

ALLAHABAD HIGH COURT

S. Rashid Ahmad

Vs

Anis Fatima

(Sulaiman, C.J.)

29.04.1932

JUDGMENT

Sulaiman, C.J.

1. On an oral application made by Dr. Faruqi notice was issued to the appellant to show cause why Rs. 440 out of Rs. 4,000 lying in deposit as security in this Court should not be paid over to Dr. Faruqi towards the payments of fees due to him. It appears that Dr. Faruqi along with another counsel filed an application for leave to appeal to their Lordships of the Privy Council, though he had not appeared in the first appeal itself. The appeal was admitted and was sent to the office of the Privy Council. Dr. Faruqi appears to have looked after the interests of the appellant and instructed the Solicitors in England. According to him the bulk of Rs. 440 is the aggregate amount of the fees due to him for various works done. The appellant succeeded and the amount of security deposited by him for the cost of the respondents is now available to him for being returned.

2. The question is whether Dr. Faruqi is entitled to claim a lien for the outstanding fees on this amount. It was held by a Full Bench of this Court in *Ross Alston v. Pitambar Das* [1903] 25 All 509 that a member of the English Bar, in accordance with the laws of England and the rules of the legal profession to which he belongs, renders and professes to render services of a purely honorary character and that in his professional capacity as an English Barrister he can neither sue nor be sued for his honoraria. Mr. Shiva Prasad Sinha contends before us that since the passing of the Bar Councils Act the status of a Barrister of England is identical with an ordinary Advocate, inasmuch as according to the practice prevailing in this province, he combines in himself the functions of a Barrister as well as of a Solicitor. It is therefore urged that he is entitled to claim the same lien which an ordinary Solicitor would be entitled to in England. We think that it is unnecessary to decide this wider question in this case.

3. The amount of Rs. 4,000 which was deposited by the appellants or by one of them as security belonged to the person or persons depositing the amount, and the proprietary interest in it never

passed to the respondents. In case of the dismissal of the Privy Council appeal it would have been open to the respondents to realise their costs out of this security. The appeal having succeeded, the liability of the appellant to make good the costs of the respondents out of this amount never arose. But this amount was not the subject matter of the litigation and can in no sense be regarded as the fruits of the action earned by the counsel for his client. Mr. Sinha has strongly relied on the case of *Ross v. Buxton*¹ where the principle laid down by Stirling, J., was approved and it was stated that a party should not run away with the fruits of the cause without satisfying the legal demands of his attorney, by whose industry, and in many instances at whose expense, those fruits were obtained. In that case a sum of money was deposited into Court under a compromise between the parties for the satisfaction of all claims for damages. The amount so deposited was obviously a compensation to the plaintiffs and was therefore the fruit of the action, and the plaintiffs' Solicitor was held entitled to claim a lien on this amount.

4. The present case is entirely different. As pointed out above the sum of Rupees 4,000 which had been deposited by the appellant to be available for the payment of the costs of the respondents in case their Lordships of the Privy Council ordered such costs to be paid, was never the subject matter of dispute and is not the fruit of the action. We are therefore of opinion that no lien can be claimed on this amount. The last point urged is that the order dated 23rd December 1931, passed by a Bench of this Court on this application, has finally decided that the lien can be claimed. We are of opinion that it is not so. That was an order passed ex parte at the time of the issue of notice to Dr. Faruqi's clients & the expression of opinion therein contained was obviously provisional and subject to any reasons to the contrary being shown by the appellant. As we are now asked to order the actual payment of the money to Dr. Faruqi, we cannot be bound by any expression of opinion which was made ex parte. We accordingly disallow the prayer of Dr. Faruqi. We make no order as to costs.

Cases Referred.

¹[1889] 42 Ch D 190