HC-KAR

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.202345 OF 2026 (GM-CPC)

BETWEEN:

KHAJASAB
S/O SAMASHURSAB
AGE: 49 YEARS,
OCC: PRIVATE BANK MANAGER
R/O PWD CAMP, BEHIND BCM HOSTEL
SINDHANUR, TQ SINDHANUR
DIST. RAICHUR.

…PETITIONER

(BY SRI. G G CHAGASHETTI, ADVOCATE)

AND:

Digitally signed by SWETA KULKARNI
Location: HIGH COURT OF KARNATAKA

1. THE COMMISSIONER
   SOCIAL WELFARE DEVELOPMENT
   M S BUILDING
   BENGALURU – 01.

2. THE DIRECTOR
   SOCIAL WELFARE DEVELOPMENT
   OPP. RANGAMANDIR, RAICHUR
   DIST RAICHUR – 584 101.

3. THE ASSISTANT DIRECTOR
   SOCIAL WELFARE DEVELOPMENT GRADE II
   SHARANABASAVESHWARA COLONY
   SINDHANUR, DIST. RAICHUR – 584 128.

4. SMT. VIJAYA
MANAGER
SOCIAL WELFARE DEPARTMENT
SHARANABASAVESHWARA COLONY, SINDHANUR
DIST. RAICHUR – 584 128.

5. RAVICHANDRA
WARDEN OF HOSTEL
SOCIAL WELFARE DEPARTMENT
SHARANABASVESHWARA COLONY, SINDHANUR
DIST. RAICHUR – 584 128.

6. MANAGING DIRECTOR
GESCOM DEPARTMENT
DIVISIONAL OFFICE KALABURAGI
DIST. KALABURAGI – 585 101.

7. ASSISTANT EXECUTIVE ENGINEER
GESCOM DEPARTMENT
PWD CAMP, SINDHANUR, TQ SINDHANUR
DIST RAICHUR – 584 128.

8. N RAMANAGOUDA
ADVOCATE , COURT COMPLEX, SINDHANUR
TQ SINDHANUR
DIST RAICHUR – 584 128.

…RESPONDENTS

(BY SRI. VEERANAGOUDA MALIPATIL, ADV. FOR R-1 TO R-5;
SRI. NAGARAJ PATIL, ADVOCATE FOR R-6 & R-7)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI AND TO QUASH THE ORDER DATED 02.06.2026 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, SINDHANUR IN E.P.NO.32/2025 VIDE ANNEXURE-D, BY ALLOWING I.A.NO.1 FILED BY THE PETITIONER VIDE ANNEXURE-C AND ALLOW THE SAID WRIT PETITION.

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the Decree Holder in Ex.No.32/2025 on the file of the Senior Civil Judge, Sindhanur, is directed against the impugned order dated 02.06.2026 whereby the Trial Court rejected the application – I.A.No.1 filed by the petitioner under Section 151 CPC for permission to engage a fresh / new counsel to conduct the case on his behalf.

2. Heard learned counsel for the petitioner and learned counsel for respondent Nos.1 to 5 and learned counsel for respondent Nos.6 and 7 and perused the material on record. For the order proposed, in order to ensure that no embarrassment is caused to respondent No.8, notice to respondent No.8 is not issued for the purpose of disposal of the present petition and for the purpose of passing the present order.

3. A perusal of the material on record will indicate that the petitioner instituted the aforesaid execution proceedings in Ex.No.32/2025 against respondent Nos.1 to 7,

which are pending before the Executing Court. In the said execution proceedings, the petitioner filed an application under Section 151 CPC dated 02.06.2026 for permission to engage a fresh / new counsel and in the affidavit in support of the application, the petitioner *inter alia* stated as under:

"AFFIDAVIT

1, Khajasab S/o. Shashurasab, age 48 years, Occ: Shree Ram Finance Employee, R/o. Behind BCM Hostel RWD Camp Sindhanur, Tq. Sindhanur, Dist. Raichur, do hereby solemnly affirm and sincerely state on oath as under:

1. I am the petitioner, in the above case; as such I am well conversant with the facts of the case. I am swearing this affidavit as I was authorized to do so. I have filed the above case against the defendants for Rent recovery suit. The contents of plaint is read as part and parcel of this affidavit to avoid repetition of facts.

