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Court : Kolkata

Decided On : Jan-10-1916

Reported in : 38Ind.Cas.30

Judge : Chaudhuri, J.

Appellant : Bhupendra Nath Bhowe

Respondent : E.D. Sasson and Co.

Judgement :

Chaudhuri, J.

1. This is an application on behalf of the plaintiff's attorney that he has a lien on the judgment obtained by the plaintiffs against the defendants and that his lien has priority over all other claims. It appears that prior to the decree in this suit the defendants had obtained judgment upon an award in their favour, dated the 19th March 1915. The award was filed on the 30th April 1915 and became capable of immediate execution. By that decree the defendants were allowed Rs. 1,451-9 which included costs to the extent of Rs. 133 against the present plaintiffs. Subsequently, the plaintiffs obtained a decree against Sassoon & Co., namely, on the 10th August 1915 for Rs. 1,431-8-0. On the 24th August, Sassoon & Co., applied on a tabular statement that satisfaction of the plaintiffs' decree might be entered. Woodroffe, J., held that it was a proper application, but inasmuch as it appeared that a prohibitory order had been issued against the plaintiffs in

execution of a decree which had been obtained against them by a firm named Christie and Ide in Suit No. 2 of 1913 for a large sum of money, he directed the matter to stand over for notice of the application to them. The matter came up before me, and I held that Christie and Ide and David Sassoon & Co., were entitled to pro rata distribution of the amount of the decree in favour of Sassoon & Co. At that time learned Counsel for the attorney for the plaintiffs submitted that he had a lien for costs, and I made my order subject to any application that might be made by the attorney in respect of his claim. That application has now been made.

2. Reliance has been placed on behalf of the attorney on the case of *Edwards v. Hope* (1885) 14 Q.B.D. 922 : 54 L.J.Q.B. 379 : 53 L.T. 69 : 33 W.R. 672. That is a case on the English Order LXV, Rule 14, which deals with 'allowing a set-off for costs notwithstanding the solicitor's lien for costs in the particular cause or matter, in which the set-off is claimed.' The rule was held applicable to costs in the same cause, not in different actions, and that in the equities of that particular case, 'the balance was in favour of allowing the solicitor's lien'...*Edwards v. Hope* (1885) 14 Q.B.D. 922 : 54 L.J.Q.B. 379 : 53 L.T. 69 : 33 W.R. 672 has been followed in *Blakey v. Latham* (1889) 41 Ch. D. 518 : 60. L.T. 624 : 37 W.R. 569. Kay, J., while feeling bound by the decision in *Edwards v. Hope* (1885) 14 Q.B.D. 922 : 54 L.J.Q.B. 379 : 53 L.T. 69 : 33 W.R. 672, expressed his opinion that the equity claimed on behalf of the attorney was the most extraordinary equity he had ever heard of. In England the practice was different in different Courts, and conflicting, In the Common Pleas a set-off was allowed without reference to the lien, but not in the Court of Chancery. It seems to me that we are not bound to follow *Edwards v. Hope* (1885) 14 Q.B.D. 922 : 54 L.J.Q.B. 379 : 53 L.T. 69 : 33 W.R. 672, as we have no such rule here, and unless I am convinced that the equity on behalf of the attorney is such that it ought to be allowed against the defendants in this action. In this case the defendants had obtained a decree prior to the decree obtained by the plaintiffs. I do not think that it has ever been recognised that a solicitor has higher rights than his own client, and it has always been held that the lien is subject to all the equities between the client and the other parties interested in the property. In considering *Blakey v. Latham* (1889) 41 Ch. D. 518 : 60. L.T. 624 : 37 W.R. 569, Kay, J., says that there is no such thing as lien except upon something of which you have possession, and that although one speaks of an attorney having a lien

upon a judgment, it is in fact only a claim or right to ask for the intervention of the Court for his protection, when, having obtained judgment for his client, he finds there is a probability of the client depriving him of his costs. He did not think it was reasonable to hold that the solicitor had an equity against the defendant compelling him to pay instead of setting it off. No case in India has been cited to me which supports the attorney's claim in this suit.

3. *Nawab Nazim of Bengal v. Heeralall Seal* 10 B.L.R. 444 merely holds that the attorney has a lien against an attaching creditor. In *Supramanyan Setty v. Hurry Froo Mug* 14 C. 374 : 7 Ind. Dec. (N.S.) 248, it was held that an attorney's lien for costs had priority over the attaching creditor. *Cullianji v. Raghaujee* 6 Bom. L.R. 879 : 30 B. 27, was referred to; it simply holds that the Court has summary jurisdiction over its suitors in the matter of attorney's lien. The same also has been held in this Court, but that such lien intercepts the right to a set-off has not, so far as I know, been directly held. Order XXI, Rule 18, provides for a set-off being allowed in cases of execution under cross-decrees. In *Goodfellow v. Gray* (1899) 2 Q.B. 498 : 68 L.J.Q.R. 1032 : 81 L.T. 314 it was held that the rule of set-off applied to damages in different actions, notwithstanding a charging order in respect of solicitor's costs in one of these actions. It is also to be noticed that *Edwards v. Hope* (1885) 14 Q.B.D. 922 : 54 L.J.Q.B. 379 : 53 L.T. 69 : 33 W.R. 672 dealt with the question of set-off of costs under the rule.

4. The attorney, it is to be noticed, merely states that he has been unable to get the balance of his costs from the plaintiffs notwithstanding demands, and that the plaintiffs have closed their place of business and were and are residing outside the jurisdiction of this Court. The attorney does not say that there is no chance of recovering his costs from his clients and that this is the only property out of which his claim can be satisfied. It does not appear also that he has taxed his bill of posts. I agree with Woodroffe, J., when he held that the defendant's application to set-off the costs was proper, and I hold that this is not a case in which I ought to hold that the solicitor's lien intercepts the set-off claimed. The application will, therefore, be refused with costs.