(1954) 06 CAL CK 0002

In the Calcutta High Court

Case No : Application in Original Suit No. 1732 of 1949

East Coast Commercial Company, Ltd. APPELLANT

Vs

Karuna Kumar Dutt Gupta RESPONDENT

Date of Decision : 07-06-1954

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 12

Citation : 58 CWN 1041 : (1956) 1 ILR (Cal) 468

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : S.N. Bose, for the Appellant;

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is a summons of the Plaintiff''s tourney for review of the decision of the Taxing Officer dated April 28, 1954.

2. The bill of costs of the Plaintiff''s attorney was lodged for taxation as between attorney and client under the warrant of attorney. No one on behalf of the Plaintiff appeared before the assistant Taxing Officer at the time of taxation although notice has served on the Plaintiff. The Assistant Taxing Officer disallowed 15 items of that bill of costs which are incidental to the application of the Plaintiff for discovery against the guardian-ad-litem of the seventh Defendant in the suit who is a minor the Plaintiff''s attorney filed his exceptions in respect of those ends disallowed by the Assistant Taxing Officer and the said receptions were heard and decided by the Taxing Officer on April 28, 1954. No one on behalf of the Plaintiff appeared at bed time when such exceptions were heard in spite of the notice proved on the Plaintiff. By that order of April 28, 1954, the taxing Officer upheld the view of the Assistant Taxing Officer and discharged the exceptions with costs.

3. In that order of the Taxing Officer, it is stated after disallowing the exceptions:

I feel tempted to report this matter to Court under Rule 11, Chapter XXXVI, of

Original Side Rules, as I consider that it was improper on the part of the attorney make this application for discovery against the minor Defendant No. 7 in the circumstances discussed before me but I do not do so as the charges for the same are already been disallowed by the Assistant Taxing Officer and which decision being upheld by me.

4. In this application before me, the only argument of the Plaintiff''s attorney is that there was an order of the Master dated March 8, 1951. This order itself does not allow the costs prissily but it is argued that by reason of Rule 23, Chapter VI, of be Original Side Rules the Plaintiff should get the costs. It is,: therefore, contended that the Taxing Officer was wrong and after beyond his authority and jurisdiction in going behind that order of the Master and considering the necessity and propriety that order.

5. It is necessary to discuss the reasons put forward by the Taxing Officer in his order complained against disallowing these costs. The reasons are:

The Plaintiff could have made an application for discovery against Defendant No. 7 without waiting for the guardian-ad-litem of the said minor Defendant file his voluntary statement. There is nothing on the Original Side Rules to prevent him from doing so. Assuming that his said contention was correct, I firm that on the 20th June 1950, Sri N. De, a Solicitor, was appointed the guardian ad-litem of the minor Defendant No. 7. The Plaintiff could, therefore, have easily obtained an order for discovery against the minor Defendant No. 7 when the latter had already got a guardian appointed for him. This the Plaintiff did not do, a though, it is on record, that on 8th December, 1950, the Plaintiff made an application for discovery against Defendants Nos. 1 to 6. If he had done so, he could have avoided the costs of the application for discovery made on the 8th March 1950 It is to be remembered that on the 14th December, 1950, Sri N. De filed a voluntary statement on behalf of the minor Defendant No. 7 in which he stated that he had no knowledge of the facts pleaded in the plaint of the suit in question and accordingly, left the matter to the decision of the Court. On the face of the above statement, I am of the opinion that there was no occasion for the Plaintiff to make an application for discovery against the minor Defendant No. 7, on the 8th March, 1951.

6. In meeting the further argument of the Plaintiff''s attorney before him that the costs of the application for discovery must in any event, be allowed under Rule 23, Chapter VI, of the Original Side Rules where it is provided that, in chamber application "unless otherwise prescribed or ordered" the costs "shall be "costs in the suit or matter", the Taxing Officer gave his further reasons in his order in these terms:

It is not disputed that the costs of all the applications and proceedings chambers shall be costs in the suit or matter unless otherwise prescribed or ordered. If the Plaintiff had made six separate applications for discovery as against the s Defendants in this suit and obtained orders for discovery as against them separately could he have invoked the aid of Rule 23, Chapter VI, of the Original Side Rules respect of his claim for costs of such applications? Certainly not. If the Could came to know that he had already made applications for discovery against Defendants 1 to 6 and was making a fresh application for an order for discovery again minor Defendant No. 7, the Court would have considered the application on own merits and made necessary orders as to costs. The fact that the Plaintiff had already obtained an order for discovery against Defendants 1 to 6 was perha not disclosed in the application the Plaintiff made against the minor Defendant No. 7 on the 8th March, 1951, and as such the Court was not in possession of the actual facts and, therefore, did not perhaps make any order as to costs in the said application.

