BOMBAY HIGH COURT

Pereira Fazalbhoy and Co

Vs.

Rajputana Cold Storage

O.C.J. Suit No. 852 of 1952

(Mody, J.)

22.06.1962

JUDGMENT

Mody, J.

1. This a Chamber Summons taken out by the applicants, who are attorneys of this Court, under Rule 573-A of the Rules of this Court applicable on its Original Side, for an order for payment of their costs against the respondents who were the clients of the applicants. The respondents had engaged the applicants as their attorneys for doing various types of work. In respect of that work done by the applicants, the applicants lodged inter alia three bills before the Taxing Master of this Court. Before lodging those bills, the applicants had obtained an order dated April 23, 1960, under Rule 569. That order was passed by the Prothonotary & Senior Master of this Court under the powers delegated to him under Rule 96, Item No. 9. Thereafter, the Taxing Master taxed those bills and issued three separate allocaturs. By this summons the applicants pray for a payment order in respect of the amounts of those three allocaturs, each forming the subject-matter of a separate item of this summons. The respondents do not challenge the present summons in respect of items 1 and 3 but have confined the challenge before me to item No. 2 of the summons only.

2. The respondents do not challenge the employment of the applicants as their attorneys even in respect of the work for which the allocatur mentioned in Item No. 2 of the summons has been issued. It is common ground that that item refers to work done by the applicants as the attorneys of the respondents in respect of petition for the winding up of the respondent-company which was filed in the High Court of Rajasthan at Jaipur. It is also common ground that there was no express agreement between the applicants and the respondents as regards the scale on which the applicants were to be remunerated by the respondents for the said work. The challenge of the respondents to the said item is two-fold : firstly, that the Prothonotary had no jurisdiction to pass the said order and, secondly, that the Taxing Master bad no power to tax the applicants' said bills

of costs on the Original Side scale.

3. So far as the first challenge is concerned, Rule 569 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; and it goes on further to provide and that provision is material that 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. As the item in dispute does not fall within the first part of Rule 569, it would fall under "all other bills of costs of Attorneys" under the second part, and, therefore, a Judge's order directing the taxation of that bill of costs was competent. Instead of there being a Judge's order, there is in this case the Prothonotary's order, and the Prothonotary was competent to pass that order under the power delegated to him under Item 9 of Rule 96, This position seems to be amply clear, but if any authority is needed in that behalf, the decision of a Division Bench of this Court in *Nowroji v. Kanga & Sayani*[1], can be referred to. That decision was given under an old rule which, for all purposes relevant to this case, was parallel to the present Rule 569, It has been held in that case that a solicitor practicing in Bombay and performing professional services for a client regarding business in the mofussil, was entitled, in the event of his client declining to pay his charges, to have his bill taxed by the Taxing Master on the Original Side of the High Court. In my opinion, therefore, the said order passed by the Prothonotary was not passed by him without jurisdiction.

4. The second ground of challenge is a ground alternative to the first. The contention is that even if it be held that the said order made by the Prothonotary was validly made by him in the exercise of his jurisdiction the Taxing Master, in any event although he validly ordered to tax the bill of the applicants, was not entitled to tax it on the basis of the Original Side scale. The respondents contend that the rules of this High Court applicable on its Original Side show that what is contemplated therein is taxing of the bills of costs of attorneys of this Court in respect of the work done by the attorneys on the Original Side itself. The respondents of course concede that the rules provide for taxation of bills of costs of attorneys for non-contentious work also, which cannot be said to have been performed or done on the Original Side of this Court. The respondents, however, do contend that in respect of contentious work, which the attorneys do in any Court other than the High Court, there cannot be taxation on the basis of the scale applicable for the work done on the Original Side. If this contention of the respondents was to be accepted, the second part of Rule 559 will of necessity have to be confined to non-contentious work alone. So far as I am aware, such a narrow construction has not yet been placed on that rule or on the similar provision contained in other corresponding rules preceding this rule during the history of this Court. At least no such instance has been cited before me. On the contrary the judgment referred to earlier is an instance of a case in which such a narrow meaning was not placed on the second part of Rule 569, or rather, the old rule which has been substituted by the present Rule 569. It was pointed out on behalf of the respondents that the relevant rules as to taxation appear in Part II, and that the heading of the Part II is "Rules, Forms and Table of Fees relating to the Jurisdiction, of the High Court on its Original Side". It was contended that this heading clearly shows that all the provisions contained in Part II were intended to be confined to Work on the

