but not to divest his ownership of property. Therefore, if A converts goods belonging to B, it is no defence that formerly and more than three years before suit was brought they were converted by C also. (See *Miller* v. *Dell.*[1])

The correspondence, in this case, in my opinion, clearly shows that the plaintiff never knew of the existence of the defendants, or of the fact that they were in possession of the bonds, or even for the matter of that, of the existence of Ramdas Gangadas till 1928. That being the case, I think the plea of limitation must be rejected.

I find the issue in the negative.

In the result, there will be a decree in favour of the plaintiff in terms of prayers (*a*), (*b*) and (*d*).

The Prothonotary to endorse and make over the bonds in suit to the plaintiff.

Attorneys for plaintiff: Messrs. *Mulla & Mulla.*

Attorneys for defendants: Messrs. *Little & Co.*

Suit decreed.

B. K. D.

[1] [1891] I. Q. B. 468.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1936
February 26

THE CALICO PRINTERS ASSOCIATION LTD. (ORIGINAL PLAINTIFFS), APPELLANTS *v.* AHMED ABDUL KARIM BROS. (ORIGINAL DEFENDANTS), RESPONDENTS.*

Practice and procedure—Costs—Notice of motion—Ex parte application for interim relief—Hearing of application after service on other side—Bombay High Court Rules (O.S.), Table of fees, items 54, 55.[1]

An *ex parte* application for interim relief, and the subsequent application after notice to the other party are really distinct applications because two orders are made and it may be necessary to take separate steps to enforce each of those orders.

*O. C. J. Appeal No. 42 of 1935; Suit No. 778 of 1935.

[1] These items run as follows:—

		Rs.
" 54.	Costs for *ex parte* motions unless otherwise ordered ..	125
55.	The like for contested motions unless otherwise ordered ..	175."

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As a matter of practice, Judges hearing *ex parte* applications for interim relief, should, instead of making the costs of that application, costs in the notice of motion which may be heard after notice is served on the other side, reserve those costs and deal with them at the time of the hearing of that notice of motion. It would then be open to the Judge who hears it to allow such additional sum by way of costs over and above the costs of the notice of motion as he thinks would compensate the successful party for the costs of the *ex parte* application.

COSTS.

The Calico Printers Association, Limited, (plaintiffs), filed a suit, *inter alia*, to restrain by an injunction Ahmed Abdul Karim Bros. (defendants) from infringing certain registered designs in piece goods in which the plaintiffs claimed an exclusive right. After the filing of the suit, the plaintiffs applied before Divatia J., on May 20, 1935, for leave to serve notice of motion before the time fixed for appearance of the defendants and obtained an interim injunction against the defendants. The notice was made returnable on June 18, 1935. The part of the order dealing with costs was as follows :

". . . and it is further ordered that the costs of the said application and of this order be costs in the said notice of motion."

The notice of motion came on for argument before B. J. Wadia J., on June 18, 1935, when it was agreed by the parties that the interim injunction should continue till the hearing and final disposal of the suit and until further orders. His Lordship directed that the costs of the notice should be costs in the cause. The part of the order relating to costs was drawn up in these terms :—

"And it is further ordered that the costs of this application and order and of the application made on the 20th May 1935 be costs in the cause."

When this order was being formally drawn up, the attorneys of the defendants desired that the order should run as follows :—

"And it is further ordered that costs of the said application and of this order, viz., the sum of Rs. 175, be costs in the cause."

The plaintiffs' attorneys did not agree to this alteration. The Prothonotary settled the order approving in material

particulars the suggestions made by the defendants' attorneys. The matter was, on July 25, 1935, placed before B. J. Wadia J., for speaking to the minutes of the order. His Lordship approved of the order in the terms settled by the Prothonotary and delivered Judgment as follows :—

B. J. WADIA J. On May 20, 1935, the plaintiffs applied to the vacation Judge for leave to serve notice of motion for injunction in this suit and also for an interim injunction. The leave was granted, as also the interim injunction. Costs were made costs in the notice of motion. On June 18, 1935, the notice of motion came on before me when counsel appeared on either side. An order was made by consent in terms of prayer (*a*) of the notice of motion, thereby confirming the injunction, and the costs of the notice of motion were made costs in the cause. In the notice of motion the plaintiffs prayed that the defendants may be ordered to pay to them the costs of the *ex parte* application made on May 20, 1935, and the costs of and incidental to the notice of motion and the order to be made thereon, but no such application was made to the Court. Counsel for the plaintiffs, however, applied for the taxed costs of the notice of motion, but the application was refused. The only order that was made was, as I stated before, that the costs of the notice of motion be costs in the cause. In drawing up the order, however, the plaintiffs inserted the following provision as to costs :—

"And it is further ordered that the costs of this application and order and of the application made on May 20, 1935, be costs in the cause."

