

(1940) 03 BOM CK 0012

In the Bombay High Court

Case No : O.C.J. Appeal No. 32 of 1939 and Suit No. 1713 of 1936

Sheikh Abdul Latiff

APPELLANT

Vs

Khalaf Abdulla

RESPONDENT

Date of Decision : 13-03-1940

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 26

Citation : AIR 1940 Bom 293 : (1940) 42 BOMLR 578

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

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—This is an appeal from a decision of Mr. Justice B.J. Wadia. The suit was a short cause, in which the defendants did not appear. The matter came before the learned Judge in Chambers, and he made an order for payment of the amount claimed by the plaintiff, which was Rs. 15,000 odd, and directed the defendants to pay a sum of Rs. 400 for costs. It is against the order for costs that the plaintiff appeals, and contends that a larger sum should have been allowed for costs. Under item 56 of the Table of Fees costs for ex parte short causes, unless otherwise ordered, are a lump sum of Rs. 250. The words "unless otherwise ordered" confer a complete discretion upon the Judge, and it is not desirable that this Court should seek to limit the grounds on which that discretion should be exercised. At the same time we think it right to say that the figure of Rs. 250 was one which the Judges considered was sufficient to include in a normal case reasonable remuneration for the solicitor. Normally the out-of-pocket expenses would come to about half the sum of Rs. 250, and it was contemplated that fixing a lump sum would save expenses and discourage unnecessary work and would at the same time provide reasonable remuneration for the solicitor.

2. Now, in the present case the) out-of-pocket expenses came to approximately Rs. 450. The reason why they were so heavy was because the defendants were residing in Arabia. An effort was made to serve them in accordance with the

provisions of Order V, Rule 26, Civil Procedure Code, but ultimately the service under that rule could not be effected, and it was then necessary to effect substituted service ; and as the defendants were Arabians, many documents had to be translated into Arabic. The plaintiff's solicitors have filed an affidavit in which they set out in detail the out-of-pocket expenses, and as far as we can see there is no reason for doubting the correctness of the items, which come to Rs. 449-10-6, and it is clear from the nature of the steps taken to bring the suit to trial that the solicitors must have done a good deal of work,-substantially more than they would have to do normally on an ex parte short cause. The learned Judge exercised his discretion and allowed more than the Rs. 250 specified in the rule, but he only allowed Rs. 400. We have not got the benefit of any judgment, and we do not know why the learned Judge allowed less than the out-of-pocket expenses. We see no reason to doubt that the sum alleged to have been spent has in fact been spent, and we are satisfied that the solicitors have done a good deal of work in connection with this matter. We observe also that this is not a case where the value of the subject-matter is below Rs. 5,000.

3. We think, therefore, that this is a case in which either the costs should be taxed, or else a sum should be allowed which will provide reasonable remuneration for the solicitors and also cover the out-of-pocket expenses. On the whole, we see no reason to direct the costs to be taxed. We think that the out-of-pocket expenses should be allowed, and in addition Rs. 200 should be allowed for the remuneration of the solicitors. We therefore allow Rs. 650 as the lump sum costs. The respondents to pay the costs of the appeal.

Kania, J.

4. I agree.