MOTI NATWARLAL & ORS. A

v.

RAGHAVAYYA NAGINDAS & CO.

March 21, 1977

[Y. V. CHANDRACHUD AND P. N. SHINGHAL, JJ.] B

Bombay High Court original side Rules 1957—*Rules* 569, 573—*Whether a Solicitor's bill of cost for work done in court subordinate to High Court can be taxed by the Taxing Master of High Court—Whether it can be taxed on the original side scale—Legal Practitioners' Fees Act* 1926—*Section* 4—*Section* 224 (1)(*d*) *of Govt. of India Act* 1935—*Rules framed thereunder—Bombay City Civil Courts Act* 1948—*Section* 18(2) *of the Bombay City Civil Court Rules* 1948.

C

Certain properties belonging to the appellants were attached by the City Civil Court in Bombay in execution of a decree. The appellant engaged the respondent firm of Solicitors who by Vakalat executed in their favour by the appellants agreed to act, appear and plead for them in the City Civil Court. The respondents took out three Chamber Summonses on behalf of the appellants for raising the attachment. Thereafter, they submitted three bills. Since the bills remained unpaid, they obtained an order from the Prothonotary of the High Court directing the Taxing Master to tax the bills. The appellants filed an appeal against the order of the Prothonotary which was dismissed by the Chamber Judge with liberty to the Taxing Master to decide whether the respondents were entitled to be remunerated on the original side scale of fees as between an attorney and client. The Taxing Master rejected the appellants' contention and taxed the respondents' bills according to the scale of fees applicable on the original side by the High Court. A Chamber Summons filed by the appellants before a Single Judge was dismissed. An appeal before the Division Bench by the appellants also failed. D

In an appeal by Special Leave the appellants contended : E

1. The Solicitors' bill for cost and remuneration in respect of the work done by them in the City Civil Court cannot be taxed by the Taxing Master of the Original Side, High Court.

2. The bill in any event cannot be taxed according to the scale of fees applicable on the original side as between an attorney and client, particularly in view of the provisions contained in the Legal Practitioners' Fees Act, 1926, Bombay City Civil Courts Act, 1948 and the Bombay City Civil Court Rules, 1948 as well and the rules framed by the Bombay High Court under section 224(1)(d) under the Government of India Act, 1935. F

Dismissing the appeal,

HELD : 1. Rule 569 of the Rules of the High Court of Bombay (Original side) 1957, authorises the Taxing Master to tax the bills of cost on every side of the High Court except the Appellate side of the High Court and in the Insolvency Court. All other bills of cost of attorneys shall also be taxed by him when he is directed to do so by a Judge's order. There is no justification for the appellants' contention that "other bills of cost" must be construed to mean other bills of cost relating to matters on the original side of the High Court. Rule 573 as amended prescribed a limitation of 5 years for lodging the bill of cost for taxation after the disposal of the suit or the proceedings in the High Court. In respect of matters which are not the subject of any proceedings in the High Court the attorney has to lodge his bill of cost for taxation within 5 years from the completion of the matter. The necessity for making this provision arose because rule 568 empowers the Taxing Master to tax the attorneys' bill of cost in all matters except those on the Appellate side of the High Court. The Bombay High Court, over a long course of years has consistently taken the view that the Taxing Master has jurisdiction to tax attorneys' bills of cost in relation G H

A to the professional services rendered by them whichever be the court in relation to which the services are rendered except the Appellate side of the High Court, in regard to which an exception has been expressly carved out by the rule. [354 G-H, 355 A-G]

Nowroji Fudumji Sirdar v. *Kanga & Savani*, 28 Bom. L.R. 384, *Chitnis & Kanga* v. *Wamanrao S. Mantri*, 46 Bom. L.R. 76 and *M/s. Pereia Fazalbhoy & Co.* v. *The Rajputana Cold Storage & Refrigeration Ltd.*, 65 Bom. L.R. 87 B approved.

