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JAMILABAI ABDUL KADAR

v.

SHANKERLAL GULABCHAND & ORS.

April 30, 1975

[V. R. KRISHNA IYER, R.S. SARKARIA AND A.C. GUPTA, JJ.]

B

Advocates Act, 1961—Scope of authority of an advocate to enter into compromise on behalf of his client.

The appellant engaged a pleader to fight her case in a Court. The case was adjourned from time to time for the parties to compose their differences. Eventually, the Court recorded a compromise, signed by the pleader of the appellant. At the time of signing the compromise, though the appellant was C not present in Court, her litigation agent was present and was consulted when the order was made. The appellant later filed a suit for a declaration that the decree based on a compromise entered into by her pleader was without authority and was not binding on her. The suit was dismissed. The appeal was dismissed *in limine* by the High Court.

On appeal to this Court, it was contended that the respondent, being a mere pleader, had no power to compromise a suit unless expressly authorised D by the party.

Dismissing the appeal—

HELD : (a) Lawyers, be they advocates, vakils or pleaders, stand on the same footing in regard to their power to act on behalf of their clients. By the Advocates Act, 1961, the Indian Bar came into existence permitting enrolment of various categories of legal practitioners like vakils and pleaders. Section 55 of the Act provides that every pleader, who did not elect to be E enrolled as an advocate under that Act, shall continue to enjoy the same rights as respects practice in any Court as he had before that Act came into force.

[340 H, 341-A]

In the instant case, though the respondent had not enrolled himself as an advocate, his rights respects practice in any Court are what he had enjoyed under the Bombay Pleaders Act, 1920, notwithstanding its repeal by the Advocaes Act. [341-B].

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(b) Every legal practitioner is an officer of the Court and aids in the cause of justice. The responsibility of the advocates to their clients and to the Court has to be the same even though some of them may be entitled to appear only in District Courts while others in High Courts. The quality of power cannot stand differentiation. [341-GH]

(2) If a suitor countermands his pleader's authority to enter into a compromise or withholds, by express recital in the vakalat, the power to com- G promise the legal proceeding, the pleader or the advocate cannot go against such advice and bind the principal, his client. This is as illegal as it is unprofessional. [342-FG]

Jiwibai v. *Ramjuwar*, AIR 1947 Nag. 17, approved.

(3) To act for the suitor involves myriad intricate actions often so legal that the client may not even understand the implication. Representation in H Court may be so demanding and so transforms forensic obligation that a lawyer may have ethical difficulties in mechanically obeying all the directions of his principal. The legal skill that is hired by the client may, for its very effective exercise, need an area of autonomy and quickness of decision that to restrict the agency to express authorisation is to ask for an unpredictable and endless enumeration of powers. To circumscribe the *power to act* is to defeat the purpose of the engagement. It is perfectly open to a party, like any

other principal, to mark out in the vakalat or by particular instructions forbidden areas or expressly withhold the right to act in sensitive matters, the choice being his, as the master. The legal profession is a para-public institution which deserves the special confidence of and owes greater responsibility to the community at large than the ordinary run of agency. [346-D-G, H] A

Sourindra v. *Heramba*, AIR 1923 PC 98, followed.

Laxmidas Ranchhoddas v. *Savitabai*, [1955] 57 BLR 988, *S. S. Waiker* v. *L. S. Waiker*, AIR 1960 Bom. 20 and *C. S. Nayakam* v. *A. N. Menon* AIR 1963 Ker. 213 approved. B

Rondel v. *Morsley* [1969] 1 A. C. 191 referred to.

(4) The Advocate or pleader has authority to act by way of compromising a case in which he is engaged even without specific consent from his client subject to two over-riding considerations: (i) He must act in good faith and for the benefit of his client; otherwise the power fails. (ii) It is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall tto the ground. [352-B] C

In the present case, the pleader had acted substantially with the knowledge of and encouraged by his client. The several adjournments taken by the appellant specifically for settling the suit speak for themselves. There is no doubt that the broad sanction for the compromise came from the appellant, that no shady action was imputable to the respondent and that his conduct had been motivated by the good of his client. [352-H] D

[Counsel should not rush in with a compromise where due care will make them fear to tread, that a junior should rarely consent on his own when there is a senior in the brief, that a party may validity impunge an act of compremise by his pleader if he is available for consultation but is by-passed. The lawyer must be above board, especially if he is to agree to an adverse verdict.] [353-C-D] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 43 of 1968

Appeal by special leave from the judgment and order dated the 11th December, 1967 of the Bombay High Court at Bombay in Second Appeal No. 1428 of 1967. F

