

(1926) 02 BOM CK 0003
In the Bombay High Court

Mahadeo Ganesh Jamsandekar	Vs	APPELLANT
Secretary of State		RESPONDENT

Date of Decision : 23-02-1926

Acts Referred:

Citation : AIR 1926 Bom 367

Hon'ble Judges : Macleod, C.J

Bench : Division Bench

Judgement

Macleod, C.J.—This case, which was filed in the District Court of Ratnagiri against the Secretary of State for India, was dismissed by the District Judge on a preliminary point, viz., that he had no jurisdiction to try the suit. The defendant was awarded his costs, and when those costs came to be taxed, if the matter had not gone any further, the defendant would have been entitled to one-fourth of the full pleaders' fees. An appeal was preferred to the High Court, which set aside the order dismissing the suit, and remanded the case for re-trial to the District Court. The District Court again dismissed the suit, and an appeal to the High Court was also dismissed.

2. A question arose with regard to the taxation of the vakils' fees in the District Court, and it appears that the defendant was allowed the full fee for the hearing of the preliminary point and again a full fee for the final hearing. An application was made to the District Court for amending the taxation. The Judge said:

This application does not lie to this Court as the decree of this Court has no separate existence after the decision of the appeal by the High Court on December 6, 1921. The order passed by me on February 20, 1920, appears to have been passed without notice to the other side. The other side, therefore, has a right to be heard on the point of pleaders' fees. But this Court unfortunately has no longer power to go into the question.

3. The first question is whether the District Judge was right in holding that after an appeal had been preferred to the High Court and an order had been made

dismissing the appeal, he was no longer competent to deal with the matter of taxation arising in his own Court under the decree passed, by him. It has been held in this Court in *Shivlal v. Jumaklal* [1893] 18 Bom. 542 that when a decree of the Court below has been confirmed on appeal by the High Court, the decree of the High Court incorporates the decree of the lower Court, and, therefore, any application for the amendment of the decree would have to be made to the High Court and not to the lower appellate Court. We are not dealing in this case with any question affecting the drafting of the decree, but we are dealing simply, with the question of taxation.

4. In our opinion the District Judge was competent to decide whether the order of taxation of the costs in his own Court was right or not. There was no necessity for such a matter to come to this Court. However, as the matter has been brought before us, we can decide the question whether the defendant was entitled to full pleaders fees on the first hearing in the District Court when the suit was decided on the preliminary point. We think it clear that u/s 7 of Act I of 1846, which prevailed when the suit was heard, the defendant was entitled, when the suit was decided on the preliminary point and not on the merits, to one-fourth of the fees which would have to be paid in the suit if it had been decided on the merits.

5. The applicant will be entitled to his costs of the application. Costs in the order of remand were made costs in the cause, and those costs will have to be paid by the plaintiffs.