

ORIGINAL CIVIL.

Before Lord-Williams J.

DAULATRAJ

v.

KALICHARAN GHOSH.*

1932

Mar. 21.

Practice—Costs—Taxation of costs, if allowed in interlocutory proceedings before termination of action—High Court Rules, Original Side, Ch. XXXVI, rule 20.

According to the English practice in the King's Bench Division, as inherited from the Common Law Divisions, no taxation of costs is allowed till the termination of the action. This does not prevent taxation of costs allowed by the court of appeal.

Kedarnath Bhutra v. Johormull Bhutra (1) and *Phillips v. Phillips* (2) referred to.

According to the rules of the High Court, Original Side, as regards the costs awarded by the trial court in interlocutory matters, a person to whom such costs have been awarded has a choice between proceeding with the taxation and execution at once, or to obtain taxation and execution after the final determination of the suit. The latter course being equitable should be followed in the absence of directions to the contrary.

MOTION.

The material facts appear from the judgment.

S. C. Ghose for the plaintiff.

S. B. Sinha for *N. C. Chatterji* for the defendant.

LORD-WILLIAMS J. This is an application on behalf of the plaintiff for an order that the execution of certain orders, dated the 16th July and 10th September, 1931, for costs be stayed until the disposal of the suit.

These were interlocutory orders. Mistakes in procedure had been made by the plaintiff, and he was ordered to pay the costs of the applications necessitated by his mistakes.

*Application in Original Civil Suit, No. 2401 of 1930.

(1) (1929) I. L. R. 57 Calc. 469.

(2) (1879) 5 Q. B. D. 60.

I have no doubt that, according to the English practice in the King's Bench Division, as inherited from the Common Law Divisions, the practice has always prevailed of having no taxation of costs till the termination of the action. This practice did not apply in the court of appeal.

I have already dealt with the point in the case of *Kedarnath Bhutra v. Johormull Bhutra* (1). To the decisions cited in that judgment I would add the case of *Phillips v. Phillips* (2). In this case it was asserted by counsel that such was the practice in the Common Law Divisions, and this was not dissented from either by the other side or by the Court.

In Chapter XXXVI, Clause 20 of our Rules it is provided that within three months from the date of the signing of the decree or order awarding costs, the party claiming shall leave in the Taxing Office an office copy of the decree or order and lodge a bill with the vouchers and signatures of counsel.

There is a proviso to the clause stating that where the costs of an interlocutory application or hearing have been awarded and have not been previously taxed or paid they may be included in the bill for the whole case. It is clear, therefore, that according to our practice a person to whom such costs have been awarded has a choice between proceeding with taxation and execution at once and leaving both taxation and execution until after the final determination of the suit.

In my view, it is convenient that some settled rule of practice should be laid down, and I propose to adhere to the rule laid down by me in the case to which I have referred. Costs in a suit ought to be set off between the parties, and, in my opinion, it is wrong that either a plaintiff or a defendant, who may be a man of straw, should be paid costs upon interlocutory applications, and should execute orders for costs forthwith made upon interlocutory applications;

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when it may be that the party will lose the suit in the end, and it will be found that he has nothing with which to meet the final order for costs which may be made against him.

I wish, therefore, to ask the office of this Court to note that when any interlocutory orders in suits are made by me they are not to be taxed or executed before the final determination of the suit unless a special direction is given to that effect. In my opinion, except in special cases, there ought to be only one taxation in a suit.

This matter comes before me upon an application for an injunction, which is a matter of discretion, and, therefore, apart from the question as to what is the correct rule, I have power to make the order, and, upon the facts of this case, I think it ought to be made.

Costs will be costs in the cause.

Attorney for plaintiff: *Charu Chunder Bose.*

Attorney for defendants: *P. Basu.*

A. K. D.