(1936) 11 BOM CK 0018

Bombay High Court

Case No: O.C.J. Suit No. 1736 of 1928

Shivramdas		APPELLANT
	Vs	
B.V. Nerurkar In Re: Sabnis, Goregaonkar and Senjit		RESPONDENT

Date of Decision: Nov. 25, 1936

Acts Referred:

- Trusts Act, 1882 - Section 3, 50

Citation: (1937) 39 BOMLR 633

Hon'ble Judges: B.J. Wadia, J

Bench: Single Bench

Judgement

B.J. Wadia, J.

This is a chamber summons taken out by the applicants, who are a firm of solicitors of this Court against the respondents who were the defendants in the suit in the matter of the costs incurred by them in defending the suit on behalf of the defendants. The applicants claim both their out-of-pocket and profit costs of the suit, notwithstanding that their senior partner, Mr. S.A. Sabnis, was one of the defendants. The respondents contended before the Taxing Master that the applicants were not entitled to any profit costs, but only to their out-of-pocket. The Taxing Master held in favour of the respondents'' contention, on which the applicants filed their objections. These objections were considered by the Taxing Master, and he gave his judgment on January 16 which is attached to his certificate dated January 17, 1936. The Taxing Master held that the defendants in the suit were trustees of the temples, charitable institutions, and funds belonging to the Gowd Saraswat community of Bombay, including the property in suit, and not merely managers of the same, and that the applicants were entitled only to their out-of-pocket costs and a further sum in respect of their office expenses in the conduct of the suit. The matter has now come up before me on a review of the taxation.

2. The suit was filed by the plaintiffs with the sanction of the Advocate General for a declaration that the Bhuleshwar Tank, situate at Bhuleshwar Street in the vicinity of several temples, which was the subject-matter of the suit, was a public charity for the Hindus of all communities for religious and ceremonial purposes, that the defendants who were described as the "trustees of the temples, charitable institutions and funds of the Gowd Saraswat community of Bombay" had no right or interest in the tank and should be restrained from filling it up, and that a scheme may be framed by the Court, and for other reliefs. The suit was filed on August 18, 1928. It reached hearing in 1934, and on April 6, 1934, it was allowed to be dismissed by consent of parties, no order being made as to costs. The applicants thereupon lodged their bill of costs for taxation between attorney and client, to which objections were taken. The question, therefore, for consideration is, on what basis should the applicants'' costs of the suit be taxed?

3. It is contended on behalf of the defendants that they are express trustees of the charity properties, of in any event they are what are called constructive trustees. It is common ground that there is no trust instrument in respect of any of these properties, nor is there any endowment by the founder or founders, nor are there any specific trusts declared by a decree or order of the Court, There is also no scheme for the administration of the charities framed and sanctioned by the Court. In para. 11 of his affidavit in reply on this summons Mr. Nerurkar, one of the defendants, says that these religious trusts have been in existence for over two hundred years. He further says: "The origin of the trust is not definitely known to me, but it is commonly believed that the trust originated by some donor building a temple and dedicating certain property to the temple for the purpose of management and maintenance of the temple and worship thereat. "He mentions six temples in the city with the management and administration of which the community is concerned. There are Immovable properties dedicated to the temples, and there are also trust funds consisting mostly of Government Securities and Municipal Bonds of the present face value of about Rs. 1,50,000. According to him there has been from time immemorial a religious and charitable trust in respect of these properties.

4. In 1896 a suit was filed by several members of the community in this Court, being Suit No. 43 of 1896, against other members, in which the plaintiffs claimed a declaration from the Court that they were properly appointed trustees, and that the defendants should hand over the trust properties to them and render an account of their management. A decree was passed on January 10, 1898, by which the Court directed a meeting of the community to be held on January 16 under the presidency of the then Prothonotary of the Court for passing resolutions as to the election of seven new trustees and two- auditors of the trust properties. The meeting was accordingly held, and the president made his report to the Court. Thereafter by a further order dated January 21, 1898, the Court declared that the first seven plaintiffs in that suit were duly appointed trustees, and the first seven defendants

were ordered to hand over charge of all the properties and transfer the same to the newly appointed trustees and to render, accounts to them. No such transfer was made in respect of the Immovable properties belonging to the charity. A scheme was asked for in the suit, but none was framed. What happened thereafter was that in October, 1900, certain rules and regulations were passed at a meeting of the community, and the defendants say that the charity properties have been managed and administered by them and their predecessors in accordance with those rules and regulations. No vesting order was made in respect of the properties, nor was there any declaration by the trustees declaring that they held the Properties on trust.

