

APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and Buckland J.

RAMJASH AGARWALLA

v.

ORR, DIGNAM & CO.*

1931
—
Mar. 5

Costs—Taxation—Counsel's fees, if Court may allow fees in excess—Procedure—Court, when to be moved—Rules and Orders of the High Court (Original Side), Ch. XXXVI, rr. 9, 32, 71-73.

Just as the Taxing Officer has jurisdiction to allow fees, in excess of the maximum set out in rule 32 of Chapter XXXVI of the Rules of the Original Side of the High Court, where written consent of the client is produced, the Court has jurisdiction to allow fees in excess where consent is proved, although it is not proved, in every instance, by a consent in writing.

In a matter where discretion is not vested in the Taxing Officer at all, it is more convenient to approach the Court at a stage before the taxation is finally concluded, and it is open to the Judge to entertain such an application.

APPEAL by client.

In a partnership suit between Tarachand Ghanashyamdas and Ramjash Agarwalla and others, the respondents, Orr, Dignam & Co., acted as attorneys for the appellant in this case. At the request of the client, Mr. N. N. Sircar was specially retained. In an interlocutory matter, Mr. Sircar accepted a brief on condition that he was assisted by junior counsel, and at the suggestion of the client, the solicitors briefed Mr. P. N. Ghosh. Later, when the matter was before the Assistant Referee, two counsel were engaged, again, according to the solicitors, with the consent of the client.

At the time of taxation, the client objected to certain items in the bill and the Assistant Taxing Officer disallowed certain fees paid to counsel on the ground that in some cases they were not covered by

*Appeal from Original Order, No. 75 of 1930, in Suit No. 73 of 1923.

1931

*Ramjash
Agarwala*
v.
*Orr, Dignam
& Co.*

rule 32 of Chapter XXXVI of the Rules of the Original Side, and in others instructions had not been obtained, from the client, in writing. Thereupon, before taxation was finally concluded, the solicitors applied to the Court and Lord-Williams J. allowed fees actually paid to counsel.

Narendrakumar Basu (with him *Banabihari Sarkar*) for the appellant. When the rules of the Original Side were amended in 1924, the words "unless otherwise allowed by the Court or a Judge" in rule 32 of Chapter XXXVI were left out. Under the rules as they now stand, the Court has no jurisdiction to allow fees in excess of the maximum set out in the table annexed to rule 32.

Further, the application is premature. Even if the Court has jurisdiction, the respondents ought to have waited until taxation was completed.

S. N. Banerji (*N. N. Sircar, Advocate-General*, with him) for the respondents. The Court, clearly, has jurisdiction to allow fees in excess, on a proper reading of rules 9 and 72, and rule 32 makes no exception. A written agreement or consent is merely useful in so far as it makes for less disputes.

Basu, in reply. The last sentence in rule 6 explains the meaning of "written consent" as used in rule 32.

It is not enough that a client should agree to pay a certain fee to a certain counsel, he must signify his consent in writing.

Payment of special charges include costs contemplated in rule 32. See *Ramesh Chandra Basu v. Jadab Chandra Mitra* (1). Rule 9 cannot by implication mean that rule 32 does not mean what it says. There cannot be any question of inherent powers where there is a specific rule. The last three lines of rule 32 are quite clear.

[*Banerji*. That means that the Taxing Officer can allow fees in excess only when there is consent in writing, but rule 9 gives the Court some sort of discretion.]

Rule 9 does not govern any matter under rule 32.

1931

*Ranjash
Agarwalla*

v.
Orr, Dignam & Co.

RANKIN C. J. This is an appeal from an order made by my learned brother Mr. Justice Lort-Williams on an application made by the attorneys with reference to the taxation of their bill against the clients for whom they had acted in the course of a partnership suit. The partnership suit appears to have proceeded to a stage at which a reference was being conducted in this Court. The bill was carried in and the taxation before the Taxing Officer arrived at a stage at which the officer was about to complete the taxation. It appears that certain learned counsel had been employed from time to time in connection with the suit and the reference and the attorneys acting for the clients were objecting in this taxation to the allowances of sums which had been paid to counsel on account of counsel's fees. Thereupon, the Taxing Officer, having come to the end of his duties, recorded an order and said that he would deal with counsel's fees finally at the next meeting and that he understood that the attorneys were applying to the Judge for an order which would authorize allowance of counsel's fees. The Taxing Officer intimated, with regard to the different fees charged in the bill, which of them he considered he was entitled under rule 32 of Chapter XXXVI of the Rules of this Court to allow and which of them he considered should not be allowed by him, at all events, without a further order from the Court. Thereupon, the attorneys moved the learned Judge and obtained from him an order directing the Taxing Officer to allow all fees paid to counsel, including the charges incurred in preparation of briefs to counsel and all other charges and expenses incurred herein and set out in the applicants' bill of costs. The intention of the summons is not entirely clear, but, when we come to consider the affidavits and the materials, it is not difficult to see what is intended by the order of the learned Judge. The fact is that, on all the questions as to which counsel's fees, which had been paid, were disallowed or about to be

1931

*Ramjash
Agarwalla*

v.

*Orr, Dignam
& Co.**Rankin C. J.*

disallowed by the Taxing Officer, the attorneys had given specific and detailed information in their affidavit. They had given several pages of items of counsel's fees, which the Taxing Officer as at present advised was not prepared to allow on the ground that it was not within his power. By that affidavit they claimed to show partly by the oath of the defendant and partly by letters received from the clients and from counsel that in each case the amount of the fees had been agreed upon by the clients and that the clients knew and intended that these fees should be paid. There was a question in some cases whether one counsel or two counsel should have been employed and in these matters also the affidavit of the attorneys is of very great detail and, speaking for myself, very convincing. In my judgment, the learned Judge was minded to make an order that in view of the clients' consent, although in some cases the consent was not in writing, the amount paid to two counsel with the clients' consent should be allowed and the first question logically for our consideration is whether, in these circumstances, the learned Judge had any power to allow the fees.