V. M. Limaye, V. N. Ganpule, R. N. Nath and *Urmila Sirur* for the appellant.

Y. S. Chitale and *A. G. Ratnaparkhi*, for respondents.

The Judgment of the Court was delivered by G

KRISHNA IYER, J. There is more than meets the eye in the seemingly simple legal issue raised in this ejectment suit, if we probe the deeper public and professional implications of the limitations on a pleader's implied power to enter into a compromise of a case *bona fide* on behalf of his client, but in his interest, although without his consent. H

The facts to use trite phraseology, fall within a narrow compass. The landlords, Respondents 1 to 3, brought an action for eviction of the tenant-appellant (Regular Suit 141 of 1964) under the rent control law extant in Maharashtra. Litigation is often so harassingly long that even where recovery of possession is sought for immediate

A *bona fide* need of the owner, the judicial process takes its slow motion course that settlement of the dispute is not infrequently preferred by both sides to protracted adjudicatory justice. In the present case, although parties had engaged lawyers and gone to trial, they took several adjournments from court to compose their differences. The last such was granted in these terms :

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"19-4-65 Parties as before present

"Application by defendant for adjournment granted. Suit is adjourned for hearing to 21-4-65.

Sd/- R. H. Maslekar,
C Joint Civil Judge
Junior Division."

Eventually, on April 21, 1965 the court recorded a compromise, signed by the pleader of the tenant, giving 18 months time to give vacant possession and decreed the suit on the agreed terms. But at heart the tenant harboured the intent to resist eviction; the impropriety
D of breaching she compromise was overpowered by the tempting plea of the illegality of the decree on consent. So she started some miscellaneous proceedings which were carried right upto this Court although dismissed in every court as incompetent. Then she inaugurated this, the third chapter of litigation, Regular Civil Suit No. 422 of 1966 for a declaration that the decree based on a compromise entered
E into by her pleader without authority was not binding on her and consequently she was not liable to be dispossessed. This last spell of litigation, after the first compromise in Court, has taken long ten years. Socio-legal research may well prove that legal justice may soon reach a point of no return if fundamental structural reform of the whole forensic process were not launched upon and frivolous
F litigation screened so as not to discredit faith in court justice. Anyway, in the present case, the hierarchy of courts has held against the appellant and she has come up, by special leave, conscious of adverse findings of fact by courts below, to this Court. The only point urged by Shri Limaye for the appellant is that Respondent 4 the pleader, Shri Palshikar, who signed the razi, had no authority to do so, especially because the client's consent so to do had not been secured and an
G *advocate*-respondent 5 before us—had also been retained in the case who had neither signed the document not represented to the Court about the settlement. It is common case that the tenant was absent in court although her litigation agent was present (and consented) when the order was made.

Shri Limaye has raised the principal plea that Respondent 4 being
H a mere *pleader*, had no power to compromise the suit unless expressly authorised by the party and here admittedly no such express authorisation existed. He seemed to make a distinction between *advocate* and *pleader* although at some stages he read this limitation as applicable to advocates too. A second point faintly raised was prudently abandoned for the reason that it had not been set up in the pleadings or urged at earlier stages. Last minute ingenuity is not fairplay in court and

we cannot and did not permit him to argue that the court had no material in the recitals of the compromise to make out the mandatory grounds required under the relevant 'rent control' law for a court to direct dispossession of a tenant of a building. We do not examine the merits of the contention of all.

Now to the only contention canvassed before us. Although vintage rulings and relevant books have been cited and voyages to Anglo-American legal systems made, we have to decide the issue in the light of Indian statute-law and decisions against the backdrop of Indian conditions. Foreign aid is helpful but in law, as in life, Indian genius must speak. In this perspective, first we have to look at the pertinent provisions of the Civil Procedure Code, the Advocates Act and the Bombay Pleaders Act.

Even before that we may reproduce the terms of the compromise which resulted in the decree for eviction in the prior suit—(Regular Civil Suit No. 141 of 1964) :

"IN THE COURT OF THE CIVIL JUDGE, JUNIOR DIVISION AT JALGAON

Regular Suit No. 141/64

SHANKARLAL GULABCHAND—Plaintiff

v.

ABDUL KADAR H. WELDER—Defendant

A compromise has been arrived at mutually between the plaintiff and the defendant and it is agreed as under :—The defendant is to give to the plaintiff actual possession of the suit properties on or before the date the 30-10-66. In case the defendant fails to deliver actual possession of the said suit properties according the plaintiff is to take actual possession of the said properties by filing a Darkhast. The defendant is liable to pay at the rate of Rs. 55.90 the amount of the loss sustained in the form of arrears of rent inclusive of the municipal tax and education cess subsequent to the filing of the suit, from the date 1-4-64 until delivery of actual possession of the plaintiff, and accordingly, the defendant is to pay at the said rate the damages for the intervening period. In case the defendant fails to pay (the same), the plaintiff is to recover the amount by filing a Darkhast. The defendant is to bear his own costs and to pay to the plaintiff the latter's costs of this suit. The plaintiff is to take the amount of refund in respect of the Court fee stamp that may be paid. It is agreed as above. A decree may therefore be passed in terms thereof.