5. I will deal with the rules and regulations framed at the meeting of the community in October, 1900, presently. The respondents claim to have been appointed "trustees" in accordance with those rules and regulations. The applicants, on the other hand, deny that the respondents were or are "trustees" as alleged. u/s 3 of the Indian Trusts Act a ''trust'' is denned as an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. The person accepting the confidence is called the trustee. Reading the two parts together, a trustee, shortly put, is a person who accepts a confidence which gives rise to an obligation annexed to the ownership of property. A trust is thus annexed to the ownership of property. It may be an express trust by reason of the act and intention of the parties, or it may arise by operation of law irrespective of the declared or supposed wishes of the parties, in which case it is called a constructive trust, corresponding to what is called an obligation in the nature of a trust under Chap. IX of the Indian Trusts Act. It is this ownership, however, which gives control to the trustee over the trust property. Under the English law it is called the legal estate which a trustee usually has, unless the property that is settled on trust is itself an equitable interest, e.g. an equity of redemption in a property mortgaged to a third party. In India there is no distinction between legal and equitable estates in the sense in which it is understood in England, as was pointed out by the Privy Council in (1931) ILR 10 PAT 851 (Privy Council) . But it is necessary that the trust property should effectually vest in the trustee, properly so called, for he holds the legal ownership; and u/s 12 of the Indian Trusts Act it is incumbent upon him to obtain, where necessary, a transfer of the trust property to himself. As a general rule a transfer of property to the trustee is one of the conditions necessary for a valid trust. Where the trust is declared by will, or the settlor is himself to be the trustee, no such transfer may be necessary. With regard to the moveable property belonging to the community, consisting of securities which are now of the face value of about Rs. 1,50,000, it appears that these were transferred by endorsement to the names of the seven persons appointed by the community at different times to manage the charity properties. Mr. Sabnis, solicitor, was appointed in or about 1927, but he finally resigned in 1935. During his time

securities worth about a lakh of rupees were endorsed to his name along with the six other persons also appointed for the purpose. These securities, it was stated in evidence, were, according to arrangement, transferable on the signatures of any three of the seven persons. Mr. Sabnis has not endorsed any one of them, but he must have known that those particular securities were endorsed to his name as one of the seven. It is difficult to understand the Immovable properties belonging to the charity were not transferred to the trustees in spite of the order of the Court of January, 1898. It is still more difficult to understand how it can be said, as is stated by Mr. Nerurkar in his affidavit, and by Mr. B.S. Sabnis in his evidence, that the Immovable properties have vested in the "trustees". The fact that they stand in the Collector''s record or the Municipal record in the collective name of the "trustees" does not mean that the Immovable properties were vested in them. As a matter of fact the Bhuleshwar Temple and Tank stood in wrong names in the Collector''s record for a long time until it was corrected in 1935.

6. Counsel for the respondents argued that there was no need for a vesting order to constitute the title of the persons who were declared trustees by the Court in 1898, that the appointment of a trustee and the vesting of the property in him are two distinct and separate matters, and the appointment itself constitutes the trustees owners of the trust properties. He relied on Noble v. Meymott (1851) 14 Beav. 471 where it is stated that the vesting and the transfer can only properly take place when the appointment of the trustees is complete. In that case two trustees were originally appointed by a deed. One of them disclaimed, as having never acted at all, and the other retired. Thereafter two new trustees were appointed by the settlors, but the trust fund was assigned by the retiring trustee alone to the new trustees. It was held that both the new trustees were validly appointed though the trust fund had not effectually vested in them. Under the power of appointment reserved to the settlors they had first to appoint new trustees and upon appointment the trust property was to be transferred to them. The appointment of trustees was held to be complete as soon as it was made. I have already stated that under the Court''s order made in January, 1898, the seven persons there mentioned were appointed trustees, but the Court also ordered that the properties were to be transferred to the newly appointed'' trustees. It is pointed out by Halsbury, Vol. XXVIII, para. 216, at p. 102, that on an appointment of new trustees the trust-property ought to be vested in all the persons who, after the appointment, are the trustees thereof. A trustee cannot execute a valid conveyance of trust-property unless it is vested in him. There was, however, as I have said before, no transfer of the Immovable properties to the names of the trustees, and the transfer of the securities does not affect the position with regard to the Immovable properties which were not vested in the trustees. There is a distinction between this appointment of a trustee and his title to the trust property of which he is appointed trustee; and in my opinion the appointment by itself does not constitute his title until the vesting and the transfer, though no doubt the appointment precedes the transfer in the ordinary course.

