

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

SC Rule 03/2014

In the matter of a Rule in
terms of Section 42(2) of the
Judicature Act No.2 of 1978,
against Hemantha Sittuge,
Attorney-at-Law

Weerasekera Arachige Dona
Sddhawathie,
No. 732, Sri Nanda Mawatha,
Madinagoda,
Rajagiriya

Complainant

Vs.

Hemantha Sittuge,
Law Library
Hulsftsdorp,
Colombo 12

Respondent

BEFORE: S. EVA WANASUNDERA PC,J

B.P. ALUWIHARE PC,J

SISIRA J. DE ABREW J.

COUNSEL; Saliya Peiris PC for the Bar Assosiation of Sri Lanka

Thusith Mudalige Deputy Solicitor General for the Hon. Attorney General.

Dr. S.F.A. Cooray for the Respondent

INQUIRY

DATES: 20-02-2014, 01-12-2014, 11-12-2014, 19-01-2015,
08-12-2015,24-03-2016, 17-06-2016-01-08-2016,
24-11-2016, 17-01-2017, 03-04-2017, 14-06-2017
06-09-2017 and 03-10-2017

DECIDED ON; 24-01-2018

Aluwihare PC,J

I have read the order made in this matter by my sister, Hon. Justice Wanasundera P.C and I would like to say with respect that I do not find myself in agreement with her.

As Hon. Justice Wanasundera P.C had dealt with the facts to some extent, I shall advert to the facts only to the extent necessary.

The complainant Saddhawathie in her evidence stated that, due to the discharge of toxic waste by the business establishment, Perera and Sons (Pvt) limited, to the drain behind her house, she along with about hundred other residents in the area faced hardships as the effluence so discharged from the said business establishment polluted the water of the two wells which were used for bathing and to obtain drinking water.

Saddhawathie, having complained to various authorities to no avail, said that the Public Health Inspector closed the well, presumably due to the water not

being fit for human consumption, and this appears to be the only solution that the authorities could provide for Saddhawathie, depriving her and the neighbours of the source of water. This lady who was in her 70s, in desperation, no doubt, had thought of seeking redress through the courts. She said a peon by the name of Premasiri introduced her to the respondent attorney, Mr Sittuge (hereinafter also referred to as the Respondent).

Saddhawathie said in her evidence that she handed over the necessary documents to the respondent and requested him to file action against Perera and Sons. The respondent had wanted Rs.10, 000 and the complainant says she paid the said amount in two instalments. After the documents were handed over, the complainant had received a letter from the respondent stating that permission was obtained to file an action, although there was no requirement to obtain permission from anyone to file action.

As nothing happened thereafter, she says she continuously came to Hulftsdorp with the intention of meeting the respondent but had not been successful. On one such occasion, she had seen the respondent near the district court and having approached him, when questioned with regard to the case, the respondent had taken to his heels. Her response was “මහත්තයා පැනලා දිව්වනේ” . In spite of her old age the Saddhawathie had given chase but the respondent had taken cover. She added that when she ran she developed leg pains and she was assisted by some people who were nearby in a Three wheeler.

Thereafter, the complainant says, she never met the respondent and saw him only at the inquiry before the Supreme Court.

Subsequent to this event the complainant, may have been in sheer desperation, had made a complaint to the Bar Association against the Respondent. The complainant's position is that, at the time she complained to the Bar Association the respondent had not filed an action as requested by her nor were the documents returned to her.

Saddhawathie had given evidence before the disciplinary committee of the Bar Association and the respondent had been absent right throughout the inquiry. According to the Bar Association inquiry notes (P 6) number of notices had been sent to the respondent, requiring him to attend the inquiry and these notices had been sent to the same address the respondent had used for his professional communications which is reflected on documents marked as P4 and P5, a letter sent by the respondent to the Honourable Attorney General and a letter addressed to the respondent by the Honourable Attorney General respectively.