Sd/- Shankarlal Gulabchand.
Sd/- R. C. Agarwal.
Regular Suit No. 422/66
Produced on behalf of the plaintiff
on the date 30-1-67
(Signature-illegible)
Advocate for the plaintiff

(In English)

Sd/- D. B. Choudhari.
Advocate for Plaintiff.
with authority to Compromise.

Sd/- B. H. Falashikar
Plaintiff with authority to Comp.

No. 1 and 2 and plaintiff Shankarlal Gulabchand with pleader and defendant Abdul Kadar with pleader admitted before me the compromise. It is verified and admitted.

Sd/- R. H. Maslekar.
C. J. 24-4-65"

Although the Civil Judge mentions in the order that 'defendant Abdul Kadar' with pleader admitted before him the compromise, it was not the defendant but his agent who was actually present. That this is an error is conceded by Sri Chitale appearing for respondents I to 3. The trial court as well as the District Court went into the question whether the plaintiff-appellant had made out that express directions were given to the pleader Shri Falshikar (respondent No. 4) *not to compromise the suit* and have come to the conclusion that no such positive instruction *'not* to compromise' was given by the party. This being the concurrent finding of fact and the High Court having dismissed the Second Appeal *in limine* we may proceed on the footing that Sri Palshikar, the pleader, had not been affirmatively informed not to enter into a compromise. The second question on which also both the Courts of fact have negatived the plaintiff-appellant's version is that the compromise was an act of sharp practice, a fraud played by the pleader on his client and on the court. We therefore exclude the possibility of dubiety and assume *bona fides* on the part of the pleader. We mention this to narrow the scope of the controversy which really turns on the existence or otherwise of the implied authority of a *pleader* to compromise a suit in the interests and on behalf of his client although without actual reference to him where his vakalat is silent on the point. There is no statutory provision decisive of this issue and we have to garner the principles from various factors like the status and significance of the legal profession in society, the wider powers conferred on lawyers as distinguished from ordinary agents on account of the triuna facets of the role of an advocate *vis a vis* the client, the court and the public and its traditions and canons of professional ethics and etiquette. Above all, the paramount consideration that the Bench and the Bar form a noble and dynamic partnership geared to the great social goal of administration of justice puts the lawyer appearing in the court in a class by himself and to compare him with an ordinary agent may be to lose sight of the lawyer as engineer of the rule of law in society.

National integration at the lawyer's level was statutorily achieved by the Advocates Act, 1961 whereby the Indian Bar, with a classless orientation, came into existence permitting enrolment of various categories of legal practioners like vakils and pleaders (see s. 29). It

must be noted, however, that Shri Palshikar has not been enrolled as an Advocate. On the contrary, the party had briefed, apart from Shri Palshikar (just a pleader with a sanad under the Bombay Pleaders Act, 1920—for short, the Bombay Act), an Advocate—Shri Khatib, 6th respondent. Section 55 of the Advocates Act provides that every pleader who does not elect to be enrolled as an Advocate under that Act shall continue to enjoy the same rights as respects practice in any court as he had before that Act came into force. Thus his rights as respects practice in any court are what he had enjoyed under the Bombay Act, notwithstanding its repeal by the Advocates Act. Our attention was drawn to ss. 9 and 16 of the Bombay Act but neither section helps us much in regard to the controversy bearing on the competence of a pleader, to enter into a compromise without the consent of the concerned party. Even so, s. 9 illumines the area to some extent and the relevant portion may be extracted :

> "9. No person shall appear, plead or act for any party in any civil proceeding in any court unless he is a pleader as defined in this Act and is entitled and duly empowered to appear, plead and act for such party in such proceeding;"

Shri Chitale contends—and this argument has found favour with the courts below—that a pleader has power to *act* for any party and to settle a dispute involved in a suit is ancillary to or implied in this power to *act*. When he settles his client's suit he *acts* for him as much as he does so when he gives up a point as meritless. We will examine this matter more in depth a little later.

