

(1937) 10 BOM CK 0005

In the Bombay High Court

Case No : O.C.J. Appeal No. 37 of 1937 and Suit No. 1568 of 1936

Gopilal Ghasiram

APPELLANT

Vs

Koshalkishore Parasram

RESPONDENT

Date of Decision : 07-10-1937

Acts Referred:

Citation : AIR 1938 Bom 224 : (1938) 40 BOMLR 256

Hon'ble Judges : John Beaumont, J;Blackwell, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This is an appeal from a decision given by Mr. Justice Engineer. It relates solely to costs. The plaintiff was filed as a short cause, and owing to the fact that the defendants, who are minors, were living outside the Bombay Presidency a good deal of out-of-pocket expenses were incurred in effecting service upon them. The learned Judge made an order that the defendants do pay Rs. 350 for the costs of this suit.

2. Now the learned Judge had before him a list of the out-of-pocket expenses, which amounted to Rs. 330. Of that amount Rs. 240 represented Court-fees, and Rs. 90 represented fees to counsel for drawing the plaintiff and for appearance in Court, fees which do not seem unreasonable having regard to the complexity of the matter. Item 56 of the Table of Fees provides that costs for ex parte short causes, unless otherwise ordered, are to be a lump sum of Rs. 250. As the order shows the plaintiff claimed that the costs should be taxed. The learned Judge instead of doing that gave the plaintiff Rs. 100 more than the scale fee.

3. It is said on this appeal that the learned Judge did not exercise his discretion, and the result of his order is that the solicitors will only get Rs. 20 for their labour, and that the client will have to pay them a substantial sum. But no evidence was adduced before the learned Judge to show what work the solicitors had done.

4. We are invited to lay down a principle for the guidance of Judges hearing interlocutory matters. The only principle is that costs, as is well known, are given as an indemnity, and the costs allowed ought to be sufficient to cover the client in respect of the costs due to his solicitors which would be allowed on taxation between party and party. But the Judge must be given some materials on which to form an opinion. It does not follow that because the out-of-pocket costs are heavy, therefore the solicitors' charges also will be heavy. It may be that most of the work done in this case was done in the Prothonotary's office, and in the absence of any evidence I do not know, and the learned Judge did not know, what work the solicitors had done. I should think that probably Rs. 20 is rather inadequate remuneration for the work which has probably been done, but I am not prepared, in the absence of any evidence, to interfere with the order of the learned Judge which he made in his discretion.

5. In these cases if solicitors want to satisfy the Judge that they have done a substantial amount of work which will not be covered by the scale fee, they ought to put in an affidavit shortly stating what work has been done. It is not necessary to go into minute details, but the Judge should be given some material on which he can form an estimate as to the proper sum to be allowed for work which the solicitors have done.

6. Here I cannot say that the learned Judge erred in principle in allowing Rs. 20 only for solicitors' charges, and I think, therefore, that the appeal must be dismissed with costs.

Blackwell, J.

7. I agree.