7. The next appointment of trustees was made in 1900 after the rules and 1936 regulations had been framed. There was no particular period of time during. which the trustees appointed under the order of 1898 were to hold office, and it is not dear whether by 1900 they were all dead or had retired or were removed. New rules were made and a new board came into existence in 1900. The rules were made at a meeting held on October 7, 1900, and In re according to the heading these rules were made "for the management of temples, charitable institutions and funds of the said community". It was ladi down in Rule 1 that "as regards the elections of the managers (trustees) and the auditors (auditors) for the management of the said temples, charitable institutions and funds, they shall be elected at a public meeting of the community to be held for the said purpose every year". The English word ''trustees'' is put in the Balbodh characters in parenthesis after the word ''managers''; after that, throughout the rules, they are referred to as "trustees". These rules were not submitted to the Court, but it was argued that that was unnecessary. The respondents claim to have been appointed "trustees" under these rules. The question arises, whether they were trustees in law, or merely managers, of the charity properties. The mere use of the word '' trustees'' does not matter; what matters is the substance underlying the word. It is true that the plaint in the suit describes the defendants as "trustees", and the defendants, of whom Mr. Sabnis was one, say in their written statement that they are "trustees". The resolution appointing Mr. Sabnis does not describe him as a trustee, though the meeting called for the purpose was for the election of "trustees". In fact there is no resolution appointing any one else as "trustee", according to the evidence of Mr. B.S. Sabnis, so far as he is aware. It is immaterial whether the defendants are described, or describe themselves, as "trustees". As pointed out by the Privy Council in (1920) L.R. 47 I.A. 224 (Privy Council) the word ''trustee'' may sometimes, as in the deed in question in that suit, be misleading, and that a man may be said to be a trustee in the general sense that every man is a trustee to whom, is entrusted the duty to manage and control the property of others, even though the ownership of the property is not transferred to him. A trustee in the legal sense of the word is one in whom the trust property is absolutely vested. See 26 CWN 133 (Privy Council) in which it was pointed out by Lord Buckmaster at p. 265, that the word ''trustee'' is a compendious word which covers a very large number of relationships involving different obligations. See also Vidya Varuthi Thirtha v. Balusami Ayyar . It was also pointed out in an earlier Privy Council case, Ramanathan Chetti Vs. Murugappa Chetti, , p.c. that the manager of properties attached to a temple is in the position of a trustee. It does not say that he is a trustee in the restricted and technical sense known to the law. The use, therefore, of the word ''trustees'' cannot make the defendants trustees in the legal sense, unless they can show that they have got the legal ownership of the Immovable properties. Without a transfer their title is inchoate. A trust is not complete until the trust property is vested in trustees for the benefit of the cestui que trust : see Mulla''s Transfer of Property Act, 2nd edn., p. 672. In ray opinion, management of property does not necessarily make the

manager a trustee in law. Trustees are managers because they have to control and manage the trust property, but all managers are not necessarily trustees, though they may be answerable in the general sense of the word for maladministration. Forinstance, an administrator of the estate of an in testate has also got to manage it, but he is not a trustee within the meaning of Section 3 of the Indian Trusts Act : Ardeshir v.0 Manchershaw (1909) 12 Bom. L.R. 53.

8. The defendants, therefore, cannot be said to be express trustees. Can it be said that they are constructive trustees? Counsel referred to Section 94 of the Indian Trusts Act which provides that in any case not coming under the preceding sections of Chapter IX of the Act, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands. It was argued that the defendants were in possession of the property, but that they had not the whole beneficial interest therein, as they along with the entire community had the whole beneficial interest in the same. What is the nature of the possession claimed by the defendants in respect of the Immovable properties. In order to be trustees, whether express or constructive, the trustees must be the legal owners of the property, for a trust is an obligation annexed to the ownership of property, whether the obligation arises by the act and intention of the parties or by operation of law. These defendants were at no time the owners of the Immovable properties, as the same had not vested in them, nor in any preceding group of seven persons appointed to manage the properties. The legal title was not in them. The Taxing Master was in error when he stated in his judgment that there was a deed of appointment of new trustees. It is common ground that there never was any. Under these facts and circumstances I hold that the defendants were neither express nor constructive trustees, according to the law, of the properties of which they were in management. They were managing the same on behalf of the community, standing in a fiduciary relationship, that is, in a position analogous to that of trustees, and liable to account; but they were not trustees in the strict accepted legal sense of the term. The rules and regulations made in 1900 were really rules of management, and the word "trustees" has been introduced in those rules merely as a convenient mode of description.