There is force in the suggestion that even though a pleader or vakil might not have chosen to get himself enrolled, in their very eligibility to be enrolled as advocates, there is implicit statutory acceptance of the position that all these categories of legal practioners have substantially the same powers *vis-a-vis* client and court. The egalitarian ethos injected by the Advocates Act makes for parity of powers between pleaders and advocates to act on behalf of their client. We think it right to read into the complex of provisions bearing on legal practitioners this activist identity of power to act. After all, every legal practitioner labels apart, is an officer of the court and aids in the cause of justice. Logically and sociologically and, indeed, legally, their responsibility to their clients and to the Court have to be the same even though some of them may be entitled to appear only in District Courts while others in the High Courts, and Advocates in any Court in the whole of the country. The quality of the power—limitations on the courts in which appearance is permissible being ignored for the time being—cannot stand differentiation. This stand is reinforced by a reference to the Civil Procedure Code which regulates the legal process in Indian courts. Order III, r.1, reads :

> "1. Any appearance, application or *act* in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise

A expressly provided by any law for the time being in force, be made or done by a party in person, or by his recognised agent or *by a pleader* appearing, applying or *acting* on the case may be, on his behalf;

We may also read r. 4(1) of the same order :

B "(1) No *pleader* shall *act* for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person . . . "

Both these provisions clothe the pleader with the power to act in any court provided he has been empowered by a vakalatnama in this C behalf. The Code has defined 'pleader' in these general terms :

"Sec. 2(15) 'Pleader' means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and attorney of a High Court."

It is obvious that this definition obliterates any status-wise distinction D between an advocate and any other legal practitioner like a vakil or pleader entitled to appear in court on behalf of his client. A profession whose founding, fighting faith is equal justice under the law does not practise inequality within its fold deaf to the mood music of non-discrimination.

The broad conclusion, having due regard to the perspective we E have set out right at the beginning, is that lawyers, be they Advocates, vakils or pleaders, stand on the same footing in regard to their power to act on behalf of their clients.

The cases cited before us, discerningly understood, confirm the soundness of this equating principle. As earlier clarified, the sole issue F is the delineation of the scope and ambit of 'acting'. Does the power to 'act' cover the right to settle the suit without getting the client's consent, or is it implied in the engagement ? To clear possible confusion we may straightaway state that both sides agree—and that is the undoubted law—that if a suitor countermands his pleader's authority to enter into a compromise or withholds, by express recital in the vakalat, the power to compromise the legal proceeding, the G pleader (or, for that matter, the Advocate, cannot go against such advice and bind the principal, his client. This is as illegal as it is unprofessional.

Shri Limaye has relied on a few decisions—both of the Privy Council and of the Indian High Courts, in his endeavour to make out that *pleaders* cannot compromise suits unless expressly authorised by H the vakalatnama. To substantiate the contrary position, Shri Chitale has drawn our attention to other rulings. These citations may be briefly surveyed and they are : *Sourindra* v. *Heramba*(1) ; *Sourendra Nath* v. *Tarubala Dasi*(2); *Jiwibai* v. *Ramjuwar* (FB)(3); *Supaji* v.

(1) A.I.R. 1923 PC 98. (2) A.I.R. 1930 PC 158.
(3) A.I.R. 1947 Nag. 17.

Nagorao(1); *Ramaswami* v. *Jai Hind Talkies*(2); *Govindammal* v. *Marhmuthu Maistry*(3); *Laxmidas Ranchhoddas* v. *Savitabai*(4); *S. S. Walker* v. *L. S. Walker*(5); *and C. S. Nayakam* v. *A. N. Menon*(6). A

Although, on an analysis of these decisions, some discordant notes may be heard, there is substantial harmony of judicial opinion on the proposition that the different classes of legal practitioners have the same rights in relation to the case in which they have been engaged. Indeed, even if there be any marginal doubt, we have to interpret the law in such manner as to promote the integration of the Indian Bar in tune with the spirit of s. 29 of the Advocates Act which categorically states that subject to the provisions of that Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates. B C

Shri Limaye placed great reliance on the Judicial Committee's statement in Sourindra (supra) where Sir John Edge observed; D

> "A pleader, who does not hold and has not filed in the suit before the Court his client's general power of attorney authorising him generally to compromise suits on behalf of his clients, cannot be recognised by a Court as having any authority to compromise the suit unless he has filed in the suit his client's vakalatnama giving him authority to compromise the suit before the Court." E

Superficially understood, this supports the appellant in wriggling out of the compromise, because the pleader Shri Phalsikar had not been given any authority to compromise the suit, in the vakalatnama, but we do not think that this is a disability specially attaching to a pleader as distinguished from an Advocate. We go further and consider that these observations have to be construed in the context of the fact that in the facts of that case some of the defendants had not filed vakalatnamas at all and that, ultimately, the Judicial Committee had upheld the compromise after special valalatnamas were filed for the unrepresented parties. The question of the powers of a pleader, as distinguished from the larger powers of an Advocate did not come up for consideration in that appeal and we cannot treat the ruling as authority for the position taken up by the appellant. F G

Lord Atkin, speaking for the Judicial Committee in *Sourendra Nath* (supra) also had to deal with agreement to compromise a suit and the implied power of an advocate to settle the suit on behalf of his H

(1) A.I.R. 1954 Nag. 250. (2) A.I.R. 1956 Mad. 586.
(3) A.I.R. 1959 Mad. 7. (4) [1955] 57 B.L.R. 988.
(5) A.I.R. 1960 Bom. 20. (6) A.I.R. 1968 Ker. 213.