This was altered by the defendants' solicitors in red ink as follows :—

"And it is further ordered that the costs of the said notice of motion and this Order, viz. Rs. 175, be costs in the cause."

Under the circumstances the matter was set down on board for speaking to the minutes of the order.

It was argued on behalf of the plaintiffs that though there was only one notice of motion, there were really two motions,

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viz., an *ex parte* motion on May 20, 1935, for which under entry No. 54 of the "Table of Fees to be taken by the Attorneys of the High Court of Bombay", as amended by Slip No. 55, the plaintiffs claimed Rs. 125, and a contested motion on June 18, 1935, for which under entry No. 55 of the same slip they claimed Rs. 175. Counsel contended that there could be no notice of motion on May 20 until the leave was granted to serve the notice of motion for injunction, and that therefore plaintiffs were entitled to an additional and separate payment of Rs. 125 for the *ex parte* application made on May 20. In my opinion it is not correct to say that there were two motions in one notice of motion. There is in fact only one notice of motion, but there are two applications, and the Court is empowered under rule 346 of the High Court Rules to grant interim relief, and it can at the same time give leave to serve the notice of motion on the other side, making the notice returnable on a particular day. It is the grant of interim relief in one and the same notice of motion having only one date. On the day on which the notice of motion is made returnable it may be contested, or it may be uncontested, in which latter case the motion is heard *ex parte*, though the notice is served on the other side. If the notice of motion is contested, the party is entitled to Rs. 175 under entry No. 55. If the notice of motion is uncontested, that is to say, heard *ex parte*, he is entitled to Rs. 125 under entry No. 54.

If the notice of motion is contested by the opposite party and the costs of the notice of motion are made costs in the cause, only Rs. 175 are allowed for costs, unless the Court hearing the notice of motion orders otherwise. The Court may order that the costs be taxed. The Court may fix a higher lump sum. The Court may expressly allow both the costs of the application for interim relief and the application on the hearing of the notice of motion, but this is hardly ever done, as a portion of the costs of the two applications will be common to both. There is, for instance, the affidavit

in support of the application, which affidavit is also used on the notice of motion. If costs of both the applications were allowed, costs of that affidavit would really be allowed twice over, which could not be the intention of the Court. It was argued that when the costs of the *ex parte* application are made costs in the notice of motion and the costs of the notice of motion are made costs in the cause, the order means that both the costs of the *ex parte* application and the costs of the contested motion are allowed. I do not agree with that interpretation of the order; it is not correct. Counsel for the plaintiffs referred to *American Trading Co.* v. *Bird & Co.*[1] but that decision has really no application to the case before me.

In my opinion, therefore, unless the Court in its discretion orders the costs to be taxed or allows a higher lump sum, the costs allowed in a contested notice of motion, even where there is an application for interim relief, are Rs. 175. The discretion I have referred to is exercised by the Court in exceptional cases on application made by counsel. In the case before me an application was made for taxed costs, and that was refused. The order made was that costs of the notice of motion be costs in the cause, which means that the costs allowed are Rs. 175, and no more.

The draft order as settled by the Prothonotary and Senior Master will stand. As this point has been raised before me for the first time and argued in Court, I make costs of the application costs in the cause.

THE plaintiffs appealed.

V. F. Tarporewala, for the appellant.

Sir Jamshed Kanga, for the respondent.

BEAUMONT C. J. This is an appeal from an order made by Mr. Justice B. J. Wadia, which raises rather an important question of practice. The suit is a suit for an injunction

[1] (1926) 50 Bom. 430.

