
(1907) 04 BOM CK 0012

In the Bombay High Court

Case No : Original Civil Suit No's. 442 of 1898, 459 of 1899 and 12 of 1900

Wadia and Gandhi and Co.

APPELLANT

Vs

Purshotum Shivji

RESPONDENT

Date of Decision : 15-04-1907

Acts Referred:

Limitation Act, 1877 — Article 178

Citation : (1907) 9 BOMLR 508

Hon'ble Judges : Davar, J

Bench : Single Bench

Judgement

Davar, J.—This is a summons obtained by Messrs. Wadia Gandhi & Co., attorneys of this Court, on the 11th of March 1907, against their client Purshotam Shivji, calling upon him to show cause why he should not pay to them the sum of Rs. 1764-2-0 being the balance of taxed costs payable by him in respect of three suits in which he employed them as his attorneys. This application is made under Rule 859. The sum claimed is due by the respondent Purshotam Shivji to his attorneys under three allocators, copies whereof are annexed to the affidavit of their clerk Paul Phillip Pereira.

2. Mr. Inverarity, on behalf of Purshotam Shivji, resisted this application on two grounds. He contended that the applicants were not entitled to proceed by one summons in three different suits and that the claim was barred by the law of Limitation.

3. I see no force in the first objection. Although the sum claimed is made up of three smaller sums due in three suits the respondent is not prejudiced by the applicants consolidating their claim and applying by one summons instead of taking out three separate summonses and I think this procedure is manifestly for the advantage of the respondent as the result is a great saving in costs. I can see nothing objectionable in the procedure adopted by the applicants and I hold that the form of procedure adopted is perfectly proper.

4. In support of his second contention Mr. Inverarity relies on Article 178 of the Limitation Act and contends that the present application comes under the provisions of that article. Article 178 of the present Limitation Act (XV of 1877) provides a period of limitation for applications for which "no period of limitation is provided elsewhere in this schedule or by the CPC Section 230." There is no specific provision in the Limitation Act or anywhere else fixing a period of time within which an application for enforcement of payment of costs by a solicitor against his client by the summary method provided by Rule 859 and Mr. Inverarity contends that this application comes within the article he relies on. The question for consideration therefore is whether the present application falls under Article 178 of the Limitation Act. Article 84 provides a period of limitation for suits by an attorney for his costs. Rule ; 859 provides a method of recovering costs from a client quite independently of a suit and it gives discretion to the Judge hearing the summons to refer parties to a suit. This rule came into operation on the 1st day of January 1902 but it is by no means a new rule, for the same rule, though in a different form, has been in existence ever since 1825, as appears from the report of certain proceedings in Chambers before Mr. Justice Bayley in the case of *Abba Haji v. Abba Thara* ILR (1876) 1 Bom. 260.

5. It appears from the report that Mr. Judge, who had acted as attorney for the defendant in that suit, applied for and obtained a summons in Chambers under Rule 149 of the Common Law Rules of the Supreme Court of Bombay, calling upon his client to show cause why he should not pay the balance due upon an allocatur of the taxing master and why in default of such payment an attachment should not issue against his person and property. The defendant's attorney pleaded limitation and the learned Judge seems to have deemed the point of some importance, for he intimated to the parties his desire to have the point argued before him by counsel. This was done and in the result his Lordship has delivered a considered judgment wherein he held that the application, such as was before him, was not a suit within the meaning of the Limitation Act IX of 1871, which was then in force and that the application was not barred by any law of Limitation then in force in British India. It is important to note here, as appears from the last paragraph of the report, that Mr. Justice Bayley's judgment came before the Appeal Court consisting of Westropp C.J. and Sargent J. and they expressed an emphatic opinion endorsing the correctness of Mr. Justice Bayley's order. The wording of Rule 149 of the Common Law Rules of the late Supreme Court is very similar to the wording of our present rule and the judgment of Mr. Justice Bayley was delivered on the 15th of July 1876. The present Limitation Act came into force on the 1st of October, 1877. Article 178 is new and Mr. Inverarity argued that the new article was intended to apply to an application such as the present one and was in all probability introduced into the new Act in consequence of the judgment of Mr. Justice Bayley.