2. The preamble and the statement of objects and reasons of the Legal Practitioners Fees Act 1926 shows that the Act was passed in order to give effect to the recommendations of the Indian Bar Committee that in any case in which a Legal Practitioner has acted or agreed to act he should be liable to be sued for negligence and be entitled to sue for his fees. The Indian Bar Committee recommended by para 42 of its report that the distinction relating to suing for negligence and being sued for fees was not of great importance since suits by C or against Legal Practitioners in respect of fees and the conduct of cases were extremely rare. But it was necessary to provide that in any case in which a Legal Practitioner had acted or agreed to act he should be liable to be sued for negligence and be entitled to sue for his fees. The definition of Legal Practitioner in the 1926 Act is the same as in the Legal Practitioners Act, 1879 (which includes an attorney). Section 3 of the Act of 1926 provides that any Legal Practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and fees to be paid for his professional services. Section 4 of the Act provides that any such D Legal Practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement or if no such fee has been settled a fee computed in accordance with the law for the time being in force in regard to the computation of the cost to be awarded to a party in respect of the fee of his Legal Practitioner. It may be that if an attorney institutes a suit he may be governed by section 4 but it really confers an additional right on the Legal Practitioner to institute a suit and cannot be construed as detracting from any other right which he may possess in regard to the taxation and recovery of his fees. [358 G-H, 359 A-B, F-H] E

3. The High Court was in error in observing that alternatively there was an apparent conflict between section 4 of the 1926 Act and the original side rules relating to the taxation of an attorney's bills of cost. Bearing in mind the true object and purpose for which the 1926 Act was passed and the drive of section 4, there is no conflict, apparent or real between the 1926 Act and the High Court Rules of 1957. [360 D-E]

4. The rules framed by the High Court under section 224(1)(d) of the 1935 F Act, are rules for fixing and regulating the fees payable as costs by any party in respect of the fees of his adversary's attorney. These rules according to their very terms have nothing to do with the taxation of any attorney's bill of cost as between himself and his own client. [360 F-G]

5. The combined effect of section 4 of the 1926 Act and the Rules framed by the High Court under section 224(1)(d) is that if an attorney who has appeared or acted for his client in the City Civil Court sues his client for fees he cannot recover in the suit anything more than what is permissible under the Rules framed G by the High Court under section 224(1)(d). However, that do not affect the right of an attorney to have his bill taxed by the Taxing Master on the original side scale. [361 C-D]

6. Section 18(2) of the Bombay City Civil Courts Act, 1948 provides that in respect of suits transferred from the High Court to the City Civil Court costs incurred in the High Court till the date of the transfer of the suit are to be assessed by the city Civil Court in such manner as the State Government may H after consultation with the High Court determine by rules. Rule 2 framed under section 18(2) provides that even as regards the fees of attorneys the Registrar of the City Civil Court is given the power to tax and allow all such costs and out of pocket expenses as shall have been properly incurred by an attorney upto the date of transfer of the suit. The rule further provides that after the date

of the transfer such fees shall be taxed and allowed as in the opinion of the Registrar are commensurate with the work done by the advocate having regard to the scale of fees sanctioned for the advocates in the City Civil Courts Rules. The said rule, applies only to transferred suits. It has no application to the suits and proceedings instituted in the City Civil Court after 148. [361 D-H] A

M/s. Sandersons & Morgans v. *Mohanlal Lalluchand Shah*, A.I.R. [1955] Cal 319 distinguished.

7. The Taxing Master, however, before allowing the cost claimed by the attorney from his client must have regard to the fact that the attorney has appeared in a subordinate court and to the scale of fees generally prevalent in that Court. [363 G-H] B

The Court observed that power similar to the power of taxation of a bill of costs between the advocate and client which is found in Supreme Court Rules, 1966, should be conferred on appropriate officers of the Court subordinate to the High Court. Such a power may enable the presiding Judge to control the professional ethics of the advocates appearing before them more effectively than is possible at present. [362 A-G] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1317 of 1975.

(From the Judgment and Order dated 8-10-1974 of the Bombay High Court in Appeal No. 73 of 1974)

P. H. Parekh and *Miss Manju Jetley*, for the Appellant D

S. K. Dholakia and *R. C. Bhatia*, for the respondent.

F. S. Nariman and *B. R. Aggarwal*, for the intervener.

The Judgment of the Court was delivered by

CHANDRACHUD, J. A question of practical importance concerning the dying profession of Solicitors arises in this appeal by special leave. The question is whether the bill of costs of a Solicitor or an Attorney who has rendered professional services to his client in the City Civil Court can be taxed by the Taxing Master, Original Side, Bombay High Court, and if so, whether it can be taxed on the Original Side scale. The dual system which was prestigiously in vogue in Bombay since the inception of the Bombay High Court has been abolished with effect from January 1, 1977 and therefore the question is not of growing importance. All the same, though the question will by and by cease to have the importance which it has to-day, we are informed at the bar that quite a few cases are kept pending in Bombay to await the decision of this appeal. E F

