

BEFORE THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

DC/17/2007

In the matter of the complaint of professional or other misconduct filed by Shri Varghese Mundackal against Shri M C Sajumon (ACS-9868).

Coram: Harish K Vaid, Presiding Officer, Umesh H Ved, N K Jain, Members

ORDER

1. A complaint in Form-I dated the 30th October, 2007 was filed under Section 21 of the Company Secretaries Act, 1980 read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) by Shri Varghese Mundackal (hereinafter referred to as the 'Complainant') against Shri M C Sajumon, ACS-9868 (hereinafter referred to as the 'Respondent'). Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent vide letter dated 13th November, 2007 calling upon him to submit the written statement. The Respondent submitted the written statement dated 14th December, 2010. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant vide letter dated 18th December, 2007 for his rejoinder, if any. However, the same was returned undelivered with the remarks of the postal authorities 'locked' and was sent again vide letter dated 16th January, 2008 which was again returned. The Complainant filed additional documents vide his letter dated 24th March, 2008.
2. The Board of Discipline at its meeting held on 17th March, 2008 after considering the material on record had decided to keep the matter in abeyance till the final decision of the Court in suit No. 29/2005 of the Court of sub-Judge Ernakulam.
3. The Board at its meeting held on 10th February, 2011 noted the applications dated 25th November, 2010 and 17th January, 2011 received from Shri Varghese Mundakal, the Complainant wherein he had *inter-alia* informed that the civil suit has been disposed-off with a clear finding of forgery in executing concocted documents and requested for reopening of the case. The Board decided that the matter may be proceeded with and directed Director (Discipline) to submit his *prima-facie* opinion in the matter.
4. The Board of Discipline at its meeting held on 16th May, 2011 considered the Report of the Director (Discipline) and decided that certain information may be sought. The Board also noted that the Hon'ble Court vide order dated 28th March, 2009 had held him guilty of being a party to the forged document. The Board desired that ~~the~~ after examining the facts, the



Director (Discipline) may re-submit his *prima-facie* opinion. The *prima-facie* opinion of the Director (Discipline) dated 6th August, 2011 was placed before the Board of Discipline at its meeting held on 9th August, 2011. The Board could not take up this matter on 9th August, 2011 as the meeting was adjourned.

5. The Board at its meeting held on 4th October, 2011 considered the *prima-facie* opinion of Director (Discipline) dated 6th August, 2011. The Board considered the complaint dated 30th October, 2007, the written statement dated 14th August, 2007, the judgement dated 28th March, 2009 in the suit No. 29/2005 of the Court of the sub Judge, Ernakulam and the other material available on record, disagreed with the *prima-facie* opinion dated 6th August, 2011 of the Director (Discipline) and directed that the Complainant be asked to specify as to under which particular clause of the First / Second Schedule of the Company Secretaries Act, 1980 he had filed the complaint and also to provide the details and status of the case, if any, filed by him against Shri M C Sajumon in the Court of Law.
6. Accordingly, the Complainant was asked *vide* letter dated 7th October, 2011 to specify as to under which particular clause of the First / Second Schedule of the Company Secretaries Act, 1980, the complaint was filed by him and also to provide the details and status of the case(s), if any, filed by him against the Respondent.
7. The Complainant *vide* his e-mail dated 28th November, 2011 had intimated that he was in Switzerland and since the concerned file was at Ernakulam, he requested to grant time till the end of December, 2011 for filing the reply as he was expected to return to Ernakulam, by the end of December, 2011.
8. The Board in its meeting held on 30th December, 2011 considered the matter and decided that the Complainant be given a last and final opportunity to provide the details and status of the case(s) if any filed by him against the Respondent and thereafter adjourned the matter. Accordingly, a letter dated 12th January, 2012 was written to the Complainant providing him last and final opportunity for providing the details and the status of the cases, if any, filed by him against the Respondent before any Court of law. The Complainant *vide* letter dated 10th January, 2012 (received on 23rd January, 2012) had *inter-alia* stated that he had filed the complaint to punish the Respondent under 'other misconduct' and also submitted certain documents to prove the involvement in committing the crime.
9. The Board in its meeting held on 30th June, 2012 ~~taken~~ ^{took} note that the Director (Discipline) endorses the *prima-facie* opinion dated 6th August, 2011 of the then Director (Discipline). The Board agreed with the *prima-facie* opinion dated 6th August, 2011 of the then Director (Discipline) that the Respondent is not guilty of professional misconduct under Clause (1) of Part IV of the First Schedule of the Company Secretaries Act, 1980. As regards Clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 as to whether the member has brought disrepute to



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the profession or the Institute as a result of his action whether or not related to his professional work, ~~the~~ the Board decided to refer the matter to the Council of the Institute.

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10. Accordingly, the matter was referred to the Council. The Council in its 209th meeting held on 24-25th August, 2012 had considered the matter that a complaint dated 30th October, 2007 in Form 'I' was filed by Shri Varghese Mundackal against Shri M C Sajumon (ACS -9868) in which he had alleged that the Respondent had witnessed a forged Power of Attorney. The then Director (Discipline) in his *prima-facie* opinion dated 6th August, 2011 had stated that the matter had since been decided by the Court which had held that the Power of Attorney alleged to have been executed by plaintiff (Complainant herein) in favour of Shri Baby Srmbicakl on 17.10.1997 was null and void and any acts done by Shri Baby Srmbicakl on the basis of said Power of Attorney was not at all binding upon the Plaintiff. The Plaintiff was entitled for the cost from Shri Baby Srmbicakl, Branch Manager, Canara Bank and Shri M C Sajumon (Respondent herein). The Court had not convicted either the executant or the witness. The Director (Discipline) had held that the Respondent was 'not guilty' of any Professional or other Misconduct. The Council decided that the conduct of Shri M C Sajumon (ACS-9868), the Respondent in the matter has not brought disrepute to the Profession or the Institute.

11. The Board considered the material on record; the nature of issues involved; the opinion of the Council and in the totality of the circumstances in this matter, the Board ordered for closure of the matter. Accordingly, the complaint stands disposed-off.

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(N K Jain)
Member

Handwritten signature of Umesh H Ved

(Umesh H Ved)
Member

Handwritten signature of Harish K Vaid

(Harish K Vaid)
Presiding Officer

Date: 18th December, 2012