6. It seems to me, however, more probable that if the attention of the Legislature was called to this judgment and if it was thought necessary to provide a period of limitation for applications of this description, the Legislature would have made

specific provision and would not have been content merely to introduce an article making a general provision for applications for which no period of limitation is provided elsewhere in the schedule or by the Civil Procedure Code, Section 230. If the matter had merely rested here the question now before me may have been arguable or open to some doubt. That Article 178 does not apply to the present application, but is limited to applications under the Civil Procedure Code, as contended by the Advocate General who appeared for the applicants, is established by the ruling of the appellate Court consisting of Chief Justice Sir Michael Westropp and Mr. Justice Melvill in the case of *Bai Manekbai v. Manekji Kavasji* ILR (1880) 7 Bom. 213. The learned Judges there express their opinion in clear and unmistakeable terms that Article 178 of schedule II, Act XV of 1877, is limited to applications made under the Code of Civil Procedure.

7. It cannot, I think, with any show of reason be contended that this is an application under the Civil Procedure Code. There is no provision whatever in the Code entitling the applicants to adopt the summary proceedings they are authorised by Rule 859 to adopt for the purpose of enforcing their claim for costs against their client. The proceedings are not akin to a suit. It is an application based on the authority of the taxing master's allocatur and is dealt with usually in a summary manner by the Judge in Chambers. The rule itself makes a distinct provision for referring the parties to a suit and this course the Judge in Chambers would, I apprehend, adopt if the client set up some special contract or arrangement with his solicitor which the solicitor denied or where for instance the client pleaded payment or satisfaction which was not admitted or where generally speaking the client disclosed a defence in showing cause which would necessitate the taking of oral evidence.

8. It was argued before me that even assuming that Article 178 applied only to applications under the Civil Procedure Code, this was an application under the Code because the rules were framed under the power conferred on the High Court by Section 652 of the Civil Procedure Code. Section 652 empowers the High Court to "make rules consistent with the Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence" and the third paragraph of the section empowers a High Court established under Statute 24 & 25 Vic. c. 104 "to make such rules consistent with the Letters Patent establishing it, to regulate its own procedure in the exercise of its Original Civil Jurisdiction as it shall think fit. " Clause 37 of the Amended Letters Patent of the High Court of Judicature for the Presidency of Bombay, however, confers on the High Court much larger and wider powers for it ordains that "it shall be lawful for the said High Court of Judicature at Bombay from time to time to make rules and orders for the purpose of regulating all proceedings in Civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, Intestate and Matrimonial Jurisdiction respectively " and the High Court in making such rules and orders is directed to be guided as far as possible by the provisions of the Code of Civil Procedure.

9. A glance at the Table of Contents of our Rule Book would show I think that the rules made by the High Court are made under the larger power to make rules and orders conferred on the High Court of Bombay by Clause 37 of its Amended Letters Patent.

10. Rule 859 is one of the rules under Chapter 38 which is headed "Miscellaneous Matters." It is not a rule merely "to regulate any matter connected with its own procedure" as contemplated by Section 652 of the Civil Procedure Code. It provides a speedy and summary procedure in favour of an officer of this Court against the party who employs him and it empowers the Judge in Chambers to give effective relief to the applicant by making an order which operates as a decree for money without going through all the formalities of a suit. This is a rule quite outside the provisions of the CPC and I am of opinion that an application under this rule is not an application under the Civil Procedure Code.

11. On the day following the day on which the summons was argued before me by counsel the applicant's solicitor drew my attention to a case-Ramhari Sahu v. Madan Mohan Mitter ILR (1895) Cal. 339. In that case it was held that the law of limitation did not apply to an application under the rules. The respondent's solicitor drew my attention to the report of a judgment of the Full Bench of the Calcutta Court in a subsequent case-Fatimunnissa v. Deoki Pershad ILR (1896) Cal. 350, wherein they overruled this case so far as the main point in the case was concerned, but the Full Bench has expressed no dissent from the view taken by the Judges as to the non-applicability of the law of limitation to applications under the rules of the Court.

12. In the view I take of this matter it is quite unnecessary to discuss the other questions argued before me as to when the solicitor's employment terminated and which of their bills or what portion of their bills of costs are barred.

13. After a careful consideration of all the arguments addressed to me I have come to the conclusion that there is no period of limitation provided for an application under Rule 859, that Article 178 of the Limitation Act applies only to applications under the Civil Procedure Code, that the application before me is not an application under the CPC and that Article 178 does not bar the claim made in the summons.

14. I make the summons absolute and direct the respondent Purshotam Shivji to pay the applicant's costs of the summons. I certify that this was a fit case for the employment of counsel.