(1921) 11 CAL CK 0001

Calcutta High Court

Case No: None

Sailendra Mohan Dutt		APPELLANT
	Vs	
Dharani Mohan Roy		RESPONDENT

Date of Decision: Nov. 30, 1921

Citation: AIR 1922 Cal 402 : 69 Ind. Cas. 823

Hon'ble Judges: Lancelot Sanderson, C.J; Richardson, J

Bench: Division Bench

Judgement

Lancelot Sanderson, C.J.

This is an appeal by Sailendra Mohan Dutt against the judgment of my learned brother, Mr. Justice Greaves. Sailendra Mohan Dutt was acting as the Attorney for one Dharaui Mohan Roy who was the defendant in the suit and by an order of the 7th of April 1920, there was a change of Attorneys; the material part of the order being: "it is ordered that upon the defendant paying to the said Mr, S. M. Dutt the sum of rupees six thousand on account of costs doe to him in this suit, including the costs of this application, to be taxed by the Taxing Officer of this Court as between Attorney and client and upon the said Mr. S. M. Putt undertaking to refund any excess amount; that may appear to have bean paid to him after taxation of such costs as aforesaid and the defendant by his Raid Attorneys, Messieurs Kali Nath. Mitter and Sarvadhicary, undertaking to pay to the said Mr. S. M. Dutt any earn that may be found due to him upon taxation in excels of the said sum of rupees six thousand and the sum already advanced to him, the said Messieurs Kali Nath Mitter and Sarvadhicary be appointed the Attorneys for the defendant." Upon taxation of the costs, a question arose with regard to four fees of learned Counsel; these four fees are mentioned in paragraph No, 4 of affidavit of Gangadar Bosa at page 37 of the Paper-Book. What happened with. regard to the question is stated as follows: "The said Assistant Taxing Officer, Mr.. S, M, Roy, referred the matter informally to the Taxing Officer and, on the 9th day of September 1920, the said Taxing Officer, after hearing Messieurs Kali Nath Mitter and Sarvadhicary and Mr, S. M. Dutt, expressed his opinion that in view of Rule 32 of the Taxation Rules be could not allow, those fees without an order of Court as required by the said rule." Thereupon, an application was made to the

learned Judge, dated the 14th of December 1920, and notice was given to the effect that an application would be made on the part of Mr. Sailendra Mohan Dutt, the former Attorney of Dharani Mohan Roy, the defendant in the suit, for an order that in the taxing of his costs as between Attorney and client the Taxing Oilier of this Hon''ble Court may do so irrespective of the Taxation Rules as regards payment of Counsel''s fees.

2. The learned Judge did not enquire into the merits of the case but disposed of it on ft preliminary objection raised by the respondent that the learned Judge had no jurisdiction to make the order asked for.

3. The learned Judge held that Chapter XXXVI, Rule 6 did not apply to fees to Counsel and decided the case upon his construction of Rule 32 of Chapter XXXVI, holding that he had no jurisdiction to allow the fees in question, and that they could only be allowed by the Taxing Officer upon the production of a letter signed by the client authorising or ratifying the tame, and that no such letter had been produced.

4. On behalf of the appellant it was argued that Chanter XXXVI, Rule 32 overrides all the other rules in Chapter XXXVI so far as fees to Counsel are concerned, that the general rule to he observed by the Taxing Officer is contained in Rule 3 but that Rule 32 is the "special provision" as to the taxation of Counsel''s fees and that the learned Judge had jurisdiction to hear and determine the application under Rule 32 on its merits. On the other hand, in support of the judgment it was first argued that the application should have been made when the change of Attorneys was made on the 7th April 1920.

5. In my judgment, this might be a matter which the Judge on hearing the application on the merits might take into consideration but the fast that the application was not made on the 7th of April 1920 cannot take away the learned Judge''s jurisdiction to hear the application : it is open to the learned Judge to consider the question as to the proper time and procedure at and in which such a matter should be brought before him.

6. It was then urged that the learned Judge had no jurisdiction to hear the application under Rule 32 unless a reference had been made by the Taxing Officer under Rule 9.

7. In my Judgment, the fact that this matter was not raised by means of a reference by the Taxing Officer does not deprive the learned Judge of his jurisdiction under Rule 32.

8. It was then argued on behalf of the respondent that under Rule 32 the Judge''s jurisdiction is limited : in other words, that the learned Judge has power to increase the scale, and to direct that the maximum figure, specified in the stale in respect of the matter in question, should not apply, but that even if the scale were increased by the Judge''s orders the proviso to Rule 32 would apply,

9. For the purpose of illustration of the argument, I will take a concrete instance, and I will refer to the first item in the table: according to the table the maximum fee for a leading Counsel on an appeal against an order is 15 gold mohurs. It was argued on behalf of the

respondent that if a fee of 20 gold mohurs had been marked on the brief of learned Counsel in respect of an appeal against an order, this could only be allowed by the Taxing Officer if (1) a letter signed by the client authorising or ratifying the payment of the fee were produced, and (ii) it a Judge''s order sanctioning an increase in the scale were produced to the Taxing Officer. In other words, it was argued that the rule merely gives the Court or a Judge power to increase the scale and that even when the scale is increased by a Judge''s order the above-mentioned letter signed by the client must be prod need.

