(1908) 12 BOM CK 0002

In the Bombay High Court

Madhavji Kamdar and Chhotubhai APPELLANT

Vs

Dada Mahomed RESPONDENT

Date of Decision : 11-12-1908

Acts Referred:
Solicitors Act, 1843 — Section 43

Citation : 1 Ind. Cas. 201

Hon'ble Judges : Russell, J

Bench : Single Bench

Judgement

Russell, J.—This was a petition in re certain costs of Madhavji and Co.

2. Messrs Madhavji Kamadar and Chhotubhai presented a petition for an order that the Taxing Master do tax bills of costs of petitioners with reference to the matters referred to in the petition.

3. The opponents, inter alia, deny their retainer of the petitioners.

4. The petition is presented under the new Rule 544, which was passed to give effect to the decision of Davar, J. In re Framji G. Markar 9 Bom. L.R. 1014. The rule runs as follows:

544. The Taxing Officer shall tax the bills of costs on every side of the Court (except the appellate side) and in the Insolvent Court. All other bills of costs of attorney shall also be taxed by him when he is directed to do so by a Judge''s order.

5. It will be observed that this rule is imperative, and it has been held that an attorney can obtain an order in taxation of his costs, although he knows that his client disputes the retainer as to the whole bill: In re Jones (1887) 36 Ch. D. 105.

6. Where the retainer is disputed, it appears clear that payment of the amount due to the attorney can be enforced by an action only: see Solicitors Act, 1843, Section 43. and In re Debenham and Walker (1895) 2 Ch. 430, and Re Clarence Marcourt (1887) 32 S.J. 92.

7. Now it is obvious that before an attorney files his suit, it is essential that the amount he claims be ascertained, and it appears to me desirable, both from the point of view of the attorney and the client, that that should be done. Until taxation, the sum certain cannot be known.

8. Again, it is competent for the client to dispute the retainer before the Taxing Master with reference to each and every item of the bill: In re Jones (1887) 36 Ch. D. 105. Assuming that the clients do so in this case, it may be they will be satisfied with the result of the taxation, in which case it is possible that a suit by the attorney will not be necessary.

9. I, therefore, make an order in the terms of the prayer of the petition. But it, is to be hoped that the Taxing Master will ''scrutinize with great care the correspondence that has been produced before me in this matter, the greater balk of which, in my opinion, is wholly unnecessary.

10. The cost''s of this application are reserved and will abide the result of the taxation or the subsequent suit.

