

BOMBAY HIGH COURT

Chitnis and Kanga

Vs

Wamanrao S. Mantri

(John Beaumont, Kt., C.J. Kania , J.)

25.09.1940

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an appeal from a decision of Mr. Justice Somjee setting aside an order made by the Prothonotary for taxation. The learned Judge gave no judgment and therefore we do not know on what view his decision was based.
2. The order made by the Prothonotary was the common form order for taxation of a bill of costs of Messrs. Chitnis and Kanga in relation to certain matters, one of which was an appeal on the appellate side of the High Court. An order for taxation on the original side cannot be made in respect of costs incurred on the appellate side of the High Court, and as to this item, admittedly the order to tax was wrong.
3. The solicitors' case is that they were employed by the client and his father in connection with probate proceedings in the Satara District Court, and in those proceedings they filed a formal retainer. They did a certain amount of work in that case partly as attorneys and partly as pleaders, although a pleader was employed to argue the case. They also allege that they did miscellaneous work in the mofussil. The order made by the Prothonotary was under Rule 534 which provides that--the Taxing Master shall tax the bills of costs on every side of the Court (except the Appellate Side) and in the Insolvency Court. All other bills of costs of attorneys shall also be taxed by him when he is directed to do so by a Judge's order.
4. So that a Judge has discretion to direct attorneys' bills to be taxed in any case, and where a bill is taxed, the attorney can apply by summary process for payment under Rule 895.
5. It is argued by Mr. Coltman in the first place that the fact of employment of the solicitors and the terms of employment are disputed, and it is unreasonable to put parties to the expense of taxing a bill when ultimately nothing may be payable. The taxation of a bill does not determine

the liability of the client to pay, and he is entitled to challenge his liability on a summons under Rule 895 after taxation has taken place. As I have pointed out the power of a Judge to direct taxation under Rule 534 is discretionary. When an application is made ex parte for a common form order for taxation, the Court may direct the solicitor to issue a summons, and may hear what the client has to say in the matter. If the Court thinks that there is a serious dispute as to the fact or terms of employment of the solicitor, the Court may refuse to make an order for taxation and leave the attorney to file a suit; and in that suit the solicitor's right to recover can be first determined, and the amount to be recovered can be determined subsequently by taxation. In the present case, on the affidavits, I do not think there is such serious doubt as to the client's liability to pay as to justify us in refusing to make an order for taxation.

6. Then it is said that the costs of proceedings in the mofussil cannot be taxed by the Taxing Master of the High Court, who will tax the bill on the ordinary original side scale. With regard to that there is a direct authority in the decision of this Court in *Nowroji v. Kanga and Sayani*¹, where the Court of Appeal held that an attorney of this Court was entitled to have his bill taxed on the original side although it related to work done in the mofussil. That case, as is noted in the judgment, related to costs incurred before the Pleaders Act of 1920 came into operation, but in my view that Act has no effect on the present question. The Act provides in Section 17, which has been replaced by Section 3 of the Legal Practitioners' Fees Act of 1926, that a legal practitioner (which includes an attorney) may enter into a special agreement as to the terms of his remuneration. But there is no question of special remuneration here. Section 18, which was also relied upon, deals merely with the amount of pleader's fees which can be recovered against the opposing party. That again has nothing to do with the present matter. In my opinion we are bound by the decision in *Nowroji v. Kanga and Sayani* to hold that the Taxing Master is entitled to tax the bill in relation to work done in the mofussil. In my opinion therefore the appeal must be allowed with costs.

Kania, J.

7. The jurisdiction of the Court to make the order for taxation under Rule 534 in connection with matters sought to be taxed here (excluding the work done on the appellate side) cannot be disputed. Rule 534 in terms is applicable. It is therefore improper to contend that the order made by the Prothonotary was ultra vires. Such orders are ordinarily made ex parte, and on the footing that the attorney is employed as such. The client's liability to pay the taxed costs can be disputed when the attorney takes out a summons for payment under Rule 895. Even before that it does not appear to be out of place for a client to take out a summons to set aside the ex parte order, and on the hearing of that summons the Court may direct either that the enquiry sought to be made in connection with the employment of the attorney by the client may be made at that stage, or having regard to the disputes raised by the client the attorneys should be referred to a separate suit. If however there is prima facie evidence or the Court is satisfied on the affidavits that no such order revoking the previous order should be made, the taxation under the order obtained ex

parte may proceed and the client can still, when an order is sought for enforcing payment, raise the contentions permitted to him. In the present case it appears that the learned Judge set aside the ex parte order passed by the Prothonotary on the footing that it was ultra vires. I am led to this conclusion from the statement found in the affidavit of the respondent. The learned Judge does not appear to have decided that there was no employment of the appellants by the respondent or his father or that there was no satisfactory evidence to lead to that conclusion and therefore left the appellants to their ordinary remedy of filing the suit. On that footing I agree that the appeal should be allowed.

Cases Referred.

1(1926) 28 Bom. L.R. 384