Certain properties belonging to appellants were attached by the City Civil Court, Bombay, in execution of a decree passed by a Court in Bellary. The appellants appeared in the execution proceedings through a firm of Solicitors, M/s Raghavayya Nagindas & Co., respondents herein, who by the vakalatnama executed in their favour by the appellants, agreed to act, appear and plead for them in the City Civil Court. The respondents took out three Chamber Summonses on behalf of the appellants for raising the attachment, which was eventually raised in about 1960. Thereafter, they submitted three bills to the appellants for their costs and remuneration. Since the bills remained unpaid, the respondents obtained on February 8, 1972 an order from the Prothonotary of the High Court directing the Taxing Master to tax the bills G H

A The appellants appealed against the order of the Prothonotary by way of Chamber Summons which was dismissed by the Chamber Judge on October 26, 1972 with liberty to the Taxing Master to decide whether respondents were entitled to be remunerated on the Original Side scale of fees, as between an Attorney and client. The Taxing Master rejected the appellants' contention, taxed the respondents' bills according to the scale of fees applicable on the Original Side of the B High Court and directed the issuance of an allocatur.

Before the respondents could obtain a payment order on the basis of the allocatur, the appellants took out a Chamber Summons on May 7, 1973 challenging the order of the Taxing Master. That Chamber Summons was dismissed by the Chamber Judge whose decision has been confirmed in appeal by a Division Bench.

C

Three contentions were raised by the appellants in the High Court : (1) A Solicitor's bill for costs and remuneration in respect of the work done by him in the City Civil Court cannot be taxed by the Taxing Master, Original Side, High Court; (2) The bill, in any event, cannot be taxed according to the scale of fees applicable on the Original Side as between an Attorney and client; and (3) The recovery D of the amount taxed by the Taxing Master is barred by limitation under art. 113 of the Limitation Act, 1963. The High Court rejected all these contentions by its judgment dated October 8, 1974.

Mr. Parekh, appearing for the appellants before us, did not press the third point regarding limitation and rightly so. Article 113 of the Limitation Act, though residuary, applies to suits and cannot govern E the special form of remedy available to the Attorneys for recovering their fees. Proceedings in pursuance of that remedy are governed by rule 573(ii)(a) of the Original Side Rules and the proviso thereto. The proceedings for recovery of fees under those provisions are not barred by time.

Counsel has, however, pressed the first two contentions with some F zeal. We will first take up for consideration the primary question whether the Taxing Master has jurisdiction at all to tax an Attorney's bill of costs for professional services rendered by him to his client in connection with a litigation in a court other than the Bombay High Court, in this case the City Civil Court. Rule 569 of "The Rules of the High Court of Bombay (Original Side), 1957" affords, in our opinion, a complete answer to the appellants' contention that the Tax- G ing Master who is an officer of the Original Side of the High Court has no jurisdiction to tax the Attorneys' bills in regard to work done by them in matters other than those on the Original Side. Rule 539 occurs in Chapter XXIX of the Original Side Rules under the rubric "The Taxing Office". The rule reads thus :

> "569. The Taxing Master shall tax the bills of costs on H every side of the Court (except the Appellate Side) and in the Insolvency Court. All other bills of costs of Attorneys shall also be taxed by him when he is directed to do so by a Judge's order."

The rule consists of two parts of which the first part confers jurisdiction on the Taxing Master to tax the bills of costs on every side of the High Court including bills relating to matters in the Insolvency Court but excluding those on the Appellate Side of the High Court. If the rule were to stop with the first part, it would have been possible to say that the Taxing Master has no jurisdiction to tax the bills in regard to matters outside the High Court. But the second parts of the rule puts the matter beyond doubt by providing that *all other bills of costs of* Attorneys shall also be taxed by the Taxing Master. It is argued on behalf of the appellants that "other bills of costs" must be construed to mean "other bills of costs relating to matters on the Original Side of the High Court" and bills relating to non-contentious matters. We see no jurisdiction for cutting down the scope of the second part of the rule by putting a limited meaning on words of width used therein. "All other bills of costs of Attorneys" to which the second part of the rule refers must mean all bills of costs of Attorneys other than those which are referred to in the first part of the rule. That we conceive to be the plain meaning of the particular provision.