A client. The statement of the law is instructive and may well be extracted :

> "They are of opinion that Mr. Sircar, as an advocate of the High Court, had, when briefed on behalf of the defendant, in the Court of the Subordinate Judge of Hoogly, the
> B implied authority of his client to settle the suit. Their Lordships have already said that he must be treated as though briefed on the trial of the suit. Their Lordships regard the power to compromise a suit as inherent in the position of an advocate in India. The considerations which have led to this implied power being established in the advocates of England,
> C Scotland and Ireland apply in equal measure to India. It is a power deemed to exist because its existence is necessary to effectuate the relations between advocate and client, to make possible the duties imposed upon the advocate by his acceptance of the cause of his client.
>
> The advocate is to conduct the cause of his client to
> D the utmost of his skill and understanding. ***He must in the interests of his client be in the position, hour by hour, almost minute by minute, to advance this argument, to withdraw that ;*** he must make the final decision whether evidence is to be given or not on any question of fact ; skill in advocacy is largely the result of discrimination. These powers in themselves almost amount to powers of compromise ; one point
> E is given up that another may prevail. But in addition to these duties, there is from time to time thrown upon the advocate the responsible task of deciding whether in the course of a case he shall accept an offer made to him, or on his part shall make an offer on his client's behalf to receive or pay something less than the full claim or the full possible liabi-
> F lity. Often the decision must be made at once. If further evidence is called or the advocate has to address the Court the occasion for settlement will vanish. In such circumstances, it the advocate has no authority unless he consults his client, valuable opportunities are lost to the client."
>
> (emphasis, ours)

G Their Lordships referred to the apparent authority that counsel has in England to compromise in all matters connected with the action. The jurisprudential basis as a branch of the Law of Agency has been thus expressed by Lord Atkin :

> "Two observations may be added. First, the implied authority of counsel is not an appendage of office, a dignity
> H added by the Courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullests beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions

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> contrary to the interests of his client, his remedy is to return his brief."

The Judicial Committee equated the Indian Advocate and his duties to his client in the conduct of the suit as in no wise different from those of his counter-parts in the United Kingdom :

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> "There are no local conditions which make it less desirable for the client to have the full benefit of an advocate's experience and judgment."

There is an obscure passage in the judgment which, according to Shri Limaye supports him : True, the Board has observed :

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> "Where the legal representative in Court of a client derives his authority from an express written authority, such as a vakalatnama, different considerations may well arise, and in such cases their Lordships express no opinion as to the existence of any implied authority of the kind under discussion."

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We are unable to see anything here to contradict the general power, actual though implied, of counsel (be he advocate or pleader) to settle the suit of his client as part of his duty to protect the interests of his client.

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We may now move on to the Indian decisions, none of which specifically uphold the absence of implied authority of a pleader *qua* pleader to enter into a compromise binding on his client.

Perhaps the clearest pronouncement against the degrading differentiation of pleaders is that by a Full Bench of the Nagpur High Court in *Jiwibai* (supra). After an exhaustive discussion, which we need not repeat, the Court concluded at p. 26 :

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> "Our answer to the second question is that counsel in India, *whether Barristers, Advocates, or pleaders,* have inherent powers, both to compromise claims, and also to refer disputes in Court to arbitration, without the authority or consent of the client, unless their powers in this behalf have been expressly counter-manded, and this, whether the law requires a written authority to 'act' or 'plead' or not."
>
> (emphasis, ours)

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The legal deduction is contained in these emphatic words :

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> "Brush unrealities aside and what do we get but a contract ? How much more is that the case in those parts of India where no solicitor intervenes and counsel and client meet face to face ? How much more when there is an actual instrument of engagement or a power of attorney ? How much more when the law requires writing ?" (p. 24)

A "The Privy Council tells us that there is inherent in the position of counsel an implicit authority to do all that is expedient, proper and necessary for the conduct of the suit and the settlement of the dispute." (p. 25)

"Turning next to O.3, R. 4, consider again the case in B which a pleader is appointed simply to 'act' without any attempt to set forth the scope of his acting. (That incidentally is in substance the power given to the plaintiff's counsel in the case). Is compromise not an acting ?" (p. 25)

Our attention has been drawn to Supaji (supra) which, while affirming C implicit authority of an Advocate, doubts the application of the same principle to pleader. We unhesitatingly prefer the Full Bench view (supra).

