
(1911) 06 BOM CK 0001
In the Bombay High Court
Case No : O. C. J. Suit No. 75 of 1911

Payne and Co.

APPELLANT

Vs

Pirojshah Nusserwanji Patel

RESPONDENT

Date of Decision : 16-06-1911

Acts Referred:

Succession Act, 1925 — Section 4

Citation : (1911) 13 BOMLR 920 : 12 Ind. Cas. 554

Hon'ble Judges : Davar, J

Bench : Single Bench

Judgement

Davar, J.—This case is an offshoot of case No. 3 of 1910 filed in the Parsi Chief Matrimonial Court by the defendant Pirosha Nusserwanji Patel against his wife Soonabai and which was heard before me in July last. For a correct appreciation of the questions in dispute in this suit, it is necessary to set out shortly the facts and circumstances of that case, The parties at the hearing of this suit agreed that I should treat all the papers in that case as papers before the Court in this suit.

2. In the Matrimonial Suit, the defendant in this suit Pirosha charged his wife Soonabai with having committed adultery with the co-respondent therein and prayed for a decree for the dissolution of his marriage with her. Soonabai denied adultery with the co-respondent but admitted that she was compelled to have illicit intercourse with Pirosha's father, that Pirosha knew of this and connived at it and that he had condoned the offence. It was contended on her behalf that if the husband had been guilty of connivance and condonation as alleged by her, he was not entitled to succeed even though adultery with the co-respondent or with other persons were proved against her. The fight between the parties at the outset was most acrimonious. The plaintiff applied for commissions to examine his witnesses at Bangalore, Madras and Ootacamund and those commissions had to be granted. These commissions were executed and voluminous evidence was recorded. The case came on for hearing on the 4th of July. A suggestion from the

Court, that in view of the fact that there were children of the marriage, it was desirable to avoid in some way the unpleasant trial of a most unpleasant action, was not accepted. The hearing proceeded and the case was heard on the 4th, 5th and the 6th of July. At 1-35 on the third day of hearing, I was informed that the parties were settling their differences and I was asked to give them time till 3-30, p. M. This was done. At the re-assembling of the Court, I was asked to record the following decree by consent of all the three parties:?

Suit dismissed. All allegations made by the plaintiff to the suit against other party or parties and allegations made by the defendant against her father-in-law Nusserwanji unreservedly withdrawn, Plaintiff to pay defendant's costs of the suit. To other order as to costs.

The above order relating to costs to be without prejudice to any right the defendant's attorneys may have in law to recover their attorney and client costs from the plaintiff.

3. The last reservation in favour of Soonabai's solicitors is embodied in the decree.

4. Though the recorded decree was merely a dismissal of the suit, every elaborate term was arranged between the husband and wife and a rough draft of those terms was read out to me before I recorded the decree. The terms of the compromise however, were not carried out by Soonabai and the plaintiff Pirosha applied to me for a rule calling upon her to show cause why the decree should not be set aside and the trial proceeded with on the ground that she had fraudulently obtained the dismissal of the suit by agreeing to terms which she never intended to carry out. When the rule came on for hearing, better counsel seemed to have prevailed and Soonabai carried out the terms of the compromise, so that the rule had to be discharged. But her conduct after decree seemed , to me to have been reprehensible and I directed that she should bear her own costs of the rule.

5. The plaintiffs in this suit, Messrs. Payne and Company, were Soonabai's solicitors in the matrimonial suit. They have filed this suit against Soonabai's husband. In their plaint, after setting out the material facts of the matrimonial suit, they say :?

That they supplied to the said Soonabai the necessaries for the purposes of her defence aforesaid and matters connected with and incidental thereto and the plaintiffs' bill of costs amounts to Rs. 19,904-7-4 which the plaintiffs claim to recover from the defendant as necessaries supplied to his wife * * and for which the defendant is liable to pay.

6. The defendant in his written statement raises various defences to the action and says :?

That the greater portion of the costs incurred by the plaintiffs on behalf of the defendant were unnecessary and extravagant having regard to the financial

position of the said Bai Soonabai and of the defendant and should not be allowed as claimed.

7. Later on the defendant submits :?

That he has no means where out to make any payment and if a decree is passed against him the defendant should be allowed to pay the same out of his salary which at present amounts to three hundred Rupees a month, out of which he pays Rs. 100 a month to the said Bai Soonabai under the said deed of compromise.