In addition, the disciplinary committee of the Bar Association had requested the respondent to attend the enquiry by email as well. Yet there had not been any response whatsoever from the respondent.

I had the benefit of observing Saddhawathie while she testified at the inquiry and considering her demeanour and the deportment, she impressed me as a truthful and a credible witness. In every sense she is a peasant and appeared to be not so literate. She unravelled the injustice that was caused to her in a typical fashion of a villager. She did not appear to have any animosity towards the respondent Attorney apart from the fact that she was visibly aggrieved by the treatment meted out to her by the Respondent, which was natural as Saddhawathie had lost the use of her natural source of water at the hands of an established business. Although Rs.10,000 she parted with as legal fees may appear meager, to a person of her standing, certainly would have been a considerable sum which she could ill afford to spend on litigation. Sadly, she did not live to see the end of this inquiry as she passed away sometime after she testified before the Supreme Court. Even on the day she testified she had come to court, four days after undergoing surgery, against medical advice, as the respondent had phoned her and had insisted that she should attend the inquiry before the Supreme Court, so much was her deference to the court. Although she was cross examined at length, her evidence remains unassailed.

Respondent Attorney-at-Law in his defence elected to give evidence. The manner in which he answered the questions in the examination in chief and cross examination gave the impression that either he was incapable of understanding the questions or was evading questions. After careful scrutiny of his evidence, I have concluded that the respondent is not a witness worthy of credit. Although there are numerous instances that can be pointed out as not truthful answers, I wish to refer to a few of them, which I feel are vital to the determination of the issues in this inquiry.

(1) In explaining the reasons as to why the respondent did not attend the inquiry before the Bar Association, he said he did not receive a single notice, including the notice sent to him on 13-11-2009. Sittuge said that he would not have received any of the notices if they were sent to the Colombo Law Library as the officials (manning the Law library) are angry with him. However, in the same year he had sent a notice to the Honourable Attorney General (P4) in terms of section 461 of the Civil Procedure Code. In the said notice the Sittuge had put down “Colombo Law library” as his address. In fact the Honourable Attorney General’s response (P 5) sent to the respondent is addressed to the Colombo law library. Let alone an Attorney-at-law who is expected to act responsibly, no sane person would use an address, if it is within his knowledge, that he would not receive any correspondence to that address. I am of the opinion that the respondent lied when he said that he did not receive any of the notices sent to him by the Bar Association requiring him to attend the inquiry. His own document, V2, which had been written late as August 2009, the respondent had used “Colombo law Library” as his forwarding address. This amply demonstrates that the story, Library officials being angry with him is merely a concocted one to justify his absence at the Bar Association inquiry.

(2) Respondent testifying before the Supreme Court under oath said, that he came to know that Saddhawathie had complained against him only when he attended this court and when his name was called. This again, in my view is bereft of any truth. The Respondent in his evidence stated that the documents he had collected from Saddhawathie were handed back to the instructing attorney Mr Piyathilake. He added that he did so, as the then secretary of the Bar Association Mr. U.R De Silva requested him, over the phone, to hand over the documents to Mr. Piyathilake. According to the Respondent, on a subsequent occasion, he had met Mr. De Silva at the High Court premises and he had been informed by Mr. De Silva that after the documents were handed over, action had been filed in the District Court. If that is what exactly had taken place, it would have been natural for the Respondent to ask the Secretary of the Bar Association as to why he is giving instructions regarding the Saddhawathie's matter, as the secretary of the Bar Association had nothing to do with the professional arrangement between Saddhawathie and Sittuge. In all probability, Mr. U.R.De Silva would have put the respondent on notice that Saddhawathie had made a complaint against him and that would have been the reason, for the Bar Association to intervene in the matter. Thus I am of the opinion that the respondent lied to this court when Sittuge said that he became aware that Saddhawathie had complained against him only when his name was called before the Supreme Court.