7. The Taxing Officer proceeded on the hypothesis of what the Court would have done and observed:

If the Plaintiff had in his application for discovery against the minor Defendant No. 7 stated the correct facts and if the Court had the opportunity to read with was stated in the voluntary statement filed by the guardian-ad-litem, the Could would have rejected the Plaintiff''s application for discovery against the mire Defendant No. 7 made on the 8th March, 1951, under Order XI, Rule 12, of the CPC and perhaps with costs.

8. Finally the Taxing Officer comes to the conclusion:

In the present case the minor Defendant had no knowledge of the facts pleaded in the plaint and accordingly left the matter entirely to the discretion of the Court. There was, therefore, in my opinion, no necessity for obtaining an order for discovery against the said minor Defendant and Assistant Taxing Officer, Sri H.K. Ganguli, correctly disallowed all charges relating to the application resulting in the order for discovery dated the 8th March 1951.

9. With these observations the Taxing Officer discharged the exceptions and concluded his order with a reference to Rule 11, Chapter XXXVI, Original Side Rules, which I have quoted above.

10. Now, it appears to me that there is a very great confusion made both by the Plaintiff''s attorney as well as by the Taxing Officer.

11. The Plaintiff''s attorney is not right in his submission that the order of March 8, 1951, gave the costs. In fact, in that order no direction for costs was made. Neither the Master''s summons for discovery asked for costs nor did the order for discovery made thereon expressly give any costs or make any reference as to costs. It was, therefore, necessary for the Plaintiff''s attorney to invoke Rule 23, Chapter VI of the Original Side Rules with regard to his claim for such costs. As this was a case which was not ''"otherwise prescribed or ordered" the Plaintiff''s attorney naturally claimed that such costs should be costs in the suit. It was not so much, therefore, a case of the Taxing Officer sitting in judgment over an order of the Court allowing costs as going against the provisions of Rule 23, Chapter

VI, Original Side Rules.

12. The Taxing Officer as well as the Assistant Taxing Officer, on the other hand, were equally wrong in themselves disallowing costs, without reference to the Court, on the ground that the application for discovery against the minor Defendant was unnecessary when the Court had ordered discovery against such minor Defendant. In so far as they did so, they were sitting in judgment over the necessity or propriety of such an order which has already been made by the Court without bringing the matter to the notice of the Court as required by Rule 11 of Chapter XXXVI of the Original Side Rules. The Taxing Officer is not entitled to proceed on the assumption that an order of the Court was made unnecessarily without reference to the Court. The further error of the Taxing Officer was due to a misunderstanding of the provisions of Rule 11, Chapter XXXVI, Original Side Rules. That rule is as follows:

Upon the taxation of the costs which shall have been allowed by any decree or order, made in a suit, the Taxing Officer shall make a general examination of the course of the proceedings on which such costs shall have arisen, and where he shall find that any part of such proceedings, attended with costs, has been injuriously or unnecessarily occasioned by the culpable negligence or improper conduct of any attorney, he shall not allow any charge for the same without the matter being brought to the notice of the Court, and for the better enabling the Taxing Officer to make such inquiry, the officers of the Court shall allow him, without fee, to examine the proceedings in the different offices. The Taxing Officer shall be at liberty to report to the Court any matter arising out of this rule, on which either himself, or any of the parties interested may desire that the decision of the Court shall be obtained.

13. It will be plain from a reading of this rule that when the Taxing Officer, on a general examination of the course of the proceedings, finds that any part of such proceedings has been injuriously or unnecessarily occasioned by the culpable negligence or improper conduct of any attorney, he shall not allow any charge for the same without the matter being brought to the notice of the Court. The duty of the Taxing Officer under this rule is clear. He has first to make a general examination of the course of proceedings. Then he has to come to a finding that any part of such proceedings has been injuriously or unnecessarily caused by culpable negligence or improper conduct of any attorney. When he does come to that finding, his duty is not to allow that charge which he considers injurious or unnecessary but refer the same to the Court. The reason for bringing the matter to the notice of the Court under this rule is obvious. It is because the Court has already made an order and therefore, the Court should be the ultimate authority to say, after its notice has been drawn to all the facts and findings of the Taxing Officer, whether the charge in respect of the order it passed should be allowed or not. Therefore, the Taxing Officer cannot disallow the costs in respect of such order without such reference to the Court. If that were not the interpretation, then the Taxing Officer would be in a position, in every case, to disallow costs in

