed Writers) Rules, 1982. In rule 2(b) of the said Rules 'deed writer' has been defined thus :

2(b). 'Deed Writer' means and includes a person who is engaged in the profession of preparing documents, namely, doing the work of conveyancing, including investigation of title, preparation of draft-deeds and engrossing the deed on stamp paper for registration and who holds a licence under these rules.

Rule 4 of the said Rules runs thus :

4. Prohibition of unlicensed persons.-No person who is not a licensed deed writer under the rules shall engage himself in the profession of a deed writer :

Provided that an advocate or a pleader practising before any Court in the State or a solicitor need not obtain a deed writer's licence.

This rule therefore makes it clear that an advocate can engage himself in the profession of a deed writer without being required to obtain a deed writer's licence. The next rule that is relevant for our purpose is rule 7 of the said Rules which is reproduced below as it stands amended by notification No. 67 dated 17.2.86:

7. Competent persons for writing different kinds of documents.- (1) Non-testamentary documents are to be prepared by licensed deed writers only ;

Provided that no such licence will be necessary if the document is prepared by an advocate, a pleader or a solicitor.

(2) No non-testamentary document shall be accepted for registration unless it is prepared by a licensed deed writer, an advocate or a solicitor or by the executants or one of the executants of the document, provided his handwriting is neat and legible;

Provided that rules 7(1) and 7(2) shall not apply to documents executed by or on behalf of or in favour of the Government of India, or State Government or local authorities and other bodies corporate, the registered cooperative societies and nationalised banks and institutions which may, by notification in the Gazette, be specified by Government in this behalf. Such societies and banks shall send to the registering officer concerned a list of persons, not more than three, duly authorised by them to write documents for or on behalf of them ;

Provided also that rules 7(1) and 7(2) shall not apply to documents prepared and executed in other States of India or any foreign country.

(3) Testamentary documents may be prepared by the testator or by any person authorised by the testator.

Rule 18 of the said Rules as it stands amended by the aforesaid notification No. 67 dated the 17th February, 1986 is also relevant for our purpose and the same is reproduced below :

18. Attestation of deeds.-(i) Every deed written out by a deed writer shall be attested by him in the following manner :

Prepared by XY (name in full) having Licence No. ... of 19.... under Z (name of the Registration Office) Registration Office.

....

Signature of the deed writer.

(ii) In the case of a type-written or printed document the name and signature of the deed writer, advocate or solicitor, as the case may be, and in the case of documents prepared by a Government agency, local authority, other bodies corporate, registered cooperative societies, nationalised banks, the full name and signature of the person who has written the document shall be furnished on the document in addition to the name and signature of the typist or the name and address of the press in the case of printed documents.

(iii) Any document drafted by a lawyer shall at the end or bottom of the document, bear full name and signature of the legal practitioner in addition to his registration number and the name of the Bar Council to which he is attached. If the document contains more than one sheet, the initial of the lawyer shall be affixed on the margin of each such sheet or sheets.

4. It is true that the West Bengal Registration (Deed Writers) Rules, 1982 does not specifically say that a lawyer's clerk can write out a document which may be presented for registration. Now, if the writing of a document is a part of the exercise involved in the profession of a deed writer and if an advocate is permitted by law to engage himself in the profession of a deed writer without being required to obtain a deed writer's licence, the question that automatically arises in the context is whether an advocate who drafts a deed can get the deed written by his own licensed clerk instead of himself writing the same where such advocate has undertaken the task of preparing the concerned document or deed as a part of his professional work.

5. In rule 867 of the Civil Rules and Orders Vol. 1 prescribed by the High Court 'licensed clerk' has been defined to mean 'a clerk who is employed by a pleader or Mukhtear in connection with his legal business and is licensed as such' under the said Rules. An advocate therefore is entitled to have licensed clerk (loosely described as law clerk, at times) in connection with his legal business, that is, in connection with his profession as an advocate. Rule 868 indicates that the licensed clerk of an advocate can perform the ministerial part of the work of his employer, as the rule says that a licensed clerk shall for the purpose of performing the ministerial part of the work of his employer have access to any court in which the latter is authorised to practice and shall approach such of its ministerial officers as may in that behalf be designated by the presiding Judge of such court, but he shall not have access to the office of any court. Rule 870 of the Civil Rules and Orders Vol. I provides that a licensed clerk desiring to have access to any ministerial officer referred to in rule 868 shall on demand produce his licence. Rule 14 of the Civil Rules and Orders Vol. I inter alia provides that all pleadings, memoranda of appeals, original petitions, affidavits; Vakalatnamas, applications and papers of a similar character presented to the court shall be written, type written or printed fairly and legibly and shall be dated and signed by the person presenting and is also signed by the scribe or typist who shall state the capacity in which he writes or types the same and shall also give his registered