A little reflection will unfold the compelling necessity of giving a comprehensive meaning to the expression 'act' and for the inclusion of all categories of legal practitioners as repositories of this D ample agency, bound yet broadened by obligatory traditions, professional control and public confidence in the Bar as a massive social instrumentality of democracy. To act for the suitor involves myriad intricate actions often so legal that the client may not even understand the implication, sometimes so sudden that time for taking instructions is absent. Representation in court may be so demanding and so E transforms forensic obligation that a lawyer may have ethical difficulties in mechanically obeying all the directions of his principal. The legal skill that is hired by the client may, for its very effective exercise, need an area of autonomy and quickness of decision that to restrict the agency to express authorisation is to ask for an unpredictable and endless enumeration of powers such as what to ask a witness and what not to, what submissions to make and what points F to give up and so on. To circumstances the *power to act* is to defeat the purpose of the engagement. Those who know how courts and counsel function will need no education on the jurisprudence of lawyer's position and powers. Of course, we hasten to enter a caveat. It is perfectly open to a party, like any other principal, to mark out in the vakalat or by particular instructions forbidden areas G or expressly withhold the right to act in sensitive matters, the choice being his, as the master. If the lawyer regards these fetters as inconsistent with his position, he may refuse or return the brief. But absent speaking instructions to the contrary, the power to act takes in its wings the right and duty to save a client by settling the suit if and *only* if he does so *bona fide* in the interests and for the advantage of his client. This amplitude of the power to act springs from the built-H in dynamism, challenge and flux of the very operation of legal representation as felicitously expressed, if we may say so with great respect, in the noble words of Lord Atkin (*Sourendra Nath's* Case (supra). We may supplement the grounds for giving this wider construction by the fact that the legal profession is a para-public institution which deserves the special confidence of and owes greater responsibility to the community at large than the ordinary run of agency.

This reasoning has been high lighted by the Kerala High Court in its Full Bench decision in *Nayakam* (supra). Mathew J., examined the English authorities and applied it to Indian conditions. The learned Judge observed :

> "The construction of a document appointing an agent is different from the construction of a vakalat appointing counsel. In the case of an agent the document would be construed strictly and the agent would have only such powers as are conferred expressly or by necessary implication. In the case of counsel the rule is otherwise because there we are dealing with a profession where well-known rules have crystallised through usage. It is on a par with a trade where the usage becomes an additional term of the contract, if not contrary to the general law or excluded by express agreement." (p. 215)

More importantly, Mathew, J. placed accent on the special position of the Bar :

> "That counsel is not a mere agent of the client would be made clear if we look at the nature of his duties and relationship with the public and the court. Counsel has a tripartite relationship : one with the public, another with the court, and the third with his client. That is a unique feature. Other professions or callings may include one or two of these relationships but no other has the triple duty. Counsel's duty to the public is unique in that he has to accept all work from all clients in courts in which he holds himself out as practising, however unattractive the case or the client." (p. 216)

The passages quoted from Lord Dearing M. R. in *Rondel's Case* (1967 1 Q.B. 443) bear repetition when considering the public justice role of the Bar :

> "A barrister cannot pick or choose his clients. He is bound to accept a brief for any man who comes before the courts. No matter how great a rascal the man may be. No matter how given to complaining. No matter how undeserving or unpopular his cause. The barrister must defend him to the end. Provided only that he is paid a proper fee, or in the case of a dock brief, a nominal fee. He must accept the brief, and do all he honourably can on behalf of his client. I say 'all he honourably can' because his duty is not only to his client. All those who practice at the Bar have from time to time been confronted with cases civil and criminal which they would have liked to refuse, but have accepted them as burdensome duty. This is the service they do to the public. Counsel has the duty and right to speak freely and independently without fear of authority, without fear of the judges and also without fear of a stab in the back from his own client. To some extent, he is a minister of justice."

A "It is a mistake to suppose that he is the mouth-piece of his client to say what he wants : or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of B fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which re- C quires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

(p. 216)

A Division Bench of the Bombay High Court (where Chagla C.J., D spoke for the Court) takes a pragmatic view of a lawyer's powers to settle as is reflected from the head-note which is sufficient for our purpose (see head-note in *Ranchhoddas* (supra);

"It is impossible for a member of the Bar to do justice to his client and to carry on his profession according to the highest standards unless he has the implied authority to do E everything in the interests of his client. This authority not only consists in putting forward such arguments as he thinks proper, but also to settle the client's litigation if he feels that a settlement would be in the interests of his client and it would be foolish to let the litigation proceed to a judgment. This implied authority has also been described as an actual F authority of counsel or an advocate. This authority may be limited or restricted or even taken away. If a limitation is put upon counsel's authority, his implied or actual authority disappears or is destroyed. In such a case he has only an ostensible authority as far as the other side is concerned. When the actual authority is destroyed and merely the ostensible authority remains, then although the other side did not G know of the limitation put upon the authority of an advocate, the Court will not enforce the settlement when in fact the client had withdrawn or limited the authority of his advocate."