Original Side of this Court, This argument places a very narrow construction on this heading. The profession of attorneys is recognized as such by this High Court only on its Original Side. The attorneys, if they are otherwise qualified lawyers, can, of course, practise in this High Court otherwise than on its Original Side or even in Courts other, than this High Court. But the very profession of attorneys owes its existence to its recognition by this Court's jurisdiction on its Original Side. If that profession owes its existence to its being recognized on the Original Side of the High Court, this High Court would have

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

jurisdiction to make rules to govern and regulate that profession including their costs and the scale on which they should be remunerated. In that light, even the taxation of costs for the work done by the solicitors as solicitors elsewhere than the Original Side of this Court would indirectly relate to the jurisdiction of the High Court on its Original Side. It was also pointed out on behalf of the respondents that a reference to the scale of fees provided in the Original Side rules the Original Side of the High Court, for example, in the High Court of Rajasthan; and, secondly, that if attorneys did some work outside the Original Side of the High Court, as for example in the High Court at Rajasthan, there may be some, items of work which have not been specifically provided for in the said table of fees. In my opinion, neither of these two contentions helps the respondents in their present, challenge. If items like notices of motion have been provided for in the table of fees, but work covered by such items is not done in the course of an attorney's work in any Court outside the Original Side of this Court, such items will not appear in the bills of costs of the attorneys, and no difficulty would, therefore, arise. Even in respect of bills for work done even on the Original Side itself if no notice of motion was taken out an item in respect of the same would not appear. So far as the other contention is concerned, it is true that there may be some items of work done by the attorneys during the course of their work elsewhere, and that the Taxing Master would have to allow for the same when' he taxes their bills of costs. In this behalf, I should note that this contention in this form has not been specifically taken in the respondents' affidavit in reply, nor have any specific items been pointed out in that affidavit by way of illustration, let alone an exhaustive enumeration. An application was made on behalf of the respondents that an opportunity may be given to them to put in a further affidavit specifying those items, or, at least, some of those items by way of illustration. I did not think it necessary to give such an opportunity to the respondents, because I could proceed to decide this summons on the basis that there may be some items of that nature in the bills of costs in respect of which the allocator mentioned in Item 2 of the summons has been issued. But even so, to my mind, it makes no difference. Even when taxing an attorney's bill of costs for contentious work done on the Original Side of this Court, items would appear in that bill which have not been specifically provided for in the table of costs payable to attorneys. In such eases, the Taxing Master, in effect, exercises his discretion and evaluates the work on the basis of the remuneration specifically provided for in the various items of the table of costs. It would not be an exaggeration to say that, it would not be possible for any rules like the rules applicable on then Original Side of the High Court to exhaustively provide a scale of remuneration for every conceivable type of work which an attorney would be engaged to do as an attorney, and such a discretion would, of necessity,