8. With reference to the defendant's complaint that the costs incurred on behalf of his wife were unnecessary and extravagant and that he has no means whatever to make any payment, it would be interesting to notice that the plaintiffs allege that he had retained six leading counsel and had himself incurred costs which they believe amounts to Rs. 36,000. The defendant does not deny the allegation that he had retained six leading counsel and though he says he did not incur costs to the extent of Rs. 36,000 he does not say how much his own costs amount to. On turning to my notes I find that five counsel appeared for him at the hearing excluding Mr. Lowndes who had appeared for him with two other counsel in Chambers on an interlocutory application. On behalf of his wife, only one counsel was instructed throughout. Various applications were made to me in that suit in Chambers, such as for further particulars, discovery, inspection, security for costs, etc., and if they had been entertained or encouraged, the costs would have increased very considerably.

9. The main question in this suit is, whether the plaintiffs, Messrs. Payne & Co., are entitled to maintain this suit against their client's husband and recover from him their costs as between attorney and client as necessities supplied by them to his wife.

10. It will clear the ground at the outset to state that it is not contended on behalf of the defendant in the present suit that his wife had any separate property before he filed his suit against her. All she then had were ornaments worth about Rs. 3,000 which were presented to her on her marriage, and was, under the Rulings of the Bombay High Court, the joint property of the husband and the wife. About half of those ornaments she had disposed of for the expenses of herself and her children, between the time she was sent out of her father-in-law's house and the time this suit was filed. The remaining ornaments worth about Rs. 1,500 she deposited with her solicitors and they have possession of them. Under the compromise effected in the suit she became the owner of those ornaments and became entitled to other ornaments of the value, according to Mr. Dinsha's evidence, of about Rs. 6,000. These also are in the possession of the plaintiffs. The defendant contends that the solicitors ought to look to these ornaments for their attorney and client costs. Soonabai's father, who is a Government pensioner, is a man of very small means and he paid to her solicitors from time to time small sums of money aggregating to Rs. 2,400. The

defendant contends that that sum also should be appropriated by the plaintiffs towards their claim in the first instance. These questions are raised in issue No. 9 and I will deal with those questions after I have dealt with the main question in the suit as to the defendant's liability to pay the solicitor and client costs claimed by the plaintiffs from him. Both the learned Advocate General and Mr. Raikes have argued this case before me with much earnestness and spared themselves no pains to put their contentions before me with force and clearness. They have drawn my attention to numerous cases bearing on the questions under discussion and pointed out with great fairness all cases both favorable and otherwise to the respective views they advocated.

11. I am afraid it is too late in the day now to raise the question as to whether the Common Law of England does or does not apply to the Parsis who inhabit the town and island of Bombay. In *Naoroji v. Roger* (1867) 4 Bom. H. C. R. 1, Westropp J. held that it did and that case has been followed by a series of decisions of this Court holding that except where there is special legislation affecting the community, the Common Law of England applied to the Parsis residing in the Presidency Town of Bombay. The authorities leave no doubt whatever that under the Common Law of England the wife is entitled to pledge her husband's credit and defend herself at his costs in any action that he may file against her for dissolution of his marriage with her. The result of all the most important cases on the subject is admirably summed up in Halsbury's Laws of England, Vol. XVI, at pages 428 and 429, where it is stated as follows:?

A wife who is deserted by her husband, or is turned away by him without adequate cause, or is compelled to leave him in consequence of his misconduct, has, by implication of law, authority to pledge his credit for the costs of taking legal advice, and for costs as between solicitor and client of and in connection with such legal proceedings as may be necessary for her security and protection, or as may reasonably be incurred in taking proceedings against him....

A wife also has authority, by implication of law, to pledge the credit, of her husband for costs reasonably incurred by her in respect of the prosecution or defence of proceedings for a dissolution of the marriage instituted by her or by her husband or in respect of proceedings for a judicial separation, the solicitor acting for her being entitled, in the event of success, to sue the husband for all the extra costs reasonably incurred beyond those allowed on taxation between party and party.

It is not necessary, in order to charge the husband, that the wife should be successful in the proceedings but the costs must be incurred reasonably.