The Madras decisions have not been consistent. In *Ramaswami's Case* (supra) it was observed :

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"It has been laid down in *Jagpati Mudaliar* v. *Ekambara Mudaliar* 21 Mad. 274 that it is not competent to a pleader to enter into a compromise on behalf of his client without his express authority to do so. See also *Thermal Ammal* v. *Sokkammal* 1918. Mad. 656 and *Sarath Kumari Dasi* v. *Amulyadhan* 1923 PC 13.

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> As the vakalat did not give counsel authority to compromise, Kesrvaraman Chettiar and the two other directors who sail with him would not be bound by the compromise."
>
> (p. 589)

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The reference to 'pleader' here is not really in contradistinction to 'advocate'. But in *Govindammal* (supra) Ramaswami, J., after an elaborate examination of the Indian and Anglo-American cases and books sums up thus :

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> "An examination of these authorities and extracts from standard publications on professional conduct, leads us to the following deductions : The decisions appear to be fairly clear that even in cases where there is no express authorisation to enter into a compromise, under the inherent authority impliedly given to the Vakil, he has power to enter into the compromise on behalf of his client. But in the present state of the clientele world and the position in which the Bar now finds itself and in the face of divided judicial authority and absence of statutory backing, prudence dictates that unless express power is given in the vakalat itself to enter into compromise, in accordance with the general practice obtaining, a special vakalat should be filed or the specific consent of the party to enter into the compromise should be obtained. If an endorsement is made on the plaint etc., it would be better to get the signature or the thumb impression of the party affixed thereto, making it evident that the party is aware of what is being done by the vakil on his or her behalf." (p. 12)

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In the American system there is only a single class of attorneys, unlike in Great Britain, but the implied power to compromise has not been upheld. American Jurisprudence S. 98 (pp. 318—320) has the following to say :

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> "The rule is almost universal that an attorney who is clothed with no other authority than that arising from his employment in that capacity has no implied power by virtue of his general retainer to compromise and settle his client's claim or cause of action, United States v. Beebe (1901) 180 US 343(Z16), Holkar v. Parker (1813) 3 Law Ed. 396 (Z17), Golder v. Bradley (C.C.A. 4th) 233 F. 721 (Z16), Anucas, 1917 A 921 (Z19) : In re Sonyder (1907) 190 N.Y. 66 (Z20), Ward v. Orsini 1926 243 N.Y. 123 (Z21), except in situations where he is confronted with an emergency and prompt action is necessary to protect the interests of the client and there is no opportunity for consultation with him. Generally, unless such an emergency exists, either precedent special authority from the client or subsequent rati-

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A fication by him is essential in order that a compromise or settlement by an attorney shall be binding on his client."

(p. 12)

We are impressed by the eloquent and luminous observations of Lord Reid, if we may say so with great deference, in *Rondel* v. B *Worsley* (1) :

> "Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. But, as an officer of the court, concerned in the C administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict, with his client's wishes or with what his client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses D for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. And by so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him." E
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> (Cases and Materials on The English Legal System—by Geoffrey Wilson—Sweet & Maxwell—1973, p. 124)

We may now deal with the properties which may bear upon the *bona fides* of the lawyer's conduct if he settles a suit, without client's F consent. Powers are one thing, prudence is another and indeed the latter sometimes bears upon the former. Mathew J set the record straight, if we may say with respect, in *Nayakam* (supra) :

> "Although we see no reason to limit or restrict the implied authority of counsel to compromise an action or confess judgment unless expressly done so by his client, we G think that both in the interest of the client and the good reputation of counsel, it is always advisable that he should get specific instructions before taking such a radical step."
>
> (p. 216)

Another facet of the limit on lawyer's powers is articulated in the H Bombay view, if we may use that expression for convenience, the ruling—viz., *Waikar* (supra)—being one relating to the implied of an advocate to compromise. Certainly, as pointed out there, the power cannot extend to matters extraneous to the action. Mudholkar J. has uttered a caution that, as far as possible, irrespective of the

(1) [1969] 1 A.C. 191.

scope of the power the lawyer must prefer to get his client's concurrence to the settlement. The reasons are obvious. If the compromise is not *bona* fide in the client's interests, the power is exceeded and it is rash to bind a party to razi without his knowledge when there is time to consult and the terms affect him adversely. The Privy Council's observation in *Sheonandan Prasad Singh* v. *Abdul Fateh Mohammed Reza* (1) serve as reminder :