9. If, however, the defendants are trustees strictly so called, of a public charity trust, the next question is whether the applicants are entitled only to their out-of-pocket costs of the suit and their office expenses, or also to their profit costs. The Taxing Master has held, as I have already stated, that they were not entitled to any profit costs. He refers in his judgment to Section 50 of the Indian Trusts Act which provides that "in the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing the trust." Section 1

of the Act expressly saves from its operation all public or private religious or charitable endowments, but the Taxing Master says in his judgment that though "it has been held by the Bombay High Court that though the Indian Trusts Act does not apply to religious or charitable endowments, the provisions of the Trusts Act (one being that a trustee should not make profit out of his trust) reproducing as they do the general law of trusts as administered in Equity Courts, should govern the procedure in India." For this statement he relies on two cases, one of this Court, v. Committee of Rameshwar and another, being a judgment of the Appeal Court of Madras, Nethiri Menon v. Gopalan Nair ILR (1915) Mad. 597 He has accordingly held that the provisions of the Indian Trusts Act should act as a guide by analogy in matters relating to public trusts, but I do not think that either of the two cases he relies on has laid down anything so broad as that. In my opinion, it is not correct to say that the provisions of the Indian Trusts Act should guide us by way of analogy in the matter of public trusts, for that would amount to doing that which the legislature has expressly prohibited. The correct position is that in matters relating to public charitable trusts the Courts in India would be governed by the principles and rules of English law and practice on the subject, unless, to use the words of the Appeal Court in Rege v. Vasantrao Ganpatrao ILR (1934) Bom. 443 : 37 Bom. L.R. 39 the English law or practice is inconsistent with the rules or practice of this Court. For instance it was held in Dhanrajgirji Narsingirji Vs. Payne and Co., following the English law, that a solicitor acting for a non-existent party was personally liable for costs. It is similarly laid down by Rule 659 of our High Court Rules that the practice and procedure of the Probate Division of the High Court of Justice in England shall be followed so far as they are applicable and not inconsistent with the rules of this High Court and with the principles of the Indian Succession Act and the Civil Procedure Code. It is also similarly laid down in Rule 771 that in cases not provided for by the rules or by the rules of procedure laid down in the Indian Companies Act, the practice and procedure of the High Court of Justice in England in matters relating to companies shall be followed so far as they are applicable and not inconsistent with these rules and the Act. It is true that many of the provisions of the Indian Trusts Act reproduce the general law of trusts as administered in Equity Courts in England, but that does not mean that we should say that the Indian Trusts Act applies by analogy to religious or charitable endowments when the Act provides that it does not. Section 50 of the Indian Trusts Act, which I have above referred to, reproduces in substance a principle of the English law of trusts. That section is applicable to express private trusts, and according to Section 95 constructive trustees are also, so far as may be, subject to the same liabilities and disabilities as trustees under an express trust.

10. What we have, however, got to consider in this case is something more than the principle embodied in Section 50 of the Indian Trusts Act, for here we have seven trustees one of whom was a solicitor-trustee who or whose firm acted on behalf of himself and his co-trustees. It is true that voluntary service is the foundation