12. Every one of the propositions laid down in the paragraphs I have cited above are based on good authority and I have set out the passages in extensor as it will save me the trouble of discussing these cases separately. Although in law it is not necessary that the wife should be successful in the proceedings in order to enable her solicitors to charge the husband, it is to be noted that in the case

before the Chief Parsi Matrimonial Court the wife came out of the proceedings supremely triumphant and to me, who was familiar with every move in the case, it was clear that the triumph was mainly due to the exertions of the solicitor Mr. F. E. Dinsha who attended to her case. There were very ugly charges made against her and voluminous evidence was recorded against her on the commissions issued by the Court. Nothing that could be done for the husband was left undone and yet at the end of three days hearing she succeeded in having the suit dismissed against her with all allegations unreservedly withdrawn. She got permanent alimony secured to her and got ornaments of large value given to her. It may be that the defendant in compromising the suit was influenced by the suggestion of the Court and by a desire to act kindly towards his wife for the sake of his children. The terms of the compromise were undoubtedly generous to the wife. Whatever may have been the defendant's motives, for the purposes of this suit, it must be held that the wife was successful in the suit instituted against her by her husband.

13. A large number of English cases have established, beyond doubt, that in matrimonial cases the wife has a right to pledge her husband's credit for her costs. It is not here necessary to discuss the various circumstances under which the solicitors of even an unsuccessful wife who had made charges against her husband which she failed to establish, were still held entitled to claim their costs against the husband. Here we have a husband attacking the wife, the wife was clearly entitled to defend herself in the best way she could. She engaged the plaintiffs. Mr. F. E. Dinsha who attended to her case has told the Court that he knew Soonabai's father and brother before the suit and that when he took up the case he looked to the husband for his costs. The defendant being a Parsi to whom the Common Law of England is applicable is *prima facie* bound to pay to his wife's solicitors their attorney and client costs. Mr. Raikes argued that this Common Law right of the wife was based on the consideration that in former time when the wife married, the husband became owner of all her property and therefore it was thought necessary to invest the wife with the power of defending herself by pledging her husband's credit. The learned Counsel contended that various legislative enactments in the nature of Married Women's Property Acts had effected a change in the status of married women and therefore the old rule authorizing a wife to pledge her husband's credit could no longer be put in force against the husband. Reliance was placed on Section 4 of the Indian Succession Act and the Married Women's Property Act passed in India to show that the status of married women had been similarly altered in India and therefore the old rule of English Common Law ought not to be enforced against husbands in India. Cases decided in England long after the passing of the Married Women's Property Acts do not give any indication that the Common Law rule has been abrogated or altered in any way. The view pressed upon the Court by Mr. Raikes seems to derive some force from the judgment of Pontifex J. in *Proby v. Proby* ILR (1879) Cal. 357, wherein it was held that in a suit for judicial separation between persons subject to the Indian Succession Act the Court will not, unless

under exceptional circumstances, order the husband to give security for his wife's costs. Though this case has been followed in some other Calcutta cases, reluctantly by Pigot J. in *Young v. Young* ILR (1886) Cal. 916, when the question arose before Mr. Justice Farran in Bombay in *Mayhew v. Mayhew* ILR (1894) 19 Bom, 293, he took a different view and held that in a suit for divorce instituted by a husband against his wife the Court has a discretion to make the husband pay the wife's costs already incurred and to give security for her further costs. Referring to *Proby v. Proby*, Mr. Justice Farran observed that too much stress seemed to have been placed on the origin of the rule in *Proby v. Proby* and too little upon the real reason for its continuance. The arguments addressed to this Court by Mr. Raikes on this point are completely answered by Mr. Justice Farran, in his judgment, where, after setting out the reason for the continuance of the rule as given in *Brown and Powles on Divorce*, he says:?

Section 4 of the Succession Act (X of 1865) enlarges the possibilities of the wife possessing means to pay her own costs, but (if she does not possess such means) does not do away with the advisability of the rule. The passing of the Married Women's Property Act in England, even that of 1882 has not produced any alteration in the rule of the Divorce Court there.

14. In the present case there is no question that the wife, beyond possessing ornaments of trifling value, which, under the law, were the joint property of herself and her husband, had no property or means whatever wherefrom to defray the costs of defending herself against her husband. The foundation for the Common Law rule is that where the wife finds it necessary to protect herself and her interest, more especially if she is attacked by her husband, she ought to have the means to do so and is, therefore, entitled to pledge her husband's credit for all proper and reasonable costs necessary to defend herself, Soonabai had no means and the solicitors to whom she went knew that she had no means and accepted her case relying on the law which enabled them to look to her husband for all her costs. It seems, therefore, that whatever may be the decision in other cases where the wife may be possessed of separate property enabling her to defray her own costs, in this case neither Section 4 of the Indian Succession Act nor the Married : Women's Property Act makes any difference in the Common Law Rule which makes the husband responsible for his wife's costs to her solicitors.