Rule 573 which was amended by Slip No. 190 also shows that the Taxing Master has jurisdiction to tax the bills of Attorneys in regard to professional services rendered by them in matters outside the High Court. Amended rule 573(i)(a) provides that subject to the proviso and subject to the discretion of the Chamber Judge to enlarge the time, in "every suit or proceeding in the High Court" an Attorney shall lodge his bill of costs for taxation within five years after the disposal of the suit or the proceeding, and if an appeal is filed in the High Court, within five years from the disposal of the appeal. Amended rule 573(ii)(a) provides that subject to the proviso and to the Chamber Judge's discretion, "In the case of matters which are not the subject of any proceedings in the High Court, an attorney shall lodge his bill of costs for taxation within five years from the completion of the matter." This latter rule prescribes the time within which an Attorney must lodge his bill of costs in regard to matters which are not the subject of any proceedings in the High Court. The necessity for making this provision arose evidently because rule 569 empowers the Taxing Master to tax the Attorneys' bills of costs in all matters except those on the Appellate Side of the High Court. The appellants' contention, if accepted, will render rule 573(ii)(a) otiose because according to that contention, no matter which is not the subject of any proceeding on the Original Side of the High Court or in the Insolvency Court could be taken before the Taxing Master for taxation of the Attorney's bills. It was then useless to provide that bills in regard to matters which are not the subject of any proceeding in the High Court must be filed within a particular period.

Apart from what appears to us to be the only reasonable construction of rule 569, the Bombay High Court, over a long course of years, has consistently taken the view that the Taxing Master has jurisdiction to tax Attorneys' bills of costs in relation to professional services rendered by them in all matters, contentious or non-contentious, and whichever be the Court in relation to which the services

A are rendered, except the Appellate Side of the High Court in regard to which an exception has been expressly carved out by the rule. In *Nowroji Pudumji Sirdar* v. *Kange & Savani*(1) the appellants were represented by the respondent firm of Solicitors in litigation in the District Court and the Subordinate Courts of Poona. The appellants having declined to pay the respondents' bills on the ground that they were excessive, respondents obtained an order from the Prothonotary B for having the bills taxed by the Taxing Master. In an appeal from the decision of the Chamber Judge who upheld the Prothonotary's order, it was contended by the appellants that the Taxing Master had no jurisdiction to tax the bills of the respondents, firstly because the bills pertained to work which was not connected with the Original Side of the High Court and secondly because the services were rendered to the appellants by a partner of the respondent firm in his C capacity as a pleader. These contentions were rejected by a Division Bench consisting of Sir Norman Macleod, C. J., and H. C. Coyajee, J., who could "see no reason" why a Solicitor practising in Bombay and performing professional services for a client regarding business in the mofussil should not be entitled to get his bills taxed by the Taxing Master on the Original Side of the High Court. In coming to this conclusion, the High Court relied on rule 494 of the Original D Side Rules, 1922 which was identical with rule 569 of the Rules of 1957.

The High Court observed in *Nowroji's* case that it may be that Attorney would fall within the provisions of the Bombay Pleaders Act, 17 of 1920, with regard to any work done in mofussil Courts after the coming into force of that Act, but that it was unnecessary to con- E sider that question because the work for which the respondents had lodged their bills was done before that Act had come into force, Relying upon this observation, it was submitted by Mr. Parekh that the decision in *Nowroji's* case is not good law after the coming into force of the Bombay Pleaders Act. It is not possible to accept this submission because even after that Act came into force, the Bombay F High Court took the same view as was taken in *Nowroji's* case and for good reason which we will expiate while dealing with the appellants' contention bearing on the scale of fees according to which the bills can be taxed. The relevant rule, couched in identical language, with which the High Court was concerned from time to time leaves no doubt that the Taxing Master has the jurisdiction to tax all bills of costs of Attorneys, except those in regard to the work done by them on the Appellate Side of the High Court.

G

In *Chitnis & Kanga* v. *Wamanrao S. Mantri*(2) the appellants, a firm of Solicitors, had obtained from the Prothonotary of the High Court an order under rule 534 of the Rules of 1936, directing the Taxing Master to tax their bill of costs relating to (1) a suit filed on the Original Side of the High Court, (2) a petition for probate in H the District Court at Satara, (3) an appeal in the High Court on its

(1) 28 Bom. L.R. 384.
(2) 48 Bom. L.R. 76.

