

It seems to us on general principles of equity that when in a partition suit all the defendants equally contest the suit, and are directed to pay the plaintiff's costs, if one defendant pays the costs, he should be entitled to contribution from his other co-defendants, unless facts could be proved which would be considered sufficient to defeat the equity. The common defence raised by the defendants in the partition suit would not be such a fact.

We think, therefore, that the decrees of the lower Courts in these cases must be set aside and the plaintiff's claim decreed with costs throughout.

Decree set aside.

J. G. R.

APPELLATE CIVIL.

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

BAI JAYAGAVRI WIFE OF MUKUNDLAL HARILAL (ORIGINAL APPLICANT), APPELLANT v. RAMANLAL CHHOTALAL (ORIGINAL OPPONENT), RESPONDENT^o.

1921.
January 7.

*Bombay Pleader's Act (XVII of 1920), section 18 (1), Schedule III, Clause IV
—Costs of Darkhast—Darkhast presented after the commencement of
the Act.*

In 1919, the plaintiff filed a suit in the Court of the First Class Subordinate Judge of Broach. It was dismissed with costs. The plaintiff, thereupon, presented in November 1920, an appeal to the High Court. The appeal was dismissed with costs. In 1922, the respondent presented a Darkhast in the Subordinate Judge's Court to recover costs awarded to the respondent in the appeal of 1920 and also the costs of the Darkhast on the ground that he was entitled to such costs under section 18 (1) of Bombay Pleader's Act, XVII of 1920.

Held, that the respondent would be entitled to the costs of the Darkhast under section 18 (1) of Bombay Pleader's Act, XVII of 1920, as the Darkhast

• * First Appeal No. 164 of 1922.

1924.

BAI
JAYAGAVRI
v.
RAMANLAL
CHHOTALAL.

was a proceeding instituted after the commencement of the Act, and it could not be treated as a proceeding pending in the Court of the Subordinate Judge at the commencement of the Act.

FIRST Appeal against the decision of D. D. Cooper, First Class Subordinate Judge at Broach in Darkhast No. 37 of 1922.

Proceedings in execution.

In 1919, the plaintiff filed a Suit No. 211 of 1919, in the Court of the First Class Subordinate Judge, at Broach. The suit was dismissed with costs.

The plaintiff then presented an appeal to the High Court being First Appeal No. 419 of 1920. The appeal was also dismissed with costs.

In 1922, the respondent presented a Darkhast to recover costs awarded to him in Appeal No. 419 of 1920, and also demanded in the Darkhast pleader's fees for presenting the Darkhast under clause IV of Schedule III of Bombay Act XVII of 1920.

The costs in Appeal No. 419 of 1920 were paid by the judgment-debtor but he refused to pay costs of Darkhast.

The Subordinate Judge refused to allow the costs of Darkhast as in his opinion when the appeal was filed the pleader's fee was governed by Regulation II of 1827 and section 52 of the Regulation contemplated that in execution proceedings no fresh pleader's fees can be awarded since the pleader is retained not only till the disposal of the suit or appeal but until the decree is fulfilled.

The respondent-applicant appealed to the High Court.

R. J. Thakor, for the appellant.

H. V. Divatia, for the respondent.

MACLEOD, C. J. :—Suit No. 211 of 1919, filed in the Court of the First Class Subordinate Judge of Broach,

was dismissed with costs. The plaintiffs presented in November 1920 Appeal No. 419 of 1920 in the Bombay High Court. The appeal was dismissed with costs. The respondent then presented a Darkhast in the First Class Subordinate Judge's Court to recover the costs awarded to the respondents in Appeal No. 419 of 1920. The costs, it appears, were paid, but the Darkhastdar asked for the costs of the Darkhast on the ground that he was entitled to such costs under Bombay Act XVII of 1920. By section 18 (1) of the Act, where costs are awarded to a party in any proceeding, the amount of the pleader's fee to be taxed in the bill of costs as recoverable by such party, if represented by a pleader, from his adversary, shall be computed in accordance with the rules in Schedule III unless such fee has been settled under the provisions of section 17 for a lesser amount in which case no more than such lesser amount shall be recoverable.

Under Schedule III, clause IV, in execution proceedings the pleader's fee to be allowed shall be one-fourth of the fee calculated at the rates specified in Rule 1 on the amount or value of the relief or money claimed in the application to execute the decree.

The claim of the respondents to have the costs of the Darkhast taxed and awarded in this fashion was disallowed by the Subordinate Judge on the ground, we take it, that when the appeal was filed the question of the pleader's fee was governed by Regulation II of 1827, and as section 52 of the Regulation contemplated that in execution proceedings no fresh pleader's fee could be awarded since the pleader was retained not only till the disposal of the suit or appeal but until the decree was fulfilled, therefore under section 33 of Bombay Act XVII of 1920 this Darkhast was a proceeding pending in the Court at the commencement of the Act, and as such pending proceeding it should be

1924.

BAL
JAYAGAVRI
v.
RAMANLAL
CHHOTALAL

1924.

BAI
JAYAGAVRI
v.
RAMANLAL
CHHOTALAL.

governed until its final disposal by the Court in which it was pending in respect of such matters, by the laws and rules in force immediately before the commencement of the Act. What was pending at the commencement of the Act was Appeal No. 419 of 1920, and it is even doubtful whether the respondent seeking execution for the costs of the appeal would not have been allowed separate pleader's fees under the Regulation. However it is not necessary to consider that, because we think that this Darkhast was a proceeding instituted after the commencement of the Act, and it cannot be treated as a proceeding pending in the Court of the Subordinate Judge at the commencement of the Act. It would follow then that under section 18 (1) of Bombay Act XVII of 1920, the respondent would be entitled to the fee prescribed under the 3rd Schedule. Therefore, the appeal must be allowed. We now make the order which should have been made by the Subordinate Judge that the appellants in Appeal No. 419 of 1920 should pay the costs of the Darkhast, and they must also pay the costs of this appeal.

Decree set aside.

J. G. R.

CRIMINAL REVISION.

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

IN RE NAGJI DULA^o.

1924.

January 16.

Criminal Procedure Code (Act V of 1898), section 439—Sentence, enhancement—Application by private complainant not competent.

Under the Code of Criminal Procedure a private party is not entitled to apply to the High Court to enhance a sentence passed by a subordinate Court. He can only draw the attention of Government to the sentence.

^oCriminal Revisional Application No. 317 of 1923.