It is anything but clear to me that it was argued before the learned Judge that the court had no power at all to allow fees above the maximum mentioned in rule 32 in the absence of a written consent. The contention seems to have been that the application was premature, rather than that the application asked for something which the court had no power to allow. It seems to me that, while it is quite true that the words referring to the order of the Court or a Judge were in 1924 left out of rule 32, when that Rule was redrafted, that was not because the absence of these words could effect or was intended to effect a total destruction of the power of the Court in any case to permit the maximum to be exceeded. The position is that the Taxing Officer himself can allow fees to any extent in excess of the maximum—not that he is obliged to, but he may

allow fees to any extent in excess of the maximum—on production of a written consent of the client or his representative or recognized agent. When we look at Chapter XXXVI, we find that that Chapter leaves a certain amount of discretion to the Taxing Officer and in certain respects leaves further discretion to the Court. In particular, we see by rule 9 that “Where, in the opinion of the Taxing Officer, the maximum fee allowed by these rules is insufficient or a fee ought to be allowed for any matter not provided for in the rules or table of fees, he may, upon the application of a party, refer the matter to the Court, stating what amount, in his judgment, ought to be allowed, and by whom the same ought to be paid, and the Court shall make such order thereon as to the allowance of the whole or any part of the amount proposed by the Taxing Officer as it shall think fit”; and it is quite clear that the Court can make an order authorizing the maximum to be exceeded. In the same way, when we looked at the rules which deal with the proper procedure for a review of taxation when taxation has been completed, we find that the Judge may make such order as to him may seem just. It appears to me that the omission of an express reference to an order of the Court in rule 32 is not because, in the absence of such reference, the Rule by itself would bind the hands of the Judge, but because the matter is left to the general principle, which is that the limits marked out by rule 32 are meant to be provisions defining the power of the Taxing Officer and are not intended to take away and cannot, by implication, take away the power of the Court in a proper case to allow fees greater than the maximum authorized by the rules. I, therefore, hold that, just as the Taxing Officer has jurisdiction to allow fees in excess when a written consent is produced, the Court has jurisdiction to allow fees in excess, where consent is proved, although it is not proved in every instance by a consent in writing.

1931

*Ramjash
Agarwalla*

v.

*Orr, Dignam
& Co.*—
Rankin C. J.

1931

*Ranjash
Agarwalla*

v.

*Orr, Dignam
& Co.**Rankin C. J.*

I now come to the next question. It was contended that the procedure was wrong, because the attorneys should have waited until the completion of the taxation and applied for a review of the taxation under rules 71 to 73 of Chapter XXXVI. In many cases, of course, it is only reasonable to wait till the very end and apply in that manner, because it is a way which provides that the Taxing Officer shall, if specific objections are brought before him, deal with these specific objections, and then the matter goes to the Judge on proper materials. That is quite right as regards many questions, but in a matter, where the discretion is not vested in the Taxing Officer at all, as in the present case, it seems to me that there is no objection whatever and it is more convenient to approach the Court at a stage before the taxation is finally concluded. There is no reason to think that it is not open to the learned Judge to entertain the application in the circumstances.

Then comes the question of the merits of the application. I am satisfied that, as regards the payment of the fees to counsel in excess of the maximum which is laid down, these attorneys have shown thoroughly and to the hilt that they were acting throughout with the consent of the clients, that the clients knew that the fees paid were in excess of the usual and that the clients were from time to time discussing with the solicitors what fees should be paid and knew what fees would be paid and satisfied themselves that they were no more than what was desirable. In these circumstances, it seems to me that, as regards the specific fees of counsel, which are mentioned in the affidavit in support of this application, they should all be allowed and it seems to me further that this is equally so as regards those cases where two counsel's fees were paid. These matters of counsel's fees have, I think, been most satisfactorily cleared up in the application.

There remains only the question of incidental charges for preparation of two briefs instead of one

and matters of that sort. As long as it is understood that the Court has satisfied itself that the fees mentioned in the affidavit were consented to and that, where two counsel were employed, the employment of these counsel was consented to, any matter of detail must be left to the Taxing Officer. It is quite evident that there is no difficulty in carrying out properly the consequences of this order. If any question does arise in consequence of this order in that respect, then it is better that the matter should come again before the Court on a proper reference under rules 71 to 73 of Chapter XXXVI.

1931
 Ramjash
 Agarwalla
 v.
 Orr, Dignam
 & Co.
 Rankin C. J.

I think that, in substance, the order of the learned Judge is right. It is, however, somewhat loosely drawn up and I think it should be altered so as to read as follows:—"It is ordered that the Taxing Officer be directed, in taxing the bill of costs of the said Messieurs Orr, Dignam & Co., to allow all fees to counsel and the proper charges incurred in preparation of briefs to counsel and other incidental charges and expenses found to be proper." But it is not intended that the order is to be an order requiring the Taxing Officer to allow the whole bill as it stands. The appeal must be dismissed with costs.

BUCKLAND J. I agree.

Appeal dismissed.

Attorneys for appellant: *R. N. Bose & Co.*

Attorneys for respondents: *Orr, Dignam & Co.*

S. M.