2. The suit for Execution petitioner. Earlier engaged advocate is not co-operating to release my rent amount, due to differences; the applicant discontinued the services of the said advocate and has now engaged new counsel, the petitioner seeking release rent amount. If delay will be put to great hardship and untold misery.

3. The petitioner previous counsel has refused to issue No Objection Certificate and I am not ready to

continue with previous counsel. I paid all fees amount to previous counsel. Because I appointing fresh counsel for continue my case.

4. The petitioner is ready to comply with any conditions and undertakes to identify himself before this Hon'ble Court.

5. The petitioner respectfully prays that this Hon'ble Court may be pleased to allow for engaging new advocate this case for release amount in favor of the applicant.

The contents of this affidavit are true and correct to the best of my knowledge and belief. Hence I verified and put my signature at Sindhanur.

Hence this affidavit."

4. Petitioner also placed reliance upon the judgment of the Hon'ble Division Bench of this Court in the case of ***Karnataka Power Transmission Corporation Ltd., Mysore Vs. M. Rajashekar and others – 2017 (1) KCCR 383 (DB)*** in order to point out that so long as the party intends to engage the services of a fresh / new counsel, it was not necessary / essential to obtain a No Objection Certificate (NOC) from the previous counsel. In the aforesaid judgment, the Hon'ble Division Bench of this Court has held as under:

"Whether vakalatnama filed by a new Advocate is to be accepted in the absence of 'no objection' of the Advocate already on record, is the short question for consideration in this case.

2. *Registry has raised an objection on the vakalatnama of the appellant filed by Sri Ajith Anand Shetty, Advocate; objection is that the vakalatnama does not contain 'no objection' of the Advocate already on record for the appellant.*

3. *We have heard Sri Ajith Anand Shetty, Learned Counsel, on the objection raised by the Registry. The Learned Counsel submitted that a party to a litigation has an absolute right to appoint an Advocate of his choice, to terminate his services, and to appoint a new Advocate. Hence, a party cannot be compelled to obtain 'no objection' from the Advocate already on record. Insisting for 'no objection' from the previous Advocate will amount to putting a restriction on the right of a party to appoint an Advocate of his choice. He sought for overruling of the objection raised by the Registry. In support of his submission, he relied on two decisions of the Supreme Court in R.D. Saxena v. Balaram Prasad Sharma [(2000) 7 SCC 264 : AIR 2000 SC 2912.] , and in New India Assurance Co. Ltd. v. A.K. Saxena [(2004) 1 SCC 117 : AIR 2004 SC 311.] , and also a Division Bench decision of this Court in Sri C.V. Sudhindra v. Divine Light School for Blind [ILR 2008 KAR 3983.]*

4. *To examine the question raised, it is relevant to refer to the following observations made by the*

Supreme Court in R.D. Saxena v. Balaram Prasad Sharma (supra):

> *"15. A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason.* ***For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative.***
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> *17. If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him is paid, the situation perhaps may turn to dangerous proportion. There may be cases when a party has no resource to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees is yet to be paid.*
>
> *18.* Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. *But if he has a duty to return the files to his client on being discharged the litigant too has a right to have the files returned to him, more so when the remaining part of the lis has to be fought in the court. This*

right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate.

