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BOMBAY HIGH COURT ON DISCLOSURE OF LEGAL OPINION IN COURT

A. Introduction:

Bombay High Court (“**HC**”) in *Anil Vishnu Anturkar* case,¹ on December 21, 2022, held that professional communication in the nature of a legal advice given by an advocate to his client is ‘privileged communication’ under the Indian Evidence Act, 1872 (“**Act**”) and it cannot be disclosed in a court without prior consent of the client.

B. Brief Facts:

1. Senior Counsel Anil Vishnu Anturkar (“**Anturkar**”) was served with witness summons to appear before the court of Civil Judge, Senior Division, Pune (“**Trial Court**”) to produce a letter dated January 11, 2004 (“**Letter**”) written by Anturkar to his client.
2. Anturkar challenged the summons on the grounds that the Letter is professional opinion, which is protected as ‘privileged communication’ under Section 126 of the Act.
3. Also, since plaint copy was not provided to Anturkar, he is not in a position to determine for what purpose, the suit was filed in the Trial Court. He also contended that there is a two-way prohibition for disclosing the privileged communication, unless the client has expressly consented to the disclosure. The obligation under Section 126 continues even after the engagement had ceased.
4. Chandra Kumar Popatlal Baldota (“**Baldota**”) contended that Anturkar was only requested to remain present before the Trial Court and confirm his signature on the Letter. Also there is no prohibition in doing so, as the Letter is already out in the open and therefore, it is no longer privileged communication.

C. Judgment & Reasoning:

HC held:

1. Emphasising on the *Larsen & Toubro Limited* case,² observed that evidence is admission and should be received by the Trial Court unless there is a legal reason for its rejection. The Letter, which is privileged in view of Sections 126 or 129 of the Act, though relevant, cannot be produced or received in evidence. Therefore, a witness, though generally competent to give evidence, may in certain cases, claim privilege as a ground for refusing to disclose a matter which is relevant.

¹ *Anil Vishnu Anturkar vs. Chandrakumar Popatlal Baldota and Ors.* MANU/MH/4639/2022.

² *Larsen & Toubro Limited vs. Prime Displays (P) Ltd.*, MANU/MH/0425/2002

2. Relying on the *State of UP* case,³ observed that introduction of relevant material can be shut out if such introduction is prohibited by law.
3. Also relying on *State of Punjab* case,⁴ that a perusal of Section 126 shows that it injuncts a lawyer from disclosing, without his client's express consent, any communication made to him in the course and for the purpose of his employment as such lawyer. Section 129 protects the client from being forced to disclose such communication. Client is entitled to prohibit his lawyer from disclosing any such communications made to the lawyer in the course and for the purpose of his employment as a lawyer.
4. The Letter is privileged communication and in view of clear bar in Section 126, even after the employment of the professional has ceased, obligation not to disclose will continue, unless there is a prior express consent of the client.

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³ *State of UP V Raj Narain and Ors.* MANU/SC/0032/1975.

⁴ *State of Punjab V Sodi Sukhdev Singh* Manu/SC/0006/1960.