(1991) 02 BOM CK 0019

In the Bombay High Court

Case No : Appeal No. 569 of 1989 in Chamber Summons No. 299 of 1987 in Company Application No. 30 of 1984 in Company Petition No. 108 of 1968

Reginald Edward Negus and Others APPELLANT

Vs

Official Liquidator and Another RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:
Bombay High Court (Original Side) Rules, 1980 — Rule 599, 600
Companies (Court) Rules, 1959 — Rule 2(11), 307, 307, 338(2), 340
Companies Act, 1956 — Section 459

Citation : (1991) 3 BomCR 455 : (1991) 93 BOMLR 86 : (1991) MhLj 774

Hon'ble Judges : S.P. Bharucha, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : J.I. Mehta and Virendra V. Tulzapurkar, instructed by Harilal Thakkar and Co, for the Appellant; J.D. Dwarkadas, instructed by B. Amin and Co., for the Respondent

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—Devidayal Tube Industries Ltd., was a company in liquidation. M/s. Harilal Thakkar & Co., Attorneys of this Court, were appointed by the Official Liquidator as his attorneys to assist him in the performance of his duties under the provisions of section 459 of the Companies Act, 1956. As such attorneys the said attorneys attended on behalf of the Official Liquidator to Company Application No. 30 of 1984, N.G.K. electrical Industries v. Official Liquidator. The said Company Application was heard on 10, 13, 19th, 20th and 27th September, 1984 and we are told that the hearing took, in the aggregate, about 20 hours.

2. On 8th July, 1986 the said attorneys lodged their bill of costs with the Taxing Master of this Court for taxation. A warrant was issued by the Taxing Master thereupon and served upon the Official Liquidator. The matter was heard before the Taxing Master and, on 12th November, 1986, the Taxing Master gave to the said attorneys liberty to approach the Court in regard to the exercise of

discretion in regard to the taxation of bills under the High Court (Original side) Rules, 1957. The said attorneys moved the Court first by way of a precipe and thereafter took out the present Chamber Summons. Thereby the said attorneys prayed for a declaration that Rule 600 of the Original Side Rules did not apply to Company Applications. The order of the Taxing Master that Rule 600 did apply to Company Applications should, it was prayed, be set aside. In the event that the Court held that Rule 600 did apply to Company Applications, the Court should order that it should not be applied to the said Company Application and a sum exceeding Rs. 1,000/- should be awarded against the instruction item in the bill of costs.

3. The principal question that Counsel urged before the learned Single Judge was as to the application of Rule 600. In the course of arguments, the question as to how the Taxing Master could have dealt with the bill of costs pertaining to the said Company application occurred to the learned Judge. The learned Judge was shown an order passed by Chandurkar, Acting C.J., on 23rd June, 1983 which read thus :

"UPON READING section 459 of the Companies Act, 1956, read with Rule 307 of the Companies (Court) Rules, 1956, read with Rule 307 of the companies (Court) Rules, 1959, and Rule 338(2) of the said rules AND letter No. OL/G-203/ Estt/5310 dated the 12th May, 1983 of the Official Liquidator, High Court, Bombay, I DO ORDER that the Taxing Master, High Court, Bombay, do accept for taxation the Bills of costs pertaining to the period after 31st December, 1976 lodged by the Advocates engaged by the Official Liquidator in performance of his duties unless otherwise ordered."

4. The learned Judge held that there was no provision either under the Company Law or under the Original side Rules whereby the Acting Chief Justice could have passed the order directing the Taxing Master to accept for taxation bills of costs pertaining to the period after 31st December, 1976 lodged by Advocates engaged by the Official Liquidator in the performance of his duties. His was not a judicial order nor could it be an administrative order which could have been passed under the provisions of law or the applicable rules. The learned Judge was apprised that it was a matter of practice that the Taxing Master had been acting under Rule 600 even in the past in respect of claims for costs regarding the instruction item pertaining to Company matters but the learned Judge was of the view that practice was not based on law or any rule having the force of law. Under the Companies (Court) Rules, the learned Judge noted, it was the Registrar who was the taxing officer of the Court for the purposes of the Companies (Court) Rules and the Registrar in the High Court meant the Registrar of the High Court and included the Prothonotary, Master and Assistant Master and such other officer as might be authorised by the chief Justice to perform all or any of the duties assigned to the Registrar under the Companies (Court) Rules. The learned Judge said that he did not know whether under the Companies (Court) Rules the Chief Justice had authorised any of the

aforementioned officers to perform the duties of the Registrar. Therefore, it necessarily meant that the Registrar was the Company Registrar of the High Court and it followed that as far as Company Applications were concerned, as also other matters arising under the Company law as regards costs and taxation of costs, the matters had to go to the Company Registrar who would be the taxing of costs, the matters had to go to the Company Registrar who would be the taxing officer of the Court. The order of the learned Judge was that the Taxing Master had no jurisdiction to assess bills of costs in any matter arising out of liquidation proceedings or in Company matters. It was the Company Registrar who was the taxing officer in this behalf and the taxation of costs had to be done in accordance with the Companies (Court) Rules. Therefore, the bill of costs of the said attorneys was withdrawn from the Taxing master and directed to be placed before the Company Registrar for the purpose of taxation.