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to restrain the defendants from wrongful user of the plaintiffs' registered design, and an application was made *ex parte* for an injunction, and on that application an injunction was granted by Mr. Justice Divatia until the hearing of the motion, costs being made costs in the motion. When the motion was heard, Mr. Justice B. J. Wadia continued the injunction until the trial, and directed that the costs of the motion be costs in the cause. Now if an order had been drawn up in those terms, in my opinion, it is quite clear that the applicants would have got separate sets of costs for the *ex parte* motion and the motion on notice. They would have got, since no contrary direction had been given, Rs. 125 for the *ex parte* motion under item 54 of the Table of Fees, and they would have got Rs. 175 for the costs of the contested motion. But when the order of Mr. Justice B. J. Wadia came to be drawn up, the defendants' attorneys inserted a provision that the costs of the *ex parte* application and of this order, viz. Rs. 175, be costs in the cause, that is to say, they sought to limit the costs of both motions to Rs. 175. The plaintiffs' attorneys, who presumably thought they would have the better chance of ultimately getting the costs, objected, and the matter was placed before the learned Judge again to determine the point. The learned Judge gave a judgment on the matter, and I think that the effect of it is that he did make an order that the costs of the motion be costs in the cause, but that he intended that to involve only the payment of the one lump sum set of costs, viz. Rs. 175, and as the order had not been passed and entered, the learned Judge was entitled to put it into such a form as would carry out what he really intended, although the actual effect of the language he used at the hearing might have produced some other result. In my opinion, therefore, there is no ground on which we can differ from the learned Judge's order, but I cannot agree with the reasoning on which the order was based. The learned Judge's view is that the *ex parte* motion and

the motion *inter partes* were only one motion, and, therefore, unless the Judge otherwise directed, there could only be one lump sum as costs, viz. Rs. 175, under item 55. In my opinion that view is not correct. It seems to me clear that there were two motions, two distinct orders were made, and it might have been necessary to take separate steps to enforce each of those orders. The Judge, however, has an absolute discretion in dealing with the costs of motions, because both item 54 and item 55 are subject to any order to the contrary. It would, I think, generally be better if Judges hearing *ex parte* motions, instead of making the costs of the *ex parte* motion costs in the motion to be heard on notice, the effect of which, I think, (unless the costs are limited by the order) is to allow Rs. 125 for the *ex parte* motion, were to reserve the costs to be dealt with on the hearing of the motion. Then the Judge who hears the motion can do what I understand is done in practice in such cases, namely allow such additional sum beyond the costs of the motion, as he thinks will compensate the successful party for the costs of the *ex parte* motion. Technically the proper form of order in such cases is to allow so much under item 54 for the *ex parte* motion, and so much under item 55 for the *inter partes* motion. To take an illustration, supposing the Judge desires to allow an extra Rs. 50 for the *ex parte* motion, instead of providing, as I understand is generally done in practice, that Rs. 175 plus Rs. 50 will be allowed for the costs of the motion (treating the two motions as one), to direct that Rs. 175 is allowed for the motion *inter partes*, and Rs. 50 is allowed for the *ex parte* motion under item 54. The net result comes to the same thing, but the alternative I have suggested preserves what seems to be the correct view, namely, that there are definitely two motions and not only one motion, as the learned Judge in his judgment suggests. However undoubtedly the learned Judge can justify the order which he made here by saying the order already made by

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Mr. Justice Divatia allows Rs. 125 for the *ex parte* motion, but as I did not intend the successful party on the two motions to get more than Rs. 175, I shall only allow Rs. 50 under item 55. That carries out in a technically correct form the order which the learned Judge says that he intended to make. That being so, I do not think there is any ground for interfering in appeal. There was a preliminary objection that an appeal does not lie, but as we do not think it necessary to make any order on the appeal, it is not necessary to discuss it. The appeal is dismissed with costs.

RANGNEKAR J. I agree.

Appeal dismissed.

B. K. D.

APPELLATE CIVIL.

Before Mr. Justice Broomfield and Mr. Justice Tyabji.

1936
ebruary 20

MANEKBAI, FORMERLY WIFE OF NADIRSHAW JAMSHEDJI VACHHA AND AT PRESENT WIFE OF RUSTOMJI M. KAPADIA (ORIGINAL PLAINTIFF), APPELLANT *v.* NADIRSHAW JAMSHEDJI VACHHA (ORIGINAL DEFENDANT), RESPONDENT.*

Parsi Marriage and Divorce Act (XV of 1865), sections 33, 34 and 35—Suit for dissolution of marriage—Decree—Order for permanent alimony—Alimony not charged on husband's property—Remarriage of wife—Application by husband to reduce amount of alimony—Order reducing amount, if competent

The appellant, a Parsi woman, was married to respondent in 1915. In 1927, she brought a suit against her husband for dissolution of marriage and, in the alternative, for judicial separation. The Parsi Chief Matrimonial Court gave her a decree declaring the marriage dissolved and Davar J. made an order directing the respondent to pay the appellant Rs. 85 per mensem by way of permanent alimony. The payment of the amount was not, however, secured on the husband's property, the order being a mere personal order to pay. In 1935, the respondent applied to

*First Appeal No. 164 of 1935.