number if he is the registered clerk of a legal practitioner. The lawyer's clerks are thus entitled and authorised to write out important documents like plaints, written statements, original petitions, affidavits, etc. Rule 882 of the Civil Rules and Orders, Vol. 1 enumerates certain items of works such as, presenting of applications signed by their masters for copies or information, etc. which are to be allowed by the courts to be done by the licensed clerks. Rule 883 however makes it clear that clerks shall not be allowed to inspect or handle records. Rule 884 provides that any person who acts as a clerk of a pleader or a mukhtear without a licence granted to him in accordance with the Rules, shall be deemed to be a tout. It is, therefore, clear that a licensed clerk of an advocate can assist the advocate in the matter of his professional work by performing ministerial and clerical parts of the work of his employer. He can therefore write out document which may be required to be prepared by his employer advocate in course of or in connection with his professional work as advocate, if he is so required by his employer advocate to do under his guidance for the purpose of assisting him in his professional work. The survey of the relevant provisions of the Rules as made above leaves no doubt that the licensed clerk of an advocate is entitled to write out document which is required or undertaken to be prepared by his employer advocate in connection with or in course of his professional work as an advocate and which he directs or requires his licensed clerk to do under his guidance for assisting him in his professional work as advocate. If that be so the necessary corollary is that the licensed clerk of an advocate can also write out deed for registration if he is required to do so by his master advocate in respect of a deed drafted by such advocate for assisting him in his professional work, and there is no doubt that preparation of deed falls within the domain of the professional work of an advocate if such an assignment is received by him in connection with his profession.

6. It may be noted here that while good handwriting is an eligibility requirement for a deed writer under rule 5 of the Deed Writers' Rules, 1982 to obtain licence, rule 874 (2) of the Civil Rules and Orders, Vol. I also requires that no person whose handwriting is illegible or bad shall be registered as a licensed clerk of advocate. The argument of the learned Advocate for the petitioners on this score is therefore futile.

7. In case of a type-written deed prepared by an advocate the deed is required to be signed by the typist who typed the deed, under rule 18 (ii) of the West Bengal Registration (Deed Writers) Rules, 1982 as quoted earlier, as well as by the Advocate who prepared the deed. In such case the deed writer does not at all come into the picture. Similarly, rule 18(iii) of the said Rules also provides that when any document is drafted by a lawyer such document shall bear the full name and signature of the lawyer in addition to his registration number and the name of the Bar Council to which he is attached. This also visualises a situation where a lawyer drafting a deed in his professional capacity may get it written by his licensed clerk and it is not necessary that the lawyer concerned, after preparing the draft in connection with his professional assignment, will have to send it to a licensed deed writer instead of getting the same written out by his own licensed clerk according to the draft prepared by him. Therefore, I find nothing wrong or illegal in the impugned circulars where it is stated that a document drafted by a lawyer may be written out by his licensed clerk. In such cases however the registration authorities may very legitimately require the licensed clerk writing out the deed, not only to record on the document declaration under his signature that it has been written by him and disclose the particulars of his licence as lawyer's clerk, but may also further require the clerk to record in writing the name of the advocate whose licensed clerk he is. Similarly, the advocate concerned also may be required to certify on the deed that the same has been drafted by him and written out by his licensed clerk recording the name of such clerk.

8. The question whether any other act of the licensed clerk of an advocate in connection with the registration of deed is an authorised or unauthorised one need not be answered in the abstract. If there is any allegation or suspicion that any specific work is being done by any one which such person cannot do under law it will be for the concerned registration authorities to consider and decide whether such work of such person is permissible under law. The court need not decide a hypothetical question in the abstract. With these observations the present writ petition is dismissed. There will however be no order as to costs.

Petition dismissed.

Final Result : Dismissed