

APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Pratt and
Mr. Justice Fawcett.*

SHRI JAGANNATH WASUDEV PANDIT (PARTY NO. 3 IN CIVIL REFERENCE NO. 3), APPLICANT AND HIS HIGHNESS THE MAHARAJA OF KOLHAPUR AND ANOTHER (PARTIES NOS. 1 AND 2 IN CIVIL REFERENCE NO. 3 OF 1920), APPLICANTS*.

1921.

January 17.

Bombay Revenue Jurisdiction Act (X of 1876), section 12—Reference to High Court—Costs—Taxation—Power of High Court to give direction as to how costs should be taxed—Costs allowed on the original side scale.

Section 12 of the Bombay Revenue Jurisdiction Act, 1876, gives the High Court jurisdiction not only to say as to which of the parties should bear the costs of the reference, but also according to what rules the costs should be taxed.

In this particular case the Court directed that costs should be taxed on the scale allowed on the original side, High Court.

APPLICATIONS praying for revision of the decision of the Taxing Officer in Reference No. 3 of 1920 made by the Government of Bombay under section 12 of Bombay Act X of 1876.

The facts in this reference matter will appear in the report given at page 463.

S. R. Bakhale, for the applicant (in Civil Application No. 757 of 1920).

G. S. Rao and *Messrs. Mulla & Mulla*, for applicant No. 1 and *J. G. Rele*, for applicant No. 2 (in Civil Application No. 758 of 1920).

MACLEOD, C. J. :—Section 12 of the Bombay Revenue Jurisdiction Act X of 1876, under which the case was referred for the decision of the High Court, especially provides that the costs (if any) consequent on any such reference should be dealt with as the High Court in each case directs. That appears to me to take the question of how the costs are to be dealt with in each

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case outside any general rules which may have been provided with regard to the dealing with costs or taxation of costs.

It has been argued that as this was an Appellate Side matter, the costs should be taxed under section 7 of the Legal Practitioners' Act I of 1846, which would only give the winning party one-fourth of the costs which would have been incurred if this matter had been a regular suit decided on its merits. Even then, it is not quite clear whether this case could come within the words of section 7 of Act I of 1846. Certainly that section was not intended to provide for references of a peculiar nature, as this reference is, and it was really intended, in my opinion, to provide for all other cases arising within the trial of regular suits.

Then Rule 65 of the Appellate Side Rules seems to make this clear, because the High Court laid down rules for the amount of costs to be awarded in particular matters, which, on the argument of Mr. Rele, would have come within section 7 of Act I of 1846.

However, all that argument appears to me to be outside the question, because the final paragraph of section 12 of the Bombay Revenue Jurisdiction Act seems to me to give this Court absolute power not only to deal with costs by directing as to who should pay them, but also by giving directions as to how those costs should be ascertained.

Then we have been referred to the decision in *Bai Meherbai v. Maganchand*⁽¹⁾. But there the only question was whether the basis of taxation should be the amount for which the suit was valued for the purposes of the Court Fees Act, or the amount of the true value of the property. Still Sir Lawrence Jenkins said: "The principle and rule of taxation ought (in our

⁽¹⁾ (1904) 29 Bom. 229 at p. 233.

opinion) as far as possible to be such as to secure that the successful party should recover from his opponent such costs as are necessary to enable him to place his case properly before the Court, and this can best be secured by adopting the actual value as the basis of taxation”.

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Considering, therefore, as I do, that there is no rule which binds us in directing in this case as to how the costs should be ascertained, the principle laid down in that case seems to me to be a proper one. We ought to give the successful party such costs as were necessary to enable him to place his case properly before the Court. Undoubtedly this was an important case. Property of a very large value was at stake, some of the opposing parties thought it advisable to instruct solicitors, and all parties appeared by counsel, while it is beyond doubt that the rules of taxation on the Appellate Side do not enable the successful party to recover the costs which had to be incurred in properly preparing his case and instructing counsel to appear before the Court. I think, therefore, that all costs of the Reference No. 3 of 1920, as also those of Civil Application No. 388 of 1920, should be taxed on the scale allowed on the Original side. Each party to bear his own costs of both these Civil Applications Nos. 757 and 758 of 1920.

PRATT, J.:—The Bombay Revenue Jurisdiction Act X of 1876 takes away the jurisdiction of Civil Courts with regard to certain suits. Under section 12, the Government has power to refer a question that would arise in any such excluded suit for the decision of the High Court. This in effect restores to this extent the jurisdiction of the Court. The question referred would, therefore, be decided in the same jurisdiction in which the suit would be tried.

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Now the question decided in this Reference, i.e., the right of the adopted son to succeed as dependent on the validity of the Summary Settlement, was one which, but for the Bombay Revenue Jurisdiction Act, would have been decided in a suit in a mofussil Court, and would have come to this Court in appeal in its appellate jurisdiction. The reference, therefore, seems to me to be one under the appellate jurisdiction of this Court. It was in fact so presented, and in the absence of any directions by the Court, I think, the Taxing Master was right in taxing all the costs of the Reference according to the rules on the Appellate Side of this Court. But the very wide powers given to this Court by the last paragraph of section 12 of the Bombay Revenue Jurisdiction Act do, I think, give us the jurisdiction not only to say which of the parties should bear the costs of the Reference, but also according to what rules the costs of the Reference should be taxed. That paragraph is as follows:—"The costs (if any) consequent on such reference shall be dealt with as the High Court in each case directs". The words "in each case" seem to me to imply the jurisdiction of this Court to give special directions in each case. I think this is a case in which such special directions should be given. The Government brief was prepared by the Government Solicitor. Some of the parties employed solicitors. All employed counsel. Taxation on the Original Side would more nearly cover costs properly incurred. I, therefore, agree in the order proposed by my Lord the Chief Justice.

FAWCETT, J. :—I agree and have nothing to add.

Order varied.

J. G. R.