underlying trusteeship in law, and the law precludes a trustee from making a profit or acquiring a benefit from his office as trustee. Generally speaking, a trustee must administer the trust gratuitously, and this rule applies even though the execution of the trust involves considerable loss of time, work and personal inconvenience, unless there is a provision to the contrary in the trust instrument, or if he contracts either with the beneficiaries, if they are competent, or with the Court, to receive remuneration for his work. This rule has been laid down in the old and well-known case of Robinson v. Pett (1734) 3 P. Wms. 249 and it proceeds upon the principle that a trustee, executor, or administrator shall have no allowance for his care and trouble. The reason given by Lord Talbot L.C. at p. 251 is that the trust estate may be otherwise loaded and rendered of little value; but it is more generally put on the ground of prudence that a trustee may not put himself in a position in which his interest and duty come in conflict : see New v. Jones (1833) 1 Mac. & G. 668. The incapacity applies not only to the solicitor-trustee personally, but also to his firm who act as his solicitors. In the case of New v. Jones the solicitor-trustee was acting only for himself. A solicitor-trustee is not bound to act professionally also for his co-trustees. The applicants rely on another rule which modifies the general rule, and that was laid down in 1850 in Cradock v. Piper (1850) 1 Mac. & G. 644. It was held by Lord Cottenham in that case, affirming Shadwell v. C, that the circumstance of a solicitor being a trustee will not prevent him from receiving his usual costs where he acts as solicitor in a suit for any of the beneficiaries or where he acts for himself and his co-trustees jointly, provided the costs are not increased by his being one of the parties for whom such joint appearance is made. As pointed out by Lord Cottenham in the course of the argument (p. 673):

A trustee, as trustee, is not to make his office a source of remuneration; but the question is, whether acting for other parties is an acting arising out of his office. If A. is a trustee of a fund, and employs himself, this is clearly within the rule; but it is not the same thing if there are other parties, and they come and employ him, though this employment may arise incidentally out of his being a trustee.

This case was mentioned in Lincoln v. Windsor (1851) 9 Hare 158 in which Turner V.C. considered the rule as established, but limited it to costs incurred in respect of business done in a suit or matter in Court. It was disapproved of in Mayison v. Sir W. Baillie, Bart (1855) 2 Maq. 80 and Broughton v. Broughton (1855) 5 De G.M. & G. 160. But Chitty J. in In re Barber : Burgess v. Vinicome (1886) 34 Ch. D. 77 pointed out that it had not been overruled, and in In re Corsellis : Lawton v. Eiwes (1887) 34 Ch. D. 675 the Court of Appeal, though it did not approve of the rule, held that it had been acted on so long that it must be considered a binding authority. Lord Justice Lindley observed at p. 688 that although the rule ought not to be extended, it would not do to fritter it away. It has also been held that the rule does not apply to the case of a solicitor-trustee who acts for himself and co-trustees in respect of business done out of Court. The rule wag commented on and distinguished in In re Corsellis : Lawton v. Elwes (1886) 33 Ch. D. 160. It was followed in Stone v. Lickorish (1891) 2 Ch. 363 and

observed upon in In re Doody Fisher v. Doody : Hibbert v. Lloyd (1893) 1 Ch. 129. It was not applied in the case of a solicitor who was the sole executor and trustee of a will in White, In re: pennell v. Franklin (1898) 1 Ch. 297, confirmed on appeal (1898) 2 Ch. 217. The rule has been called "anomalous" by Lewin in his work on Trusts, 13th edn., at P. 259. It has thus been criticized several times in England, but it is still the law, for the criticism is by Courts of coordinate jurisdiction, and the decision has not yet been overruled by the highest tribunal. It is still cited as good law by Halsbury in Vol. XXVIII, para. 336, at pp. 63-64. In this connection the observations of Herschell C. in Bray v. Ford (1896) A.C. 44, may be cited. That was a libel action arising out of a charge contained in a letter that the respondent, whilst holding the fiduciary position of vice-chairman of the Council of the Yorkshire College, was making profit as its paid solicitor. Lord Herschell observes as follows (p. 51):-

It is an inflexible rule of a Court of Equity that a person in a fiduciary position, such as the respondent''s, is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he was bound to protect. It has, therefore, been deemed expedient to lay down this positive rule. But I am satisfied that it might be departed from in many cases, without any breach of morality, without any wrong being inflicted, and without any consciousness of wrong-doing. Indeed, it is obvious that it might sometimes be to the advantage of the beneficiaries that their trustee should act for them professionally rather than a stranger, even though the trustee were paid for his services.