It appears that it was only after the documents were handed over to Mr Piyathilake that some meaningful action had been taken and action was filed on 17-10-2009, which was two months after Saddhawathie complained to the Bar Association.

To address the grievance of Saddhawathie, the situation demanded, taking immediate action, to prevent Perera and Sons discharging toxic waste polluting their source of water. According to the complaint made by Saddhawathie, she had instructed the respondent to file action against

Perera and Sons on 20-11- 2008. The action however was filed almost one year later on 7-10-2009, that was also after Saddhawathie had complained to the Bar Association and after the respondent had returned the documents to Mr Piyathilake, Attorney- at- law.

Ironically the Attorney -at -law Mr. Jayakody who gave evidence on behalf of the Respondent Sittuge said that after he collected the papers (relating to Sddhawathie's case) from Mr. Piyathilaka, he filed papers in court and obtained an injunction against Perera and Sons. This amply demonstrates the delay was on the part of respondent Sittuge in discharging his professional duty.

Having considered the material placed before the inquiry, I am of the firm view that it has been clearly established a dereliction of professional duty on the part of the respondent attorney- at-law Sittuge and he had acted in a manner detrimental and prejudicial to the interest of the complainant, whom he chose to represent.

Justice Dr. A.R.B Amerasinghe in his book “ Professional Ethics and Responsblities of Lawyers” commenting on the duty of diligence on the part of an Attorney state, (pg;290)

“ An attorney should advise and represent his client and render professional assistance conscientiously with scrupulous care and due diligence in reasonable time and he should not accept any professional matter unless he can so attend to it”.

International Code of Ethics for lawyers, published by the International Bar Association states that; (Rule 4)... *it is improper for lawyers to accept a case unless they can handle it promptly and with due competence.....*

Having carefully considered the material placed before this court in support of the Rule as well as on behalf of the respondent Sittuge, I have

reached the conclusion that the respondent Attorney-at-law had failed to exercise due diligence expected of an attorney, in prosecuting the interest of the complainant Saddhawathie and thereby committed deceit and malpractice within the meaning of section 42 (2) of the Judicature Act. I also hold that the conduct of the respondent Attorney at Law is disgraceful and dishonourable of an Attorney-at-law of good repute and competence.

Having considered the foregoing, I hold that the respondent Attorney is guilty of the breaches referred to in paragraphs (a) to (e) of the Rule issued against him.

The next issue is to consider appropriate measures that should be taken against the respondent Sittuge, in view of his conduct referred to above.

I have referred to the facts relevant to the complaint and a reiteration of the same would not be required. It appears, however, that this is not the first instance that the respondent Sittuge had conducted himself in this manner. Mr. Harsha Soza P.C, Overall Chairman of the Professional Purposes Committee of the Bar Association who overlooked the inquiry against respondent Sittuge at the Bar Association, had remarked in his letter dated 10.02.2010 that, ***“I find that Mr. Sittuge, AAL has made a habit of charging fees and not performing his professional duties”***. Mr. Soza P.C had referred to, two other instances where complaints have been made against respondent Sittuge:

PP/1802/37/09 complaint by Ms. Nallathambi Kalaimathy against Mr. Hemantha Sittuge

PPC/1803/38/09 complaint made by Mr. K. Palitha Wijesena, against Mr. Hemantha Sittuge.

In addition the Panel A of the Bar Association Disciplinary Committee of the Bar Association had observed that the inquiry relating to Saddawathie

is the 5th case against respondent Sittuge that had come up before the Panel.

If that be the case, the conduct on the part of respondent Sittuge had been unconscionable and cannot be condoned by any measure. The respondent had not shown any attempt to reform himself in spite of the numerous allegations made against him and having to face disciplinary inquiries before the Disciplinary Committee of the Bar Association and appears to carry on regardless.

I make order suspending the Respondent from practice or any other activity connected or concerned with the legal system for a period of five years.

Judge of the Supreme Court

JUSTICE SISIRA J. DE ABREW

I agree

Judge of the Supreme Court