10. R. 32 was made in 1914 and fit was stated by the learned Counsel for the respondent that it was well known that the rule was made because of complaints which had arisen as to excessive fees of Counsel.

11. The rule was made before my time, for the let terms of the rule lead me to think that there is little doubt but that the learned Counsel''s statement was correct: the object of the rule, judging by its terms, seams to me to have been to limit the jurisdiction and discretion of the Taxing Officer as regards Counsel''s fees, and to provide that under no circumstances can the Taxing Officer allow any fees to Counsel, higher than those set out in the table, unless an order of the Court, or a Judge is obtained, No doubt the fees mentioned in the table were considered to be reasonable and sufficient in all ordinary cases and it was, therefore, hoped that the rule would result in Counsel''s fees being kept within reasonable limits. It was, therefore, provided, so far as the Taxing Officer was concerned, that he could not go beyond those specified fees. At the same time a proviso was added that even with regard to the fees allowed by the table the Taxing Officer, even when dealing with a taxation as between Attorney and client, was not to allow the difference between the maximum fee allowed by the table and that actually allowed as between party and party if, in his opinion, such difference constituted an excessive fee, unless a letter signed by the client authorising or ratifying the payment thereof was produced. It is, however, a reasonable construction of the rule, in my judgment, that while it was intended thus to restrict and limit the jurisdiction and discretion of the Taxing Officer as regards fees to Counsel, it was at the same a time intended to preserve the. jurisdiction and discretion of the Court or a Judge in this respect unfettered in order that the Court or a Judge should have power to deal with exceptional cases, as is shown by the insertion of the words "unless otherwise ordered by the Court or a Judge " in the first part of the rule.

12. In my judgment, the proviso in Rule 32 applies to the jurisdiction and discretion of the Taxing Officer only and does not control the jurisdiction and discretion of the Court or a Judge, In other words, the proviso applies to a case when the Court or a Judge has not ordered or does not order otherwise.

13. It was further argued that Rule 6 of Chapter XXVI applies to this matter. It seems to me obvious, having regard to its terms, that Rule 6 was based upon the provisions of the English Rule [C. LXV, Rule 27 (29)]: that rule includes the words "special fees to

Councel" Those words are omitted from Chapter XXXVI, Rule 6, and it was argued for the appellant that the framers of these rules intended that, as far as the Taxing Officer was concerned, the matter of Counsel"s fees should be controlled entirely by the provision of Rule 32.

14. The words at the beginning of Rule 32 notwithstanding any other provision in the rules" would point to there being some other rule relating to Counsel"s fees. A Sufficient meaning may be given to these words by reference to Rule 3 which provides; " The Taxing Officer shall, in the absence of any special provision in these rules, regulate the taxation of charges for retaining and employing Counsel, as nearly as may be, by the practice of the Supreme Court in England, reference being had to any difference which may exist between the two countries in the relative value and use of money." But even assuming that Rule 6, must be taken to refer to Counsel"s fees, although those fees are not specifically mentioned therein, the rule is a direction to the Taxing Officer only and, in my judgment, does not limit or control the jurisdiction of the Court or a Judge, given by r.

15. In my judgment, therefore, the learned Judge had jurisdiction to deal with the application and to decide the matter on its merit?. I desire to make it clear that anything that I have said is not to be taken as an opinion on the merits of the question, No enquiry has yet been made with respect thereto. My decision is merely that the learned Judge had jurisdiction to hear the application on the merits. I am, therefore, not pressed by the argument of the learned Counsel for the respondent that the salutary rule laid down in Rule 6 will be abrogated by our decision, The learned Judge, who hears the application on its merits, will consider all the facts relating to the case and when deciding the matter will, no doubt, take into consideration the well-known principles applicable thereto.

16. It was further argued for the respondent that the learned Judge would not go into the question of amount, unless upon a reference or a review. In my judgment, there is no weight in that argument, for if the question of amount does become material on the application, the learned Judge will be able, if he thinks right be to do, to refer the question of amount to the Taxing Officer. In my judgment, therefore, this appeal should be allowed, the order of the learned Judge should be set aside, and both the learned Counsel agreeing that this is the proper course, the matter is to be remanded to a learned Judge on the Original Side for a decision on the merits.

17. The appellant will have the costs of the appeal; the costs of the proceedings before my learned brother Greaves, J., will be in the direction of the Judge who hears the matter on remand.

Richardson, J.

18. I agree.