15. It was next argued that the provisions of Section 33 of the Parsi Marriage and Divorce Act, XV of 1865, limited the liability of a Parsi husband for his wife's alimony and costs to a sum not exceeding one-fifth of his net income. This argument seems to me to be wholly untenable. The provisions of Section 33 relate merely to orders pending the suit. The payments contemplated in this section are merely payments "during the suit" and does not in any way limit or qualify the liability of the husband to the wife's solicitors.

16. It was next pointed out that the High Court has framed a table of fees and it was argued that the Court had no power to award anything more than what is

fixed in that table. That table is headed :?

The following fees only shall be allowed in cases tried under Act XV of 1865.

17. At the bottom of the table the following appears :?" Costs between party and party will be taxed by the clerk of the Court."

18. It seemed to me to be quite clear that when the Parsi Marriage and Divorce Act was framed and even later on when the table of fees was settled the question that has now arisen was never present to the minds of the framers of the Act and the table. Section 33 of the Act merely contemplates cases where the wife may not have means sufficient to pay "all the necessary expenses" of prosecuting or defending a suit for divorce or judicial separation and limits the husband's liability to pay such expenses as well as his wife's maintenance pending the suit to one-fifth of his net income. It is very difficult to decide what is the significance to be attached to the word only in the heading to the table of fees. No doubt the framers of the table desired that the costs in a Parsi matrimonial suit should be as low as possible but if it is argued that the word only means that the Court has no power under any circumstances to award anything more than what is provided for in the table and that it was intended to limit the costs to what is strictly in the table and that the table should be treated as exhaustive and excluding all and every item of costs other than those mentioned in the table then we are led into grave absurdities.

19. For instance, there is no provision for costs of correspondence or a commission to take evidence which, in many cases, is absolutely necessary. It would be manifestly absurd to argue that no costs in a Parsi matrimonial suit could be allowed for correspondence which may have been perfectly proper and usual under the circumstances of the case or that no costs could be allowed for a commission however necessary such a commission should have been. Again, the table provides for fee for the attendance of an advocate and also provides for the fee "For attorney or pleader with advocate." No provision is made for preparing a brief for the advocate. Now how is a pleader or an attorney to instruct an advocate without sending him a brief? And it is again manifestly absurd to suppose that Rs. 45 which is the fee fixed for an attorney or pleader's attendance with advocate on the first day of hearing would include his remuneration for preparing a brief for counsel at the hearing.

20. Strange as it may appear, a provision is made in the table for payment of Rs.5 to an attorney or pleader for attendance on the day of presenting a plaint or written statement; but no provision is made for preparing or drafting a plaint or written statement. A plaint or written statement is always presented to the clerk of the Court and filed as a matter of course. I cannot understand why an attorney or pleader should be paid Rs.5 for "attendance on the day of presenting a plaint or written statement." It seems to me quite clear that no such meaning could be given to the word only in the heading to the table as was contended for at the hearing on behalf of the defendant.

21. The provision at the foot of the table for taxation of party and party costs also leads to the inference that the awarding of attorney and client costs by the Parsi Matrimonial Courts was within the contemplation of the framers.

22. On having the records of the Parsi Chief Matrimonial Court searched, I find that Mr. Justice Mulvill on the 18th of January 1883 in suit No. 3 of 1882 made an order in the following terms:?

Plaintiff ordered to pay all coats to be taxed between attorney and client.

23. In that suit the husband sued for dissolution of his marriage and charged his wife with having committed adultery and procured abortion. His solicitor eventually asked permission to withdraw the suit and the Court made the order for costs in the terms set out above.

24. Then again it must be remembered that the table of fees contemplates merely party and party costs as between the parties to a Parsi matrimonial suit and does not touch the rights of a wife's solicitors to recover from the husband their attorney and client costs as necessities supplied by them to the wife. But even if the contentions of the defendant were to be allowed and it was found that u/s 33 of the Act and the table of fees the costs to be awarded to a wife in a matrimonial suit are to be limited to one-fifth of the husband's income and to the amounts mentioned in the table there is clear authority for holding that that does not affect the rights of the wife's solicitors to recover their attorney and client costs from the husband.

25. In *Ottaway v. Hamilton* (1878) 3 C. P. D. 393, it was held that a wife's solicitor may sue the husband for extra costs, i. e., costs reasonably incurred by him beyond the costs taxed and allowed as between party and party. In this case it is laid down that the solicitor's Common Law right to sue the husband as for "necessaries" supplied to the wife is not to be limited to the statutable rights and remedies for costs given to the wife under the Divorce Acts. For these reasons it seems to me that the defendant's contentions based on Section 33 of the Act and the table of fees cannot prevail.