23. We, therefore, hold that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct.

42. ……It is true that an advocate is competent to settle the terms of his engagement and his fee by private agreement with his client but it is equally true that if such fee is not paid he has no right to retain the case papers and other documents belonging to his client. Like any other citizen, an advocate has a right to recover the fee or other amounts payable to him by the litigant by way of legal proceedings but subject to such restrictions as may be imposed by law or the rules made in that behalf……"

(underlining supplied)

5. *In the context of the question raised, the following observations made by a Division Bench of this Court in Sri C.V. Sudhindra v. Divine Light School for Blind (supra) are also apposite:*

"7. We are therefore of the considered opinion that the contract of vakalathnama can be withdrawn by the client at any time. There is nothing known as irrevocable vakalathnama. Precisely the same right has been exercised by respondent No. 1 herein (defendant No.7 in the suit) who had earlier engaged the petitioners on their behalf as Advocates to represent them……

8. …… if the Advocate feels that he has any genuine claim or grievance against his client, the appropriate course is to return the brief with endorsement of no objection and agitate such right in an appropriate forum, in accordance

with law and not indulge in arm twisting methods by holding on to the brief."

(Underlining supplied)

6. *As could be seen from the observations made in the two decisions extracted above, a party to a litigation has an absolute right to appoint an Advocate of his choice, to terminate his services, and to appoint a new Advocate. A party has the freedom to change his Advocate any time and for whatever reason. However, fairness demands that the party should inform his Advocate already on record, though this is not a condition precedent to appoint a new Advocate.*

7. *There is nothing known as irrevocable vakalatnama. The right of a party to withdraw vakalatnama or authorization given to an Advocate is absolute. Hence, a party may discharge his Advocate any time, with or without cause by withdrawing his vakalatnama or authorization. On discharging the Advocate, the party has the right to have the case file returned to him from the Advocate, and any refusal by the Advocate to return the file amounts to misconduct under Section35 of the Advocates Act, 1961. In any proceeding, including civil and criminal, a party has an absolute right to appoint a new Advocate. Under no circumstance, a party can be denied of his right to appoint a new Advocate of his choice. Therefore, it follows that any rule or law imposing restriction on the said right can't be construed as mandatory. Accordingly, Courts, Tribunals or other authorities shall not ask for 'no objection' of the*

Advocate already on record, to accept the vakalatnama filed by a new Advocate.

8. *As observed in the decisions referred to above, if an Advocate is discharged by his client and if he has any genuine claim against his client relating to the fee payable to him, the appropriate course for him is to return the brief and to agitate his claim in an appropriate forum, in accordance with law.*

9. *As stated above, under no circumstance, a party can be denied of his right to appoint a new Advocate of his choice. The right is absolute and not conditional. Hence, the objection raised by the Registry on the vakalatnama is overruled. Hereafter, the Registry shall not ask for 'no objection' of the Advocate already on record, to accept the vakalatnama filed by a new Advocate."*

5. Despite the aforesaid facts and circumstances and the specific contention urged by the petitioner that he intends to engage a new counsel by discontinuing the services of the earlier counsel and that the petitioner would pay all the fees payable to the previous counsel, who was refusing to issue No Objection Certificate (NOC) in favour of the petitioner to engage a new counsel, the Trial Court has proceeded to reject I.A.No.1 by improper and erroneous appreciation of the material on record, in particular, the application and affidavit

filed by the petitioner as well as the principles laid down in ***Rajashekar's*** case supra and consequently, I am of the considered opinion that the impugned order passed by the Trial Court rejecting I.A.No.1 deserves to be set aside and the application I.A.No.1 filed by the petitioner deserves to be allowed.

6. In the result, I pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) The impugned order dated 02.06.2026 passed on application – I.A.No.1 in Ex.No.32/2025 by the Senior Civil Judge, Sindhanur, is hereby set aside.

(iii) I.A.No.1 filed by the petitioner under Section 151 CPC dated 02.06.2026 is hereby allowed and the petitioner is permitted to engage the services of a fresh / new counsel to conduct the case and appear on behalf of the petitioner.

(iv) The Trial Court is directed to permit the petitioner to engage the services of a new / fresh counsel without

insisting on obtaining No Objection Certificate (NOC) from the previous counsel and proceed further with the matter.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SV
List No.: 1 Sl No.: 55