

PRIVILEGE OVER LAWYER AND CLIENT COMMUNICATIONS: ANIL VISHNU ANTURKAR v CHANDRAKUMAR POPATLAL BALDOTA^[1]

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The Bombay High Court has reiterated that communications between a lawyer and client are privileged and cannot be disclosed to a third party without the express consent of the client.

Brief facts

The Petitioner, a Senior Advocate of the Bombay High Court, challenged a witness summons issued to him directing him to appear before the Civil Court, Pune and: (a) produce an office copy of a legal opinion prepared by him for his client, and (b) confirm his signature on the opinion to prove the existence and contents of it. The Petitioner filed a Writ Petition to quash the summons.

Arguments before the Bombay High Court

The Petitioner contended that the opinion was a professional communication which was protected under §126 of the Indian Evidence Act 1872 and privilege could only be waived by express consent of the client. The Petitioner said that he did not have his client's consent to waive privilege, and that consent could not be obtained as his client had passed away.

The Respondent argued that any privilege in the opinion had been waived because the opinion had already been produced and considered in the suit filed before the Civil Court.

Findings of the Bombay High Court

The Court said that, in the usual course, evidence could be received and considered by a Court unless there was a legal reason to prevent this. In this regard, §126 prevented the disclosure of communications or advice by an advocate to a client, unless made in furtherance of a fraudulent/

¹ Writ Petition No. 3359 of 2015

illegal purpose, without the express consent of the client, and that this bar continued to exist even after the termination of the engagement. The Court therefore held that the opinion was a privileged document and could neither be produced nor admitted. Accordingly, the Court allowed the Writ Petition and quashed the witness summons.

Conclusion

Privilege is an enduring concept that belongs to a lawyer's client and may only be waived by that client, and even if a privileged communication is disclosed in legal proceedings by a third party, the communication is inadmissible in evidence.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

For further information on this topic please contact Tuli & Co

Tel +91 120 693 4000, Fax +91 120 693 4001 or Email lawyers@tuli.co.in

www.tuli.co.in

Author(s)



Anubhav Dutta

Managing Associate



Varun Gupta

Associate