

APPELLATE CIVIL.

Before Rankin C. J. and Graham J.

BIKRAMKISHORE MANIKYA

v.

ALI AHMAD.*

1930

Dec. 15.

Privy Council—Costs—Security for costs of Privy Council Appeal—Taxed costs of solicitors in England, if payable out of security money—High Court, if may deal with question of solicitor's cost in England.

Solicitors in England may, in a proper case, obtain from the High Court an order for payment to them of moneys deposited in the High Court, as security for their clients' costs of an appeal to the Privy Council.

APPLICATION BY SOLICITORS IN ENGLAND.

Relevant facts of the case appear from the judgment.

Satindranath Mukherji for the applicants. The appellants to England cannot resist the application if they get a valid discharge of their liability to pay the respondent's costs, as ordered by their Lordships of the Judicial Committee.

The solicitors have a valid and subsisting lien on the security money and, in case the respondents oppose the application, this is a proper case for equitable interference by the Court. See *Khetter Kristo Mitter v. Kally Prosunno Ghose* (1) and *Harnandroy Foolchand v. Gootiram Bhuttar* (2), where Indian and English cases on the point have been reviewed.

Rameshchandra Sen (with him *Santimay Majumdar* and *Beerendrachandra Das*) for the appellant. This application is without any precedent. My clients must have a valid discharge before the solicitors are allowed to realise their costs out of the security deposited here.

[RANKIN C. J. Who are the persons entitled to costs under the order of the Privy Council?]

*Privy Council Appeals, Nos. 118 to 164 of 1923.

(1) (1898) I. L. R. 25 Calc. 887.

(2) (1919) I. L. R. 46 Calc. 1070.

All the respondents named in the order. The difficulty is that some of them were not represented by these solicitors.

[RANKIN C. J. But those respondents did not incur any costs in the Privy Council.]

But even so, it is the executing court that passes such orders and this application should be made before the trial court. The proper course for the solicitors would be to attach the security by way of garnishee proceedings after the respondents have applied for execution of the order of the Privy Council.

Nurul Huq Chaudhuri (with him *Jatindranath Sanyal*) for the respondents.

RANKIN C. J. In these cases, an application has been made by the solicitors, who acted in England for some of the respondents, in certain Privy Council Appeals, which were dismissed. The appellants brought a great many appeals and these involved the same points and were determined by the same judgment. In this Court, the appellants wanted one set of security, as it is called, to be accepted for all the appeals. The order made was that Rs. 4,000 should be put in the first appeal and Rs. 2,000 in respect of all other appeals; but it is quite clear that the Rs. 6,000 was to be the security that was to cover all the appeals. What has happened is that the respondents were apparently not able to put their lawyers in funds to pay the bill of costs which this firm of solicitors had taxed before the Privy Council amounting to £480 7s. 5d. Accordingly, the solicitors apply to this Court that the Rs. 6,000 security deposited here be paid out to them in satisfaction of the sum of £480 7s. 5d. This Rs. 6,000 is not quite enough to satisfy that sum of money, but the applicants are prepared to accept it in complete discharge of that particular amount. Notice has been given to all the advocates, who are known to have taken part in this Court for the respondents in the

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appeals with which we are concerned. I find that no such advocate appears to press his claim to share in the Rs. 6,000. It does not appear that any of the respondents, other than those represented by the solicitors, who are the applicants before us, took any part in the hearing of the appeals in England. That being so, it appears to me that it is quite right and reasonable that these solicitors should be allowed to stand in the shoes of their clients and to have an order for payment to them of the Rs. 6,000 now in deposit in this Court. In these matters, it is not usual for this Court to take upon itself anything that requires to be done by the process of execution under the Civil Procedure Code. But we are dealing now with a sum of money that was paid into this Court for the very purpose in respect of which the claim is now made by these solicitors. I have no doubt at all that it is not necessary for us to send this matter to the trial court, but that we can deal with it ourselves. It should be made quite clear that all claims in respect of this sum of £480 7s. 5d. against the appellants to England under the order in Council will be discharged by the sum which is in security here being directed to be paid out to the applicants. It appears that a sum of Rs. 12 must be deducted from this Rs. 6,000 as there is a possibility of a small outstanding claim by an advocate of this Court by name Mr. Bhagirath-chandra Das. No order is made as to the costs of this application.

GRAHAM J. I agree.

Application allowed.

S. M.