have to be left to the Taxing Master, and in fact, so far as I am aware, bills of costs of attorneys have been taxed by Taxing Masters on that basis. Without making a detailed search, two illustrations strike me in this behalf. It is well-known that attorneys' bills of costs include an item of remuneration when the client has telephoned to the solicitor and given to him some instructions on the telephone. Such items have, over a long period, been allowed in taxation. These items are treated as attendances although they are not attendances in person by the attorneys on the client. That is done by giving a little wider meaning to the word "attendance" which has been provided for in the table of fees and is treated as an attendance although it is not in person but only over the telephone. But there is another instance, viz., when an attorney signs a cheque on behalf of his client and is remunerated for it.
Such items normally find a place in the bills of costs of attorneys, and are allowed on taxation. There is no item so far as I can see in the table of fees which, howsoever widely construed, can be said to include this particular charge, yet the same have over a long period been allowed on taxation. It merely illustrates that to some extent the Taxing Master must be given a discretion. It is in the exercise of that discretion that, although it, is not covered by any specific item in the table of fees, he allows a reasonable remuneration for the same. Needless to say that if any party feels aggrieved by the amount actually allowed by a Taxing Master in the exercise of such discretion as the same being too large or too small, he has his remedy by approaching the Chamber Judge under the provisions of Rule 610 and even an appeal lie's against the decision of the Chamber Judge. If that be so, I do not see any, reason why the Taxing Master in the exercise of his discretion should not make an allowance for an item not specifically provided for in the table of fees when that item covers work done elsewhere than on the Original Side of this Court.

5. It was contended on behalf of the respondents that in this particular case, the applicants had taken a special authority from the respondents in respect of at least two types of work which were not work on the Original Side of this Court, namely, in the City Civil Court and in the Small Causes Court under which the applicants were to be remunerated for such work on the Original Side scale. To support this contention, respondents sought to rely upon the notes before the Taxing Master. Without specific attention having been drawn to this aspect of the case and the specific point not having been relied upon in the affidavit in reply, in my opinion, it is not open to the respondents to urge that contention. A Chamber Summons is normally decided on the basis of the evidence as contained, in affidavits. If a point is not specifically referred to and the evidence in, support thereof relied upon or at least referred to in the affidavits, it would be difficult for the other side to check up its veracity and to meet it. In this case, however, as and by way of an exceptional case, I propose to consider this argument. The respondents contended that inasmuch as the special, authority is confined to the said two types of work only, it must be inferred by implication that the parties did not intend that the table of fees applicable on the Original Side should be the basis of the remuneration payable in respect of the work done by the applicants elsewhere, for example, in the Rajasthan High Court or the Supreme Court. First of all, I do not think that there is sufficient material on which this argument can be made or considered. It is an argument based on an implication. That implication can be raised after

knowing all the relevant facts. It has not been brought out before me that when that authority was taken for work in the City Civil Court and Small Causes Court, it was within the contemplation of the parties that the respondents would entrust to the applicants their, work in the Rajasthan High Court or the Supreme Court. If at the time when the special authority was given and taken, parties did not contemplate any work in the Rajasthan High Court, it would not be correct to draw such an inference. Therefore, in the absence of the necessary materials, I do not think, I would be justified in drawing that inference. Moreover, the various scales of fees for work done in these various Courts would have to be compared with the table of fees mentioned in the rules of this Court. If the normal scale of fees which an attorney would be entitled to charge in respect of the work done in the Bombay Small Causes Court or the Bombay City Civil Court was lower than that provided in our table of fees, there may be a reason for the attorneys to demand that they shall be paid on the basis of the table of fees contained in our rules applicable on the Original Side. But if the scale of remuneration for work done, for example, in the Rajasthan High Court, was more remunerative than as provided for in our rules, it may be that the attorneys may have felt themselves content to be remunerated on the basis of the lower scale contained in the table of fees applicable on the Original Side of this Court. In the absence of the necessary material, it is, therefore, not possible to draw such an inference. But the second difficulty in the way of this argument of the respondents is that normally, when a party engages an attorney of this Court as his attorney, he knows that an attorney is entitled under the rules of this Court to have his bill taxed, and that that taxation would be on the scale provided for in the rules of this Court. It would be only if that litigant, or as a matter of fact either the litigant or the attorney, wants to make a provision to the contrary, would there be the necessity of a specific agreement of that nature. But normally, if there, is no such specific agreement, the inference would be that both the client as well as the attorney know and intend that the work of the attorney would be remunerated on the basis of his costs as taxed in accordance with the provisions of the rules of this High Court on its Original Side.

6. In these circumstances, the challenge of the respondents fails. I, therefore, make the summons absolute with costs.
Summons made absolute.