
(1942) 10 BOM CK 0018

In the Bombay High Court

Case No : O.C.J. Appeal No. 18 of 1942 and Miscellaneous No. 141 of 1939

P.D. Shamdasani

APPELLANT

Vs

The Central Bank of India Ltd.

RESPONDENT

Date of Decision : 01-10-1942

Acts Referred:

Citation : AIR 1942 Bom 90 : (1943) 45 BOMLR 379

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

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—This is a notice of motion taken out by the appellant in an appeal against an order of Mr. Justice Blackwell dismissing substantially a summons for review of taxation. There was a slight variation in the Taxing Master's order, but that is irrelevant for the moment. The motion asks that the Taxing Master be directed to forbear from issuing the allocatur pending the hearing of the appeal, and further that the Prothonotary and Senior Master be directed to forbear from entering on the margin of the appellate Court's order of February 2, 1940, the amount of costs which may be allowed in the Taxing Master's allocatur under Rule 272 of the Rules of this Court.

2. The circumstances in which the appeal arises are these. The order under which costs were directed to be paid by the present appellant was an order of this Court made on February 2, 1940, and the Taxing Master completed his taxation on June 18, 1941, and on June 25 the appellant made an application for review under Rule 572, which was dismissed by the Taxing Master on November 14. On November 28, the appellant took out a chamber summons for review of taxation, which chamber summons was dismissed on June 23, 1942, and from that order this appeal is brought.

3. The contention of the appellant is that pending the hearing of the appeal it is not open to the Taxing Master to issue an allocatur, and he appears to assume that if the allocatur cannot be issued, no steps can be taken to recover the costs pending the hearing of the appeal. Whether that assumption is well founded may

be open to doubt, but all we have to consider at the moment is whether we have jurisdiction, and if we have whether we ought, to order the Taxing Master to forbear from issuing his allocatur.

4. There is no rule in the High Court Rules which requires the Taxing Master to issue an allocatur in every case; but an allocatur is merely a certificate given by the responsible officer as to the amount at which costs have been allowed, and I apprehend that there is nothing to prevent the Taxing Master giving such allocatur or certificate without any specific rule directing him so to do. The practice of issuing allocaturs has existed for many years. The only rule, which deals expressly with an allocatur is Rule 571, which provides that a party who is dissatisfied with any allowance or disallowance made by the Taxing Master may within the time specified apply to the Taxing Master to review the taxation in respect of the same; and then it is provided that the Taxing Master may, when he shall think fit, issue, pending the consideration of such objections, a preliminary allocatur for or on account of the remainder of the bill of costs, and such further allocatur as may be necessary shall be issued by the Taxing Master after his decision upon such objections. That is to say, where" there are objections to a bill of costs, the Taxing Master can issue a preliminary allocatur dealing with undisputed items, and such further allocatur as may be necessary shall be issued by him after his decision upon the objections. If no preliminary allocatur is issued, the words "such further allocatur"" are not strictly speaking accurate; but I have" no doubt that the rule means that such further or other allocatur as may be) necessary shall be issued.

5. Rule 572 directs what the Taxing Master has to do when he reviews the taxation. Then Rule 573 enables the party aggrieved to take the matter to the Judge. That rule provides :

Any party, who may be dissatisfied with the decision of the Taxing Master as to any item, or part of an item which may have been objected to as aforesaid, may, not later than fourteen days from the date of the decision, or within such further time as the Judge may allow, apply to a Judge in Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to him may seem just; but the taxation of the Taxing Master shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

6. It will be noticed that the concluding words of Rule 571 make it obligatory on the Taxing Master to issue his further allocatur after his decision upon objections, which suggests that an allocatur has to be issued without waiting for the decision of the Judge. The Taxing Master tells us that in practice, if there is a summons to review taxation before a Judge, he refrains from issuing his final allocatur until after the matter has been disposed of by the Judge, so that he can show in his allocatur the amount of costs finally allowed. I doubt whether, if any party insisted on his issuing an allocatur before the Judge's decision, the Taxing Master could withhold it, but the practice of doing so is generally convenient. It is to be

observed that the concluding words of Rule 571 are much in the same terms as the concluding words of Rule 39 of the English Rules. The English Court of Appeal in *Harbin v. Gordon* [1914] 2 K.B. 577 held that a Judge in Chambers could not set aside the decision of the Taxing Master in respect of items complained of, unless the allocatur by the Taxing Master had been previously issued; but the provision of the English Rule 41, which corresponds to our Rule 573, is not worded in identical language. The English rule provides that any party who may be dissatisfied with the "certificate or allocatur of the Taxing Master," (for which words our rule substitutes "decision of the Taxing Master,") may apply to the Court, and the application has to be made within "fourteen days from the date of the certificate or allocatur" instead of as in our Rule 573; from the date of the decision. Therefore the English case does not apply in Bombay, and I certainly do not desire to suggest that the prevailing practice in the Taxing Master's Office not to issue an allocatur until after the Chamber Judge has dealt with the summons to review is wrong.

7. But Mr. Shamdasani contends that an allocatur cannot in any circumstances be issued until after the amount of costs has been finally determined. There is nothing in the rules to justify such a contention, and it is obvious that, if such a contention were to prevail, it would mean that where there is an appeal to this Court, or further to the Privy Council, there would be virtually a stay without any of the normal terms being imposed.