> "But whatever may be the authority of counsel, whether actual or ostensible, if frequently happens that actions are compromised without reference to the implied authority of counsel at all. In these days communication with actual principals is much easier and quicker than in the days when the authority of counsel was first established. In their Lordship's experience both in this country and in India it constantly happens that counsel do not take upon themselves to compromise a case without receiving express authority from their clients for the particular terms : and that this position in each particular case is mutually known between the parties." (p. 22) (supra)

Ramaswami J., also in *Govindammal* (supra) in the paragraph already extracted, has referred to a disturbing aspect which must alert the public and the profession to the lurking dangers of a *carte blanche* to counsel to compromise a case without client's precedent permission. The learned Judge quotes, what may be a cautionary signal. from *Thenal Ammal* v. *Sokkummal* (ILR 41 Mad. 233, 235—AIR 1918 Mad. 656) :

> "It is not the ordinary duty of an Advocate to negotiate terms, without reference to his client, with the opposite party. Such an action is calculated to place the practitioner in a false position. We do not think it is desirable that such a power should vest in him in the interest of the profession. From the point of view of the client, we think that it is not safe that he should be regarded by engaging a vakil to have given him authority to dispose of his right in any way he chooses. Therefore we think that the general power claimed is not in consonance with the highest ideals of the profession or of justice. For these reasons we think that a very strict interpretation should be placed upon vakalat containing powers of this kind."

Ramaswami, J. has adverted to the wiser alternative of counsel seeking client's consent before compromising the litigation, having regard to the 'position in which the Bar finds itself' these days.

(1) AIR 1935 P.C. 119.

A While we are not prepared to consider in this case whether an Advocate or pleader is liable to legal action in case of deviance or negligence, we must uphold the actual, though implied, authority of a pleader (which is a generic expression including all legal practitioners as indicated in s. 2(15), C.P.C.) to act by way of compromising a case in which he is engaged even without specific consent from his B client, subject undoubtedly to two over-riding considerations : (i) He must act in good faith and for the benefit of his client; otherwise the power fails (2) It is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground. We need hardly emphasise that the bar must sternly screen to extirpate the C black-sheep among them, for Caesar's wife must be above suspicion, if the profession is to command the confidence of the community and the court.

On the facts of the present case we have little doubt that the pleader has acted substantially with the knowledge of and encouraged D by his client. The several adjournments taken by the appellant specifically for settling the suit speak better when we read the penultimate application for postponment on this score. Exhibit 21, d/17-2-65 runs:

"In the Court of the Joint Civil Judge, J. D. at Jalgaon
Reg. Suit No. 141/64

E Shankarlal Gulabchand More & Ors.....Plaintiffs

Versus

A. Kadar H. Welder .....Defendant

The respectful application on behalf of the Plaintiffs and the F defendant is as follows :—

In the said matter, talks regarding compromise are going on mutually between the plaintiffs and the defendants. The talks have not concluded as yet. Hence be pleased to adjourn the hearing fixed for today and give another date for hearing. This is the application.

G Date : 17-2-1965 Sd/- D. H. Chaudhri
Advocate for plaintiff

Sd/- B. H. Palshikar
Advocate for defendant.

Allowed ;
H Sd/- R. H. Maslekar
17-2-65."

We feel no doubt that the broad sanction for the compromise came from the tenant, that no shady action is imputable to respondent 4 and that his conduct has been motivated by the good of his client.

The last posting was for reporting the compromise. But, on that date, the Court declined further adjournment and the party being absent and away, the pleader for the appellant had no alternative but to suffer an eviction decree or settle it to the maximum advantage of his party. Ordinarily when a junior and senior appear in the case, it would be an adventurist act exposing himself to great risk on the part of the junior to report a compromise witihout consulting his senior, even assuming that the party was not available. Nevertheless, we have had an over-all view of the facts of the present case and do not feel inclined to the view that the implied authority of the pleader has been abused. The courts below were right in fastening the settlement of the suit upon the appellant.

Nevertheless, it is right to stress that counsel should not rush in with a razi where due care will make them fear to tread, that a junior should rarely consent on his own when there is a senior in the brief, that a party may validly impugn an act of compromise by his pleader if he is available for consultation but is by-passed. The lawyer must be above board, especially if he is to agree to an adverse verdict. As for classes of legal practitioners, we are equally clear that the tidal swell of unification and equalisation has swept away all professional sub-castes. Anyway, that is the law. Such artificial segregations as persist are mere proof of partial survival after death and will wither away in good time. Anyway, that is our hope.

We dismiss the appeal, but in view of divided judicial opinion in the High Courts and the Constitutional obligation of this Court under Art. 141 to resolve and settle the law we direct the parties will bear their costs in this Court.

Appeal dismissed

P. B. R.