11. The next question is whether the rule in Cradock v. Piper is applicable in India. There is no case here in which it has been referred to, but it appears that in this very suit the applicants were allowed their profit costs by the Taxing Master in respect of a notice of motion which was dismissed against the defendants both in the Court below and in the Appeal Court. To adopt the test laid down by our Appeal Court in Rege v. Vasantrao Ganpatrao (1934) ILR 59 Bom. 443 : 37 Bom. L.R. 39 the question is whether this rule of the English law is inconsistent with any law in India or any rule or practice of this Court. It was argued that the Indian Trusts Act was passed in 1881, and that if the legislature was so minded, the rule in Cradock v. Piper might have been engrafted as an exception to the general principle of Section 50. Counsel referred to the 1st proviso of Section 95 which allows a constructive trustee reasonable remuneration for his trouble, skill and loss of time if he rightfully cultivates the property in respect of which he is such trustee or if he employs it in trade or business. The argument is, however, open to the same criticism as Section 50, namely, that the Act does not apply to public and charitable trusts. Moreover, it is not for this Court to say whether the rule in Cradock v. Piper has been advisedly

left out of the Act. It is really speaking a rule of taxation of costs, and I do not think such a rule, though it is referred to in legal decisions, would ordinarily be put into a statute which declares the general principles of the law. If Section 50 of our Act reproduces a principle of the English law, and the rule in Cradock v. Piper is still applicable in England, it cannot be said to be repugnant to that principle. A solicitor-trustee is bound to protect the title to the trust property, and for that purpose defend a suit without remuneration; but he is under no obligation to do so in his professional capacity also for his co-trustees. In my opinion, therefore, the rule is not inconsistent with any law or rule of practice of this Court.

12. I have already held that the defendants were not strictly "trustees". It was argued'' that if the rule as to payment of costs was so strict against a trustee that it did not admit of any exception or extension except by deed or agreement, its application should also be restricted to those who were trustees in the strict legal sense of the term, and that the defendants not being trustees, the applicants should get their full costs. But it has been held that this general rule applies to all persons standing in a fiduciary position, though they may not be strictly "trustees", e.g. see Bray v. Ford referred to above. Whether therefore the defendants were managers of the charity properties, in the position of trustees, for and on behalf of the community, as I have held, or whether they were trustees, either express or constructive, in law, I do not see why the applicants should not get the advantage of the modification of the general rule of English law as to payment of costs, embodied in Cradock v. Piper.

13. There is really no question of estoppel in this case, and the point has not been pressed. It appears, however, from the minutes of the resolutions passed by the community that Mr. Sabnis was willing in 1927 to resign on account of any embarrassment that may be caused to his co-trustees in the matter of his or his firm''s costs by reason of his being a solicitor-trustee, and he continued to act when a resolution was passed that there was no legal objection to his acting as a member of the Board and at the same time to his firm acting as the Board''s solicitors in the suit. It does not, therefore, seem quite fair on the part of his co-trustees, among whom there are some well-known lawyers, to take the full benefit of the applicants'' services in a heavy litigation, and then seek to deprive them altogether of their profit costs on the ground that Mr. Sabnis was a solicitor-trustee. However, this is entirely beside the point. The parties could not agree to terms, and wished to stand on their rights according to the law.

14. In my opinion the applicants are entitled to their profit costs limited according to the rule laid down in Cradock v. Piper. Where a solicitor-trustee is a defendant as trustee, and is held entitled to his costs, the Court directs them to be taxed as between attorney and client : see York v. Brown (1844) 1 Coll 260. I, therefore, order that the judgment, order and certificate of the Officiating Taxing Master be set aside, and the applicants'' bill of costs be taxed as between attorney and client,

allowing them both out-of-pocket and profit costs except so far as such costs might have been incurred by Mr Sabnis solicitor being a party defendant to the suit.

15. I have heard counsel on the question of the costs both of the hearing before the Taxing Master as well as of the hearing before me in Court. I think the applicants are entitled to the costs of their appearance before the Taxing Master on the taxation of their bill of costs and on the hearing Of the objections filed by them. I certify for counsel on the hearing before the Taxing Master. The summons was first heard by Kania J., who ordered it to be adjourned into Court and made the costs of the hearing costs in the summons. On that counsel will be certified, if the learned Judge has not already said so in making his order.

16. With regard to the hearing before me I am satisfied that this was a matter of a somewhat complex nature which required consideration of. the various principles and arguments advanced by counsel on either side. In my opinion this is a fit case in which I would allow the applicants'' costs of the hearing to be taxed as on a long cause scale, allowing two counsel for the same. The applicants'' costs as ordered by me will come out of the charity estate in the hands of the respondents. The respondents'' costs of their appearance before the Taxing Master, on the same basis, and of the hearing. before me, will also come out of the estate, taxed as between attorney and client.