8. Mr. Shamdasani has relied on a decision given in chambers by Mr. Justice B.J. Wadia on July 10, 1936, in a case between Mr. Shamdasani and the Central Bank, *Shamdasani v. Central Bank of India Ltd.* (1936) O.C.J. Appeal No. 41 of 1931, Suit No. 564 of 1925, decided by B.J. Wadia J., on July 10, 1936 (Unrep.) In that case the Taxing Master had been asked to issue a final allocatur, when a summons to review was pending before the Judge. The Taxing Master refused to do so, but issued a preliminary allocatur. Mr. Justice B.J. Wadia held that as there was a summons to review pending before the Chamber Judge, the Taxing Master could not issue a preliminary allocatur. I confess I am unable to follow the reasoning of the learned Judge. A preliminary allocatur deals with undisputed items, and why sued an allocatur should not be issued because other items are in dispute before the Judge, I am quite unable to follow. I think that decision was wrong, and I gather from the judgments in Chambers of Mr. Justice Kania and Mr. Justice Somjee which have been referred to, that the learned Judges thought that the judgment was wrong. In this case we are dealing with a final allocatur, and I am clearly of opinion that in the absence of a rule requiring him not to do, this Court has no jurisdiction to order the Taxing Master not to issue an allocatur pending the decision in the appeal. Moreover, if we have jurisdiction, I am of opinion that there is no justification for our exercising it, and thereby in effect granting a stay of execution without imposing any terms.

9. The relief claimed against the Prothonotary and Senior Master must fail with that claimed against the Taxing Master. If an allocatur issues, the Prothonotary

and Senior Master must carry out the terms of Rule 272.

10. The appellant can always make an application for stay of execution, if the allocatur is issued, and such an application will be dealt with in the normal way. Stays are usually granted in the case of money-decrees on terms. They are, of course, not granted without imposing terms except in exceptional cases. In my opinion, the notice of motion fails and must be dismissed with costs.

11. Lump sum costs fixed at Rs. 250.

Chagla, J.

12. I agree. I should like to add that it is clear from our High Court Rules that there is no specific rule which gives to the Taxing Master the power to issue an allocatur in the case of an undisputed or uncontested taxation. But I do not think such a rule is necessary, because such power depends upon the practice both here and in England, and to my mind the power to issue an allocatur is implicit in the very power to tax, because the allocatur is nothing more than a mere certificate issued by the Taxing Master showing the amount for which he has taxed the bill. Every taxation must naturally and inevitably end in an allocatur, and it is not necessary to look into the rules to find an express power being conferred upon the Taxing Master to issue an allocatur in an undisputed and uncontested taxation.

13. But the difficulty here arises with regard to the construction of Rule 571. The proviso to that rule lays down that the Taxing Master has power to issue a preliminary or an interim allocatur with regard to those items in the bill which are not disputed, while he goes on to consider the objections under review before him. After he has given his decision, and the review before him comes to an end, the proviso makes it incumbent upon him to issue a further allocatur. The use of the expression "further allocatur" is not very happy, but it is clear from the context in what sense it was intended to be used. The nature of this "further allocatur" would depend upon whether he has issued a preliminary allocatur or not. If he has, then it would be the final allocatur comprising the disputed items. If he has not, then it would be an allocatur comprising all the items, both disputed and undisputed. With great respect I do not agree with the unreported decision of Mr. Justice B.J. Wadia that the Taxing Master has no power to issue a preliminary allocatur after the review before him has been decided. In so far as such an allocatur deals with those items in the bill which have not been objected to and which can no longer be challenged, there is no reason why the Taxing Master should not issue such an allocatur at any stage.

14. With regard to the final allocatur, though the Taxing Master is bound to issue it after his decision on the disputed items, if called upon to do so, as a matter of practice that is not done till after the Chamber Judge has reviewed the taxation or the time for going before the Chamber Judge has expired. This practice is based upon convenience, because even if the Taxing Master were to issue an allocatur, that would be subject to any alteration or amendment that the

Chamber Judge might make in reviewing the taxation which came before him.

15. Then when one looks at Rule 573, it provides that "the taxation of the Taxing Master shall be final and conclusive as to all matters which shall not have been objected to in the manner aforesaid," and the objection "in the manner aforesaid" is either under r.-571 or 573 before the Taxing Master and the Chamber Judge. With respect I do not agree with the observation of Mr. Justice B.J. Wadia that an appeal is still a hearing of the review against the decision of the Taxing Master. One might as well say that when a trial Judge has heard a suit and given judgment, the appeal against his judgment is still a continuation of the suit. The review comes to an end when the Chamber Judge finally disposes of it, and the appeal from his order is not a continuation of taxation. Therefore, as soon as Mr. Justice Blackwell dismissed the Chamber Summons, the review came to an end, and the taxation became final and conclusive not only with regard to items not objected to, but even with regard to the disputed items decided by the learned Judge. Therefore, there is no substance in the contention of the appellant that the Taxing Master should be directed to forbear from issuing the allocatur because the review of taxation is still pending before the Appeal Court.