26. The second issue in this suit raises the question whether this suit will lie, having regard to the order made in the Parsi Matrimonial Court on the 12th of April 1910, and issue 10 questions whether having regard to the order made as regards the costs of commissions in the said suit and the payment made to the plaintiffs thereunder, the plaintiffs can claim any costs in respect of the said commission.

27. On the 9th of April the defendant in the matrimonial suit obtained a summons calling upon the plaintiff to show cause why the defendant's expenses of that suit should not be taxed from time to time and why the plaintiff in that suit should not be ordered to pay such expenses when so taxed to the defendant's attorneys and why security should not be given, etc.

28. This summons was argued before me on the 12th of April when I dismissed

the same reserving the costs thereof. I did so because I thought it was most undesirable to make the very large order asked for in the summons at that stage of the suit. Previously to this, on the 8th of April 1910, I had ordered the plaintiff in that suit to pay to his wife's solicitors Rs. 150 towards the defendant's costs. That order was made in the exercise of the discretion vested in the Judge u/s 33 of the Parsi Marriage and Divorce Act, and was without prejudice to any application that may be subsequently made by the wife.

29. Again, on the 14th of April 1910 when I made an order for the issue of commissions I ordered the husband to pay to the wife forthwith a sum of Rs. 320 towards the costs of the commission.

30. It is contended in this suit that these orders now preclude the plaintiffs from maintaining this suit and claiming any further costs from the husband. When I dismissed the summons I did not decide that the wife was not entitled to the order she asked for. All I did was to refuse to make the order at that stage of the suit, and the other orders for payments of Rs. 150 and Rs. 320 distinctly state that these payments were to be made towards the costs of the suit and the commissions. Quite apart from these considerations there is very strong authority for holding against these contentions of the defendant.

31. In *Robertson v. Robertson* (1881) 6 P.D. 119, the Court of appeal held that in a divorce suit the costs of the wife payable by the husband are not limited to the amount paid into the Court or secured by the husband for that purpose. In that case Sir James Hannen, the President of the Divorce Court, had limited the order for costs granted to the respondent wife to "the amount paid into Court or secured by the petitioner for that purpose." The Court of Appeal, consisting of Sir George Jessel, Master of the Rolls and Lords Justices Brett and Cotton, varied the order and directed that the limitation should be removed; the Master of the Rolls observing that it appeared to him that where the defence was fairly and reasonably conducted the solicitor ought to be paid in full his costs, that is, his costs properly incurred. The comments of Sir James Hannen on the appeal Courts' judgments in *Robertson v. Robertson* in the subsequent case of *Smith v. Smith* (1882) 7 P.D. 84, make very interesting reading and throws much light on the question of the practice of the English Courts in allowing wife's costs against her husband in divorce actions.

32. Under these circumstances, I must hold that my order dismissing the summons and the two other orders directing payment towards the costs of the suit and of the commissions do not debar the present plaintiffs from maintaining this suit.

In the ninth issue the defendant raises the question whether the moneys and jeweler deposited with the plaintiffs ought not to have been realized and applied towards the payment of their costs before making their claim in this suit against the defendant. I will deal with the ornaments and jeweler that come into the plaintiffs' hands in the first instance. Soonabai had about Rs. 1,500 worth of

