

(1928) 11 MAD CK 0033
In the Madras High Court

In Re: The United India Life Assurance Co., Ltd.

Date of Decision : 23-11-1928

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : 117 Ind. Cas. 301

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Single Bench

Judgement

Mr. Justice Kumaraswami Sastri, J.—This is an application for review of taxation. The original application was by a notice of motion u/s 45 of the Specific Relief Act for directing the United India Life Assurance Company, Limited, to do certain things. The application is also entitled "In the matter of the United India Life Assurance Company, Limited," as required by the rules. But this is not an application under any of the sections of the Indian Companies Act. It is purely an application u/s 45 of the Specific Relief Act. The learned Judge dismissed the application with "costs," but the order as drawn up is "taxed costs".

2. The contention raised by the applicant is that the order is wrongly drawn up, inasmuch as the old Judge did not allow "taxed costs". The other contention is that, as the party did not appear by Attorney but only by Counsel, he is not entitled to bring in the bill for each item of work done and that all that the Court could do, even if the order as drawn up is right, is to award such costs as are allowable to an Advocate appearing in a notice of motion. I think Rule 20 of Order VI of the Fees Rules only refers to petitions or proceedings under the Indian Companies Act, Probate and Administration matters, petitions under the Guardian and Wards Act, Income Tax cases, Habeas Corpus applications, claims to attached properties, applications under the Trustee Act, Administrator-General's Act, Arbitrations, and similar matters. I do not think that there is any provision under the Rules by which an application u/s 45 of the Specific Relief Act will entitle an Advocate not appearing by Attorney to bring in an itemised bill as has been done in the present case charging for attendance and various other matters as if the Advocate himself was both Attorney and Advocate. The petitioner's Advocate states that he is willing that the bill may be taxed and does

not want an amendment of the order, but his contention is that it should be taxed on the footing of a notice of motion conducted by an Advocate without an Attorney and that he is prepared to pay whatever fees the Taxing Officer will allow on such taxation. I think his contention is right. If the matter does not fall under Order VI, Rule 20, it is clear that the bill such as is brought in by the Advocate for the counter petitioner cannot stand.

3. I allow the application and direct the Taxing Officer to tax the bill on the footing that the order is for taxed costs on a notice of motion presented and conducted by an Advocate without an Attorney.