Section 459 of the Companies Act which is referred to in the order of the learned Acting Chief Justice states that the Liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties. Rule 307 of the Companies (Court) Rules say much the same thing. Rule 338(2), also mentioned in the said order, says," Save as otherwise ordered by the Court, no payments in respect of bills of Advocates, shall be allowed out of the assets of the Company without proof that the same have been considered and allowed by the taxing officer of the Court. The Taxing Officer shall, before passing the bills or charges of an advocate, satisfy himself that the appointment of an advocate to assist the liquidator in the performance of his duties has been duly sanctioned." Rule 340 of the Companies (Court) Rules states that the "Registrar shall be the Taxing Officer of the Court for the purpose of these rules." The Registrar is defined by Rule 2(11) of the companies (Court) Rules to mean "in the High Court, the Registrar of the High Court, and includes the Prothonotary, Master and Assistant Master, and such other officer as may be authorised by the Chief Justice to perform all or any of the duties assigned to the Registrar under the these Rules...."

5. It is, in our view, clear that by the order dated 23rd June, 1983 the learned Acting Chief Justice authorised the Taxing Master to perform the duty of taxation of bills of costs assigned to the Registrar under Rule 340 of the Company (Court) Rules.

6. Rather than send the matter back to the learned Company Judge now to consider what is properly the subject matter of the Company Application taken out by the said attorneys, we have decided, with the consent of Counsel, to consider the matter ourselves.

7. Rule 6 of the Companies (Court) Rules states that the practice and procedure of the Court shall apply to all proceedings under the Companies Act and under the Companies (court) Rules. Rule 339 expressly deals with the taxation of costs in Bombay, Calcutta and Madras and states that the costs of all proceedings under the Companies Act and the Companies (Court) Rules in these High courts

shall be taxed in accordance with the rules and the practice and procedure of these Courts. Rule 342 provides much the same thing in regard to other High courts. Rules 356 speaks of taxation between advocate and client and sub-rule (6) makes it clear that it shall not apply to the taxation of a bill of costs as between an advocate employed by the Official Liquidator and the Official Liquidator, which shall be taxed, subject to any order of the Court, according to the rules regulating taxation of costs between party and party.

8. Now, the only provisions that can govern the taxation of bills of costs are contained in the Original Side Rules, 1957. They are Rules 599 and 600. They read thus :

"599. In dealing with fees or allowances, which are discretionary, the Taxing Master, in exercise of such discretion, shall take into consideration the other fees and allowances to the Attorney and Counsel, if any, in respect of the work to which any such allowance applies, the nature or importance of the suit or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings and all other circumstances."

"600. The Taxing Master shall not allow as Instructions for Brief any sum exceeding Rs. 1,000 unless otherwise ordered by the Court in

(a) Short causes.

(b) Appeals from the decision of a Judge in any matter when only one Counsel is allowed.

(c) Long causes set down as undefended.

(d) Long causes in which the opposite party does not enter an appearance and in which an ex-parte decree is obtained.

(e) Appearances for any formal party who only appears to submit to the order of the Court and to ask for costs.

(f) Matrimonial Suits.

(g) Hearing on further directions and costs.

(h) Hearing on Commissioner''s Report and on exceptions to the Commissioner''s Report.

(i) Chamber matters adjourned into Court.

(j) Notices of Motion."

9. It is true that Rule 600 applies only in respect of bills of costs for work done prior to 31st December 1976. It is also true that Rule 600 relates in terms only to suits, appeals and interlocutory and subsequent proceedings therein and does not cover proceedings under the Company law. Under Rule 600 the Taxing

Master may allow as instructions for brief a sum exceeding Rs. 1,000/- if so ordered by the Court. Rule 600 is preceded by Rule 599 whereunder the Taxing Master is obliged, in dealing with fees or allowances which are discretionary, to take into consideration the various matters therein specified. We think that it is necessary that some parameters must be specified within which the Taxing Master may consider bills placed before him for taxation in relation to work done under the Company law. Rules 599 and 600 read together provide such parameters. We therefore, think that Rules 599 and 600 read together must apply to the taxation of bills of costs relating to company matters.

10. In the said Company Application in respect of which the bill of costs before us was lodged the hearings spanned 5 days and took about 20 hours. This is, in our view, an appropriate case where the instruction item in the bill of costs may be allowed in excess of the sum of Rs. 1,000/-, due regard being had to the factors set out in Rule 599.

11. We are told that there are similar bills of costs in regard to work done by advocates and attorneys for the Official Liquidator which are awaiting the disposal of the present appeal. It would not, in our view, be advisable to hold here and now that in all these matters a sum exceeding Rs. 1,000/- should be allowed as instructions for brief. We, therefore, direct the Official Liquidator to make a report in each such matter to the learned Company Judge setting out details of the volume of work done in that matter by the Advocate concerned, the period of time that was occupied in the hearing, in conferences, etc. The Official Liquidator shall give to the Advocate concerned notice of the hearing of such report. The Company Judge shall, after hearing the Official Liquidator and the advocate concerned, decide whether a sum exceeding Rs. 1,000/- should be allowed in the particular matter as instructions for brief. The bill of costs shall then be taxed accordingly. If the Company Judge does permit the instruction item to exceed Rs. 1,000/-, the Taxing Master shall decide what is payable in respect thereof having regard to the factors set out in Rule 599.

12. In Company matters that come hereafter it would be convenient if the Court disposing of the same should itself certify whether or not the instruction item should exceed Rs. 1,000/- and the Taxing Master shall tax the bill of costs accordingly in the manner hereinabove indicated.

13. The appeal is allowed. The Chamber Summons is made absolute in terms of prayer (c). In the concerned bill of costs a sum exceeding Rs. 1,000/- shall be awarded as and by way of instruction item and the exact amount shall be fixed by the Taxing Master having regard to the factors mentioned in Rule 599 of the Original Side Rules.

14. The order made by the Taxing Master shall be subject to review, appeal and objection as is provided for by the applicable rules.

15. No order as to costs.

