

(1938) 02 MAD CK 0001
In the Madras High Court

S.A. Ramanathan Chettiar

APPELLANT

Vs

S.N. Alagappa Chettiar

RESPONDENT

Date of Decision : 03-02-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1

Citation : AIR 1938 Mad 711 : (1938) 47 LW 780 : (1938) 1 MLJ 793

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is a petition to revise the order of the Principal Subordinate Judge of Devakottah, dated 29th March, 1937,

directing that the adjournment prayed for by the plaintiff in O.S. No. 183 of 1928 before him should be granted only on condition of the plaintiff

paying as costs the sum of Rs. 8,979-5-4 to the first defendant. The claim in the suit was no doubt valued at about Rs. 6 lakhs, but it is argued on

behalf of the plaintiff-petitioner that even in spite of the fact that the plaintiff valued the claim at Rs. 6 lakhs, the amount of costs ordered to be paid

as a condition of the adjournment is excessive if not illegal. He relies on the words of Order 17, Rule 1, Civil Procedure Code, which gives the

Court power to make such order as it thinks fit with respect to the costs occasioned by the adjournment. According to him this rule does not entitle

the Court to demand payment of the entire costs of the suit incurred up to the date on which the adjournment is asked for as was done in the

present case. His contention appears to be right because the power given to the Court to make such order as it thinks fit is only with respect to the

costs occasioned by the adjournment and not the costs of the suit generally. He relies also on Rule 27 of the Rules of Practice made under the

CPC where it is stated that the party desiring an adjournment shall in certain cases be ordered to pay the costs thereof including the expenses of resummoning the witnesses if any and the fee of the pleader of the other party. There is another rule in the Rules of Practice, namely, Rule 49 framed under the Legal Practitioners' Act which provides that except in certain cases adjournment should not be granted save on the condition that the party applying pays all the costs of the day including a reasonable fee to the legal practitioner engaged by his adversary. The rule goes on to say that a sum not exceeding Rs. 20 in a Subordinate Judge's Court shall be deemed to be a reasonable fee within the meaning of the rule. It therefore appears as if according to the rules only the costs occasioned by the adjournment should have been ordered to be paid, the pleader's fee not ordinarily exceeding Rs. 20. Mr. Swaminatha Aiyar brings to my notice the decision in Gajendra Shah v. Ram Charan I.L.R.(1929) 4 Luck. 529 and in particular the observation at page 533 to the effect that the sum to, be awarded as costs as a condition of the grant of an adjournment should not be one of the nature of penalty or of punishment. It cannot in my opinion be seriously argued that anything like Rs. 8,000 or Rs. 9,000 was properly ordered to be paid as a condition of granting the adjournment in a case of this kind in the mofussal. The case reported in Dhanu Ram Mahto v. Murli Mahto I.L.R.(1909) 36 Cal. 566 which was relied upon by the respondent's advocate does not really support his contention. In that case it was only the costs of the day that were ordered to be paid as a condition and not the costs incurred up to date as in the present case including the full vakil's fee on the claim in the plaint. The order sought to be revised is in my opinion indefensible in law in the sense that it goes beyond the power of the Court which made it. Even otherwise I am of opinion that even if the Court had power to require the payment of full costs up to date as a condition, it was neither reasonable nor just to require such payment in the circumstances of this case, having regard to the very large amount involved.

2. The order of the Subordinate Judge will therefore be modified as follows:

Instead of the words ""that the plaintiff should pay the defendant the costs incurred by him till now in this Court"", the words ""that the plaintiff should pay the defendant the costs of the day, namely, of the 29th March, 1937,

including vakil's fee Rs. 20""', be substituted. The petitioner is entitled to get his costs of this petition from the respondent. 15 days' time will be given to pay the costs after the same are taxed by the Court below. In view of the fact that the amount of costs now ordered to be paid is comparatively small, there is no need to retain the condition that if the amount of costs are not paid by the due date the plaintiff will be non-suited. The condition is set aside. The defendant will be at liberty to execute the order relating to the costs of the adjournment if the amount is not deposited within the time allowed.