respect of orders made by Court without reference to the Court and then avoid such reference by saying, as he does here, that no such reference is needed because the costs have been his allowed by him. That will make the situation impossible. The rule expressly says he shall not allow such charge without bringing the matter to the notice of the Court. In so far therefore, as the Taxing Officer disallowed the costs in this case without reference to the Court, he was exceeding the power under Rule 11, Chapter XXXVI, Original Side Rules. The reason behind Rule 11, Chapter XXXVI, Original Side Rules for investing the Taxing Officer with this power not to allow such costs, even in the case where a decree or order has allowed such costs, is that he is in a better position, by virtue of his "general examination of the course of proceedings", to discover whether a particular decree or order for costs refers to part of the proceedings where costs have been injuriously or unnecessarily caused by the culpable negligence or improper conduct of the attorney than the Court or the authority making the decree or order because, when that is made, a general examination of the course of proceedings is not made by the Court or authority making the decree or order. But this is only a check in the hands of the Taxing Officer and is not an unqualified power. If he has to act on it, he can only do so by bringing it to the notice of the court. The difficulty now lies in the course which this Court should follow in a case like this. Clearly, the Taxing Officer was wrong in disallowing the costs without reference to the Court and his decision, therefore, must be set aside. I can, after setting aside his order, either tax the costs myself by following or disallowing such costs or I can direct the Taxing Officer to re-hear the exceptions in the light of the principles said down in this judgment so that there may be a fresh taxation. The power of the Judge reviewing taxation and making any order, in course of such review is very wide. Under Rule 72 if Chapter XXXVI, Original Side Rules, the Judge may make "such order as to him may seem just" while reviewing the taxation. To send this back to the Taxing Officer in such circumstances, in this case, will be only to encourage multiplicity of proceedings for a conclusion foregone, because the Taxing Officer has already expressed his view that he would have liked to make a report under Chapter XXXVI, Rule 11, Original Side Rules, but that he did not make it on the ground that the costs were disallowed by the Assistant Taxing Officer and thereby misconceived that rule. If, therefore, I send this back to the Taxing Officer, what he would do, and he has no other option having regard to the view he has already expressed, would be to make a report under Rule 11, Chapter XXXVI, Original Side Rules, taxing the very same grounds as he has done in his order. His reason in a report under Rule 11 of Chapter XXXVI, Original Side Rules, will be the same as in this order complained against, that this order of discovery against the minor Defendant was, in the facts and circumstances, "unnecessarily occasioned by the ''culpable negligence or improper conduct of the attorney". I will, therefore, treat this order of the Taxing Officer, dated April 28, 1954, as his report under Rule 11 of Chapter XXXVI, Original Side Rules, after setting aside only that part of his order where he constituted himself the final authority to disallow the costs without reference to this Court. What the Taxing Officer could not do, this Court, however, can. It can do so not only under Rule 11 of Chapter XXXVI, Original Side Rules, but also under Rule 72, Chapter XXXVI, Original Side Rules, where the powers of the reviewing Judge are wide enough as already indicated. On the facts already stated, I, therefore, disallow the fasts of the Plaintiff''s attorney in respect of the 15 items of the ill of costs which are incidental to the application of the Plaintiff for discovery against the guardian-ad litem of the minor 7th Defendant, as being entirely unnecessary and caused by the culpable negligence or improper conduct of the attorney.

14. The order, therefore, is as follows: I set aside the order of the Taxing Officer, dated April 28, 1954, in so far as he himself finally disallowed those costs without reference to this Court but treat the rest of his order dated April 28, 1954 and the facts and reasons given therein as a report under Rule 11 of Chapter XXXVI Original Side Rules, bringing such facts and reasons to the notice of this Court.

15. Also under Rule 72 of Chapter XXXVI, Original Side Rules empowering the Judge to make any order which to him seem just, I am of the opinion and I consider it just that these cost which the Plaintiff''s attorney has claimed should be disallowed I disallow these costs also under Rule 72 of Chapter XXXVI, Original Side Rules.

16. I dismiss the application with the order I have indicated but I make no order as to costs of this application.

