
(1932) 08 BOM CK 0017
In the Bombay High Court
Case No : O.C.J. Suit No. 1004 of 1926

Ramgopal Keshavdas

APPELLANT

Vs

The Secretary of State for India in Council

RESPONDENT

Date of Decision : 01-08-1932

Acts Referred:

Citation : AIR 1933 Bom 106 : (1933) 35 BOMLR 105 : (1933) ILR (Bom) 589

Hon'ble Judges : Wadia, J

Bench : Single Bench

Judgement

Wadia, J.—[After stating the facts his Lordship preceded:] The only question that arises on the summons is as to what was exactly meant by the Court by the words "the costs of this suit." It has been argued by counsel for defendant No. 1 that the costs of the suit which his client was made to pay to the plaintiffs did not include the costs of the general action, in so far as they had been increased by reason of impleading defendant No. 2 in the suit. The matter came on before the Assistant Taxing Master for review, and he gave his judgment dated June 20, 1932, which is annexed to his certificate. Reference is made in that judgment to Kelly's Directories, Limited v. Gavin and Lloyds [1901] 2 Ch. 763. In that suit it was held that where one of two defendants was ordered to pay the plaintiffs "their costs of this action," the costs were to include all the plaintiffs' costs of action, including the costs in respect of the other defendant against whom no relief was obtained. The words in that case were "their costs of this action," and in the suit before me the words are "costs of this suit." The Taxing Master in Kelly's Directories, Limited v. Gavin and Lloyds allowed the plaintiffs all their costs of the action, though the word "all" was not mentioned in the order, and similarly the Assistant Taxing Master here also has allowed the plaintiffs all costs of the suit, although the word "all" does not occur in the consent decree taken as between the plaintiffs and defendant No. 1. It was sought to distinguish the case of Kelly's Directories, Limited v. Gavin and Lloyds, by saying that there the orders made against the two defendants were made at one and the same time or rather were part of one and the same order, whereas the decree here in respect

of defendant No. 2 was made in 1929, and the decree as against defendant No. 1 was passed in 1931. In my opinion that makes really no difference, for it is immaterial, so far as the general costs of the suit are concerned, whether the order in respect of one defendant is made at the same time as the order in respect of the other defendant or is made at different times. The Assistant Taxing Master, in my opinion, was, therefore, right in construing the words of the decree as meaning all costs of the suit in the absence of any qualifying words in the decree, such as, "except so far as the costs of the action have been increased by defendant No. 2 being made parties to the suit." I have also been referred by counsel for the plaintiffs to *Besterman v. British Motor Cab Company, Limited* [1914] 3 K.B. 181. In that suit Vaughan Williams L.J. pointed out at page 187 that if the facts and the circumstances of the case are such that in a state of uncertainty it is reasonable for a plaintiff to join both the defendants in order to ascertain which of the two is the really guilty one, then "it is part of the reasonable costs of the action that the costs of the action which you have launched against one of those defendants, and who has succeeded in defending himself, should be borne by the man who is to blame." I have already stated in the beginning that the action was instituted against both defendants by reason of the answer which the G.I.P. Railway Company gave to the plaintiff's, and therefore this is a case in which all the general costs of the action which have not been disposed of, although the suit is dismissed as against defendant No. 2, should be borne by the person who is to blame, and that person in this case is the railway company as represented by defendant No. 1.

2. Under the circumstances the summons will be dismissed with costs. Counsel certified.