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(1935) 04 CAL CK 0002

Calcutta High Court

Case No: Civil Rule No. 1205 of 1934

Rai Bahadur Sermal Dalmia and Others		APPELLANT
	Vs	
Manindra Lal Dutt		RESPONDENT

Date of Decision: April 17, 1935

Judgement

R.C. Mitter. J.

1. The amount involved in this Rule is very small, but the case raises a question of principle. The Opposite Party is not represented before me and at my request Messrs. Kanaidhan Dutt and Taradas Dutt argued the case on behalf of the Opposite Party as amicus curiae and I am thankful to them for the assistance they have rendered. Satya Narain Dalmia brought in the Ordinary Original Civil Jurisdiction of this Court a suit (No. 1395 of 1933) against Rai Bahadur Seramal Dalmia and Deokinandan Dalmia (hereinafter called the Dalmias) for partition and accounts. The suit included two business concerns, an oil mill and a rice mill at Dubrajpur in the District of Birbhum. Large sums of money were due to Dalmias from persons who had taken goods on credit from the said two concerns. In the aforesaid suit the official receiver was ultimately appoint-ed receiver. The powers which were given to him were such as are ordinarily given to all receivers appointed in suits pending in the Original Side. The Official Receiver was appointed with.. the power:

to get and collect outstanding debts and claims due in respect of the said property and with all the powers provided for in Order XL, Rule 1, Clause (d) of the ode of Civil Procedure except that he shall not without leave of this Court (1) grant lease or leases for a time exceeding three years or (2) bring suits except suits for rent or ejectment when the rents are in arrears for more than two months " etc.

2. The Opposite Party and many other persons had taken goods on credit from the Dalmias and sums of money were due from them. They did not pay, with the result that the receiver applied for leave to the Court appointing him to sue them. Such leave was

necessary, having regard to the terms of his appointment which I have set out above. On the 9th March, 1934, Mr. Justice Buckland granted the application for leave. A part of the said order is as follows:--

And it is further ordered that the said receiver be also at liberty out of the said funds in his hands in the first instance to retain and pay his costs of and incidental to this application to be taxed by the Taxing Officer of this Court as between attorney and client and then to add the same to his claim in the said intended suits pro rata.

3. Thereafter the receiver instituted the suit against the Opposite Party. He made up his claims as follows:--

	(a) KhataBakiaccount,		Rs. 34 10 9
	Principal		...
	(b) Interest		... ï¿½ 7 5 0
	(c) Cost for obtaining leave to sue (pro rata)		ï¿½ 1 10 3
			... Rs. 43 10 0

4. The entire costs for obtaining leave to sue was Rs. 188-15. The application for leave to sue comprised seventeen claims, and the costs of the said application was distributed by the receiver pro rata and in accordance with the value of the respective claims.

5. The learned Small Cause Court Judge decreed the claim against the Opposite Party but refused to allow the receiver "item No. (c), i.e., the sum of Re. 1-10-3. The receiver has moved this Court against the said part of the order, and as many cases are pending in the same Court and other Courts and many will have to be instituted, and as the matter involves a question of principle, he puts forward this case as a test case.

6. If the learned Small Cause Court Judge in the proper exercise of his discretion had refused to allow as costs the said sum of Re. 1-10-3, I would not have had the power to revise his order, but he has based his order mainly on the ground that the said costs are extraneous to the suit before him and that he had no jurisdiction to include it in the Schedule of costs.

7. The other reasons given by him do not appeal to me. He says that the Defendant before him was in no way concerned with the suit for partition and accounts between the Dalmias and was not responsible for the appointment of a receiver therein and that the receiver could have induced the Court to include in his writ a general power to sue. None of these reasons are convincing.

8. What powers should be given to the receiver is for the Court to decide, the Court appointing him. If that Court, in order to have proper control or check over its officer, or to safeguard debtors to the estate from harassment, says that the receiver must apply for leave to sue in all cases or in certain classes of cases, I do not see how the receiver can have any say in the matter. Besides the writ issued to the official receiver in the present case is in the usual form in vogue in the Original Side of this Court.

9. This leads me to the main question, namely, had the Court below jurisdiction to allow the said sum of Re. 1-10-3 as costs--Sec. 35 of the CPC provides that the costs of and incident to all suits shall be in the discretion of the Court. In my judgment, it does not limit the powers of the Court to award only such amounts which are incurred as costs by a party front the institution of a suit to its termination. The words incident to all suits are in my judgment wide enough to cover costs incurred by a party before the institution of a suit but naturally or intimately connected with the suit. The receiver could not sue for the money without the necessary leave of the Court. He had the right to receive the money and grant a valid discharge to the debtor, if the money had been paid to him amicably. I do not therefore see the force of Mr. Dutt''s argument that an executor or administrator is not allowed to add as costs of a suit instituted by him against a debtor any part of the probate expenses, or that a person suing a debtor on the basis of a succession certificate is not allowed to add as costs, the expenses incurred in obtaining the succession certificate. These cases do not furnish a real analogy, for in these cases, the probate, letters of administration and succession certificate constitute the evidence and the only evidence of the title of the Plaintiff to the debt sought to be recovered, and these costs cannot be allowed on the principle that a Plaintiff is not entitled to the costs incurred by him of either perfecting his title or right, or costs incurred by him in collecting evidence antecedent to the suit. They would not be regarded as costs incident to the suit. I hold accordingly that a Court has power to award as costs, the costs incurred by a receiver in obtaining leave to sue. The view I am taking is moreover in accord with the practice prevailing in the Original Side. The Rule is accordingly made absolute but without costs.