

**(1938) 07 CAL CK 0018**  
**In the Calcutta High Court**

Province of Bengal

APPELLANT

Vs

Noor Ahmade and Others

RESPONDENT

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**Date of Decision :** 05-07-1938

**Acts Referred:**

**Citation :** AIR 1938 Cal 776

**Hon'ble Judges :** Edgley, J; Biswas, J

**Bench :** Full Bench

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### Judgement

Biswas, J.—This is an application on behalf of Government for an order for recovery of court-fees in a pauper appeal which was disposed of by this Court sometime ago. The application purports to be made under Order 33, Rule 12, Civil P.C., which must be read for the present purposes along with Order 44, Rule 1. The facts shortly stated are these : The plaintiff brought a suit for damages for breach of a contract and he assessed his claim at Rs. 20,500. The suit was decreed by the learned Subordinate Judge for a sum of Rs. 1500 only. Against that judgment there was an appeal filed by defendant 1 Messrs. T. & J. Broc. klebank Ltd. incorporated in Great Britain and having their agency office at 6 Lyons Range, Calcutta. The appeal was valued at Rs. 1500. There was also a cross-objection on behalf of the plaintiff which was valued at Rs. 19,000 being the difference between the amount claimed and the amount awarded by the learned Subordinate Judge-as damages. The appeal and the cross-objection were heard by a Bench of this Court, with the result that the appeal was allowed and the cross-objection was also allowed in part. The learned Judges held that the plaintiff had made out his claim for damages to the extent of Rs. 5500 though not on the ground which had been accepted by the learned Subordinate Judge in support of the decree which he had made. In the result, their Lordships-directed a decree to be drawn up in favour of the plaintiff for a sum of Rs. 5500 with interest and costs. So far as the costs are-concerned, the direction was that the costs of the Appeal Court as well as the trial" Court should be computed on the basis of a claim of Rs. 5500.

2. The learned Subordinate Judge in decreeing the claim for a sum of Rs. 1500 hack made an order that so far as the court-fees were concerned, Government would be entitled to recover the full amount payable on the basis of Rs. 20,500 from the defendant company. In the decree of this Court on appeal as originally drawn up this part of the decree of the learned Sub-ordinate Judge was affirmed. That led to an application on behalf of defendant 1 for amendment of the decree and this was allowed with the result that all reference-to the decree of the Subordinate Judge-regarding the payment of court-fees was deleted. The decree as amended is set out in para. 2 of the present application which has been made on behalf of Government. The position therefore is that in the decree of this Court as it finally stands there is no order whatsoever for payment of court-fees to Government as contemplated by Order 33, Rule 10 of the Code. In view of this omission, the present application has been made under Rule 12 of the same Order. This is a new provision and has been enacted for the purpose of making it clear that the Government's right to apply for an appropriate order for payment of court, fees to which it may be entitled in a pauper suit shall not be lost by reason of lapse of time. Reading. the words of Rule 10 of Order 33, it might appear as if the order for payment of court-fees under that Rule was to be made on the basis of the decree already passed by the? Court as between the parties to the suit. The Rule is in these terms:

Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as pauper; such amount shall be recoverable by the Provincial Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

3. It is the words "any party ordered by the decree to pay the same " which appear not to be free from ambiguity. Taking Rule 10 by itself, there would be a good deal to be said in favour of the view that the words quoted contemplate or presuppose the existence of an order in the decree itself as made between the parties to the suit, for payment of court-fees, and that the order which is to be made in favour of Government for recovery of the court-fees is to follow such order. On a careful reading of this Rule however, along with other Rules in Order 33 of the Code, such a construction does not appear to be justified. The terms of Rule 11 and Rule 12, have to be referred to in this connection, in order to under\* stand the whole scheme which is provided for in respect of the Government's right to realise court-fees in pauper suits. Rule 10 deals with a case where the plaintiff ultimately succeeds in the suit. Rule 11 deals with a case where the plaintiff fails in the suit or is dispaupered or where the suit is withdrawn or dismissed on certain grounds specified therein. Then there follows Rule 12 which, as I have already pointed out, is a new provision made in the Code of 1908 and which provides that the Government shall have the right to apply to the Court at any time to make an order for payment of court-fees under Rule 10 and Rule 12. Rule 14 is also a new provision, and it enacts that where an order is made under Rule 10, 11 or 12, the Court shall forthwith cause a copy of the decree to be

forwarded to the Collector. There can be no doubt on a reading of Rule 14 that the Legislature clearly contemplated the making of a distinct order under each of the three rules referred to therein. So far as Rule 11 is concerned, the matter is left in no uncertainty by reason of the language actually employed in it. So far as Rule 12 is concerned, that also makes express reference to an "order" to be made by the Court. Rule 10 is not so clearly expressed, and that occasions the ambiguity to which I have already referred. But the reasonable way of reading Rule 10 so as to make it consistent with the other rules in this Order would be to hold that this rule also contemplates the making of a specific "order" for payment of the court-fees to Government. In other words, the effect of the concluding portion of Rule 10 which I have quoted above is that it not merely declares the right of the Government to recover the court-fees, but also authorises the Court to make an order as to the party or parties from whom the court-fees are to be recovered. The words from any party ordered by the decree to pay the same" would be equivalent to saying "from any party or parties against whom an order may be made in this behalf to pay the same," such order to be a part of the decree in the suit. If this is a correct reading of this Rule, it follows that after the suit is disposed of, the Court is at liberty, whether Government is represented or not before it at the time, to make an order in favour of Government for payment of court-fees; and in making such an order, the Court will no doubt be entitled in the exercise of its discretion to direct which of the parties shall be liable for the payment of such court-fees. That the Court has a discretion in the matter was recognized in a decision of this Court in *Rohini Kumar Pal v. Kusum Kamini Pal* 15 A I R (1928) Cal 196.

4. Now in this case, as already indicated, although an order in terms of Order 33, Rule 10, had been made by the learned Subordinate Judge when he passed the decree in favour of the plaintiff, no such order was made by this Court on appeal. That is why Government now seek to obtain such an order by the present application which is made under Rule 12. We hold that the application is quite competent and that the Government's right to obtain an order for recovery of the court-fees is not lost, because there was no such order incorporated in the decree of the Appellate Court.

5. The next question that arises is as to what the order should be. The total amount of court-fees payable on the plaint as framed mainly on the basis of the claim of Rs. 20,500 would be Rs. 1241-4-0. On the plain wording of Rule 10 it is quite clear that the Government will be entitled to recover the whole of this amount. The plaintiff does not dispute this, but contends that the whole of the amount should be made recoverable from the defendant. It is perfectly clear from the judgment of this Court that the defendant was made liable to pay the costs of the plaintiff, which would include the court-fees, only to the extent of Rs. 5500. That being so, there is no justification whatever for saying that the defendant should be made liable to any greater extent. It would be quite proper in the circumstances to order and we make the order, that so far as the defendant Company is concerned, it shall be liable to pay court-fees only on the

basis of Rs. 5500. It shall pay the court, fees on this basis not only on the plaint but also on the memo-randum of cross-objections. The balance of the amounts which will be due to Government in respect of the court-fees calculated on the total value of the suit, namely, the sum of Rs. 20,500 will be recoverable from the plaintiff. In effect, the plaintiff has failed to establish his claim to the extent of the difference between Rs. 20,500 and Rs. 5500, and the order we make is quite in accord with the justice of the case. This order will be treated as supplementary to the decree already made in the appeal. We make no order as to costs of this application. Let the supplementary order as made to-day be printed in the paper book of the Privy Council Appeal.

Edgley, J.

6. I agree.