

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr Justice Bisheshwar
Nath Srivastava.

1929
December,
13.

LALA RAM CHARAN (DEFENDANT-APPELLANT) *v.* MUSAM-
MAT JASODA (PLAINTIFF-RESPONDENT).*

*Civil Procedure Code (Act V of 1908), schedule II, para-
graph 13—Award—Costs in an arbitration—Absence of
order as to costs in an award—Court's jurisdiction to
make an order for costs in the absence of an adjudication
about them in the award—Oudh Civil Rules, 1929, rule
289(6)—Pleader's fee in arbitration proceedings, amount
of.*

In the absence of any provision in an award in the matter of costs, it is open to the court seized of the proceedings to make an order as to costs under paragraph 13 of schedule II of the Code of Civil Procedure.

The proceedings before the arbitrator and the proceedings subsequent to the award are all proceedings in the matter of the application made by the respondent under paragraph 17 of the second schedule of the Code of Civil Procedure and therefore according to sub-rule 6 of rule 289 of the Oudh Civil Rules of 1929, only one-fourth of the fee payable in the case of suits decided on the merits after contest, could be taxed.

Mr. *Ram Bharose Lal*, for the appellant.

Mr. *K. N Tandon*, for the respondent.

HASAN and SRIVASTAVA, JJ. :—This appeal arises out of certain arbitration proceedings which ended in an award against the appellant. The award made no provision as to the costs of the proceedings. The appellant raised several objections to the award but they were all decided against him, and in the matter of costs the court made the following order :—

“The plaintiff will get his costs from the defendant who shall pay the plaintiff's costs and bear his own costs.”

It is against this order that the present appeal has been preferred.

*First Civil Appeal No. 49 of 1929, against the decree of S. Khurshed Husain, Subordinate Judge of Hardoi, dated the 20th of February, 1929.

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*Hasan and
 Srivastava,
 JJ*

On behalf of the appellant the learned advocate argued that as the award made no provision as to costs, the court could have made no order in respect thereof. We are unable to accept the argument. It seems to us that in the absence of any provision in the award in the matter of costs, it was open to the court seized of the proceedings to make an order as to costs under paragraph 13 of schedule II of the Code of Civil Procedure.

The next argument arose as to the scale of fee payable to the pleader of the respondent in such proceedings. In the decree framed on the basis of the award such fee is taxed against the appellant and in favour of the respondent as if it were a case of a suit decided on the merits after contest. We think that this should not have been done. The proceedings before the arbitrators and the proceedings subsequent to the award were all proceedings in the matter of the application made by the respondent under paragraph 17 of the second schedule of the Code of Civil Procedure and, therefore, according to sub-rule 6 of rule 289 of the Oudh Civil Rules of 1929, only one-fourth of the fee payable in the case of suits decided on the merits after contest, could be taxed against the appellants and in favour of the respondent.

Accordingly we direct that the decree prepared in the court below shall be amended as just now indicated in the matter of the pleader's fee. We make no order as to costs in this Court.