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SATYENDRA NARAIN SINGH & OTHERS.

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v.

RAM NATH SINGH & OTHERS.

August 23, 1984

[Y.V. CHANDRACHUD, C.J. AND E.S. VENKATARAMIAH, J.]

C

Standards of professional conduct and etiquette—Duty of the Court owed by the Advocate—Propriety of accepting a brief and appearing before his father—Rule 6 of Section 1 of Chapter II of Rules made by the Bar Council of India under Section 49(1) (C) of the Advocates Act, 1961, explained.

The appellants and respondents are members of an association called the State Society for the Prevention of Cruelty to Animals in Bihar. Respondent No. 1 filed a suit in the Court of the learned Munsif, 3rd Court, Patna in the capacity of a life member of the Society and obtained an injunction restraining the appellants and respondent No. 3 from interfering with the working of the Society. Having lost the appeal against the order of interim injunction before the Additional District Judge VI, Patna, the appellants filed a revision application before the High Court of Patna. On July 3, 1980, when the revision application came up for hearing before Mr. Justice S.K. Jha, Shri Bindeswari Chaudhury, Advocate appearing for the appellants took an adjournment for July 9, 1980. On Juty 8, 1980 the appellants changed their advocate and engaged Shri Sailendra Kumar Jha another advocate and son of Mr. Justice S K. Jha to appear for them. The learned Judge was surprised to find that the appearance of his son was filed in a case of which he was already seized. However, on July 9, 1980, instead of Sailendra Kumer Jha appearing for the appellants, Shri Bindeswari Chaudhury appeared and did not press the revision application saying that he would rather return the papers to his clients. The learned Judge dismissed the application since it was not pressed. Hence the appeal after obtaining Special Leave of the Court by the appellants.

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Dismissing the appeal, the Court

HELD : 1. Since it is not quite clear whether the appellants made an untrue representation to Shri Sailendra Kumar Jha that the case was not ready for hearing and that it had not even appeared in the monthly cause list, the appellants and their advocate cannot be condemned unheard. *Audi alteram partem.* [611F-G]

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2. There are a few black sheep in every profession, nay, in every walk of life. But few as they are, they tarnish, by their machinations, the fair name

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of age-old institutions. Therefore, persons who occupy high public offices must take care to see that those who claim to be close to them are not allowed to exploit that closeness, alleged or real. On the facts of this case, it can only be said that Shri Sailendra Kumar Jha took a correct decision in not appearing in that case any further and, with respect, his father jurtice S.K. Jha acted in the best traditions of the Judiciary in seeing that his son withdrew from the case. It is better that in such circumstances the Advocate son, rather than the Judge father, withdraws from the case. [611G-H, 612A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal

No. 3373 OF 1984

Appeal by Special leave from the Judgment and Order dated the 9th July, 1980 of the Patna High Court in C.R. No. 1655/77

D.N. Mukherjee and *N.R. Choudhary* for the Appellants

B.P. Singh for the Respondent

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. Special Leave granted limited to the question of the propriety of briefing a son to appear before his father.

In Bihar, there is an Association called the State Society for the Prevention of Cruelty to Animals. As if other forums do not provide enough opportunities for factious fights, there was an unseemly wrangle amongst the members of the Society over its day-to-day management. So much indeed, that inspired by the lofty ideal of preventing cruelty to animals, they forgot that they did not have to be unkind to their own brotherhood. Their petty disputes led to the filing of a suit in the Court of the learned Munsif, 3rd Court, Patna. That suit was instituted by respondent 1, who claims to be a life member of the Society. He filed an application in the suit for an injunction restraining the appellants and respondent 3 from interfering with the working of the Society. That application was allowed by the trial Court. The appeal filed against the order of interim injunction was dismissed by the learned Additional District Judge-VI, Patna. So much was enough litigative wastefulness. But a litigation, once begun, has to run its full course, particularly when it is believed that what is involved is prestige and so-called principles.

The appellants filed a revision application in the High Court

of Patna against the order of the District Court. A learned single Judge of the High Court issued a Rule on that application, calling upon respondent 1 to show cause why the order of injunction should not be set aside. The revision application came up for hearing before Justice S.K. Jha on July 3, 1980 when Shri Bindeswari Chaudhury, Advocate, who appeared for the appellants asked for an adjournment. The learned Judge adjourned the case to July 9, 1980. On July 8, the appellants engaged Justice S.K. Jha's advocate son Shri Sailendra Kumar Jha to appear for them. The learned Judge was surprised to find that the appearance of his son was filed in a case of which he was already seized. It is alleged that the appellants told Shri Sailendra Kumar Jha that the case was not ready for hearing and that it was not even on the monthly cause list. It appears that the learned advocate had made it clear to them that he will not appear in the case if it was listed before his father.

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On July 9, Shri Bindeswari Chaudhury did not press the revision application saying that he would rather return the papers to his clients. The learned Judge dismissed the application since it was not pressed.

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In these circumstances, nothing requires to be done in the matter of the interim injunction. It has to operate during the pendency of the suit. We hope that the parties will remember that the dumb animals for whose welfare they have floated the Society, will be crying for their attention while they will be litigating, at leisure, the right to manage the affairs of the Society.

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It is not quite clear whether the appellants made an untrue representation to Shri Sailendra Kumar Jha that the case was not ready for hearing and that it had not even appeared in the monthly cause list. We do not want to condemn them unheard. *Audi alteram partem.*

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There are a few black sheep in every profession, nay, in every walk of life. But few as they are, they tarnish, by their machinations, the fair name of age-old institutions. Therefore, persons who occupy high public offices must take care to see that those who claim to be close to them are not allowed to exploit that closeness,

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A alleged or real. On the facts of this case, we will only say that Shri Sailendra Kumar Jha took a correct decision in not appearing in the case any further and, with respect, his father Justice S.K. Jha acted in the best traditions of the Judiciary in seeing that his son withdrew from the case. It is better that in such circumstances the advocate son, rather than the Judge father, withdraws from
B the case.

With these observations, the appeal is dimissed. There will be no order as to costs.

C S.R. *Appeal dismissed.*