

Nicol Vs. Mathoora Dass Dumani

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Court : Kolkata

Decided On : May-02-1888

Reported in : (1888)ILR15Cal507

Judge : Wilson, J.

Appellant : Nicol

Respondent : Mathoora Dass Dumani

Judgement :

ORDER

Wilson, J.

1. The point raised in this matter is a small one, but it is desirable that it should be settled, because it is one which may be of frequent occurrence. What happened was this: A case came on before the learned Chief Judge of the Small Cause Court in which a question arose which he referred to this Court, and which this Court decided in the plaintiff's favour, and it was directed that this case should go back to be decided on its merits. The matter came on again before the learned Chief Judge, who fixed a day for dealing with the case on its merits, but in the meantime he made an order giving the plaintiff the costs of the reference to this Court. It is against that order that this rule has been obtained.

2. The question before me is the same as was raised before the learned Judge on behalf of the defendant, viz., whether the learned Judge had power to deal with the costs of the reference at this stage, or must dispose of them at a later stage when dealing with the costs generally. I think this objection is well founded. Section 69 of the Presidency Small Cause Court Act directs the manner in which, in certain cases, references are to be made to this Court, and by that section they are to be referred under Section 617 of the Code of Civil Procedure. Now Section 617 of the Code of Civil Procedure provides for references on questions of law by the Judge of an inferior Court who feels any doubt on such questions. But Section 69 of the Small Cause Court Act is somewhat wider, because the reference may be made whether there is a doubt or not, but nevertheless the reference is to be, in express terms, under that section. Now, when the reference is under Section 617, the costs are provided for under Section 620 of the Civil Procedure Code, which says: 'Costs, if any, consequent on a reference for the opinion of the High Court shall be costs in the case.'

3. Now the sole question here is what is the meaning of the words 'costs in the case.' On the one hand it is suggested that 'the case' means 'the reference,' and that the costs of the reference may be dealt with as a thing apart. On the other hand a more extreme view is taken, namely, that the costs must follow the costs of the cause. Now I do not think that this can be the true meaning. The technical meaning of the words 'costs in the cause' is quite unknown in this country generally, costs of every separate application being dealt with in the discretion of the Judge when dealing with the costs of the case. I think the meaning of the words is plain. Section 617 allows a reference in the hearing of a suit or appeal, and under Section 620 the costs are to be costs in the case. I entertain no doubt that this means costs of the suit or appeal as in Section 617, s. 620-being the section under which the costs are dealt with, and the costs being made costs in the case. Turning to the sections dealing with the question of costs in suits, Section 220 provides 'that the Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of the power.' And then comes the only proviso I think which makes costs *prima facie*, but not I think necessarily, abide the result of the suit; 'Provided that if the Court directs that the

costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.'

4. Now these costs, therefore, under Section 620 are in the same position as costs of a suit under Section 220. The costs of an application may be dealt with separately or reserved, but the costs of a suit can only be dealt with once and for all, viz., at the termination of the suit.

5. The result is that I think this order is wrong, and the costs of the reference must be decided when the case is decided; but I desire to say that when the learned Judge comes to deal with the costs of the reference he will not necessarily be bound to give them to the party who succeeds in the suit. He will be at perfect liberty to give them on their own merits. In the result this order directing the defendant to pay the-costs of the reference must be set aside, and the applicant must have his-costs of this rule.

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