ornaments with her when she came down from Karachi to light this suit. These she had to deposit with her solicitors. Although the solicitors looked to the husband eventually for costs, they safe-guarded themselves against all possible contingencies by securing themselves as much as possible. These ornaments were the only property their client Soonabai had and they made her deposit the same with them. These ornaments before the compromise were not, as I have previously observed, her separate property. They were in law the joint property of herself and her husband. When the compromise of the suit was effected she became entitled to more ornaments under that compromise and the defendant handed over those ornaments, worth, Mr. Dinsha thinks, about Rs. 6,000, to the plaintiffs as her solicitors and they are in possession of them now. Soonabai is not a party to this suit and I could not possibly make any order depriving her of her property without giving her an opportunity of being heard. If I had at any time any doubt as to what order I ought to make; if, at any time I had-felt that the defendant's contentions on this head had any force in them, I would certainly have given her an opportunity of being heard. Her answer would be most obvious. "One of the terms" she would say "on which I compromised this suit was that both sets of these ornaments were to be my absolute property. You agreed to pay my costs and the Court ordered you to pay them. You knew that my solicitors were claiming my attorney and client costs against you and you were party to an arrangement whereby their right, if any, to claim them against you was specially reserved to them." It seems to me that these are complete and effective answers to the defendant's contentions. The first set of ornaments were not her separate property when she gave a retainer to her solicitors. She did not contract with them in respect of this property. The second set of ornaments never belonged to her then or at any time while the costs were being incurred. She had no right to deal with the first set of ornaments during the pendency of the suit. She agreed to compromise the suit on the express terms of her being given these ornaments as her separate and absolute property. These terms in the compromise would be wholly illusory if after the husband hands over the ornaments to his wife's solicitors they are declared entitled to appropriate them towards costs which on my findings the husband was all along liable to pay. Such a proceeding would in my opinion be most unjust to her. Here again unfortunately for the defendant the question is covered by authority. In *Harrison v. Harrison* (1888) 13 P. D. 180, a decree for dissolution of marriage having been made on the petition of the wife an order was made directing her husband to secure to her for life an annual sum of ₹130. Her solicitors applied for an order charging their costs upon this sum. The Court of Appeal reversing the order of Mr. Justice Brett refused to make the order applied for on the ground that upon the facts it could not be presumed that the wife had entered into a contract with the solicitors so as to bind her separate property, that the husband was therefore *prima facie* responsible and for any thing that appeared the costs could be recovered from him. Lord Justice Fry in the course of his judgment observes:?

We have, therefore, a case in which the husband is primarily liable, and the

result of the order of the learned Judge is to pay the husband's debt out of the sum which the husband is ordered to provide for the wife. This is a conclusion to which I should be unwilling to come, and I do not think that the sum which the husband is so directed to pay ought to be charged with his debts, at any rate until all reasonable recourse has been had to himself.... It appears to me that the debt is *prima facie* the debt of the husband.

33. The result of the reasoning in the judgments of their Lordships of the Court of Appeal is that the solicitors must make all efforts to secure their costs from their real debtor, the husband, before they can be allowed to apply for a charging order against the wife's property "recovered or preserved" in the suit through their exertions.

34. In addition to taking the ornaments which Soonabai had, the plaintiffs got Soonabai's father to pay to them in various sums Rs. 2,400. These sums Mr. Dinsha told the Court his cashier by mistake credited to Soonabai in his Firm's books instead of to her father and he was at first under the impression that he was bound to give credit for this sum in his bill and he offered to do so. It transpired however in his cross-examination by the defendant's counsel that he had obtained these sums from his client's father on the distinct understanding that he would refund the moneys to him if he recovered his costs from Soonabai's husband. That there was this understanding there was no question. Mr. Dinsha had correspondence with Soonabai's father which he offered to produce but he was not cross-examined on the subject. If he now attempts to appropriate this sum towards his costs without doing everything possible to recover his costs from the husband he would, in my opinion, be guilty of grave breach of faith. If he fails to get a decree against the husband, or if after getting his decree he fails to recover the amount of that decree, then it may be that he may be entitled to appropriate this sum towards his costs. It would be in my opinion most unjust to make the father pay a debt which is clearly payable by the husband.

35. I am thus driven to decide every point in this case against the defendant. I have done so with great reluctance and much regret. The question raised in this suit has never before arisen in a case tried by the Parsi Chief Matrimonial Court. My decision may be of small importance so far as the parties to the present suit are concerned but I am afraid it will have a most disastrous effect on the Parsi Community, and, to the unfortunate Parsi husband who may have to resort to the Matrimonial Court, there will now be an added terror to the usual unpleasantness associated with suits arising out of domestic troubles. As soon as his troubles are over in the Matrimonial Court, he will be faced with the possibility of a suit at the instance of his wife's solicitors for all her expenses under the guise of necessities supplied to her although he may have been successful in the suit. This is the result of my present judgment and the result is most deplorable and is entirely due to the fact that English Common Law is held to be applicable to the Parsis of Bombay.

36. The plaintiffs have not had their Bill of party and party costs allowed in the decree in the matrimonial suit taxed. Soonabai has moreover undertaken not to claim those costs and stated that she had no objection to her solicitors recovering the costs awarded to her. So that it will be convenient to have the whole bill of both sets of costs dealt with in this suit. The taxation of the bill by consent stood over till after I delivered judgment on the questions of law arising in the suit and I decided the question whether the defendant was liable or not. On the bill being taxed there will be a decree for the amount of the taxed costs in favour of the plaintiffs.

37. The defendant must pay the plaintiffs' costs of this suit.