Appellate Side and (4) certain miscellaneous work done in the mofussil. The respondent, to whom the appellants had rendered these professional services, contended before the Taxing Master that the order of the Prothonotary was *ultra vires* insofar as it related to items (2), (3) and (4). The Taxing Master rejected that contention whereupon the respondent took out a Chamber Summons submitting that it was not competent to the Attorneys to take advantage of the procedure that applies to taxation of Solicitors' costs on the Original Side of the High Court in respect of costs incurred in the mofussil and on the Appellate Side of the High Court. The respondent further contended by the Chamber Summons that the matter was governed by the Bombay Pleaders Act, 17 of 1920, and therefore the Taxing Master had no jurisdiction to tax the appellants' bill in regard to items 2, 3 and 4. The Chamber Judge set aside the ex-parte order of the Prothonotary without a speaking order, against which the appellants filed an appeal which was heard by Sir John Beaumont, C. J., and Kania, J. The Division Bench held that the order of the Prothonotary in regard to item 3 which related to the work done by the appellants on the Appellate Side of the High Court was clearly wrong in view of the provision contained in rule 534 of the Rules of 1936. As regards the remaining three items, namely the suit on the Original Side, the probate proceedings in the Satara District Court and the miscellaneous work done in the mofussil, the Court following the decision in *Nowroji's* case held that the appellants were entitled to have their bill taxed in regard to these items by the Taxing Master of the Original Side, although it related to work done in the mofussil. Adverting to the observation made in *Nowroji's* case in regard to the effect of the Bombay Pleaders Act of 1920, the learned Judges held that the provisions of that Act had no effect on the question in issue. The learned Chief Justice referred in his judgment to s. 17 of the Act of 1920 which provided that a legal practitioner (which expression included an Attorney) may enter into a special agreement as to the terms of his remuneration and to s. 18 which dealt merely with the amount of pleader's fees which could be recovered against the opposite party. These provisions, according to the High Court, had nothing to do with the question whether an Attorney's bill of costs in regard to the work done by him in the mofussil could be taxed by the Taxing Master.

in *Nowroji* (*supra*), the learned Judge held that by reason of rule 569, *age & Refrigeration Limited,*(1) Mody J., sitting singly, took the same view of the Taxing Master's power to tax the Attorneys' bills. In that case the appellants had rendered professional services to the respondents in respect of a petition for winding up which was filed in the High Court of Rajasthan. Respondents raised the same contenions which are raised by Mr. Parekh before us, namely, that the Prothonotary had no jurisdiction to pass the order directing the Taxing Master to tax the bill and secondly, that the bill of costs could not be taxed on the Original Side scale. Relying upon the decision in *Nowroji* (*supra*), the learned Judge held that by reason of rule 569, the very rule with which we are concerned in the instant case, an

(1) 65 Bom. L.R. 87.

A Attorney of the High Court was entitled to have his bill of costs taxed by the Taxing Master in respect of professional work done by him even in a Court other than the Bombay High Court. The learned Judge also negatived the second contention of the respondents before him, but we will turn to that part of the judgment later.

B These decisions of the High Court contain a correct exposition of the relevant rule which was numbered as Rule No.494 in the Rules of 1922, No. 534 in the Rules of 1936 and is now Rule No. 569 in the Rules of 1957. The Rules of 1909 also contained a similar rule bearing No. 491. It is important to mention from the point of view of 'legislative' history, that prior to the framing of the 1909 rules, the corresponding rule was Rule 544 of the 1907 Rules C which, in material respects, was worded differently. It said :

> "Rules 544.
>
> The Taxing Officer shall tax the bills of costs on every side of the Court (Except the Appellate Side) and in the Insolvency Court. He shall also tax all such attorney's bills of costs as he may be directed to tax by a Judge's order D on consent of the parties, or on the application by any party chargeable with the bill."

Under this rule, the Taxing Officer could tax the bills referred to in the second part of the rule by consent of parties only or if an application was made for taxation of the bill by a person chargeable with the bill. Further, the second part of Rule 544 did not contain the E expression "All other bills of costs" (emphasis supplied) which is to be found in the corresponding rule since the framing of the 1922 Rules. The significant changes introduced in 1922 are directed at conferring on the Taxing Master the power to tax all bills of Attorneys, including those for work done in any other Court save the appellate side of the High Court.

F It is argued on behalf of the appellants that assuming that the Taxing Master has jurisdiction to tax the bills in regard to the work done by the respondents in the City Civil Court, the bills cannot be taxed on the Original Side scale in view of the provisions contained in the Legal Practitioners (Fees) Act, 21 of 1926. We see no substance in this submission. The statement of Objects and Reasons of G the 1926 Act shows that the Act was passed in order to give effect to the recommendation of the Indian Bar Committee that in any case in which a legal practitioner has acted or agreed to act, he should be liable to be sued for negligence and be entitled to sue for his fees. Prior to the Passing of the Act of 1926, various High Courts in India had held almost consistently that Vakils could be sued for negligence in the discharge of their professional duties and H were entitled to sue for their fees but Barristers could neither be sued for negligence nor could they sue for their fees. The Indian Bar Committee recommended by paragraph 42 of its report that in practice, the distinction relating to suing for negligence and being sued

for fees was not of great importance since suits by or against legal practitioners in respect of fees and the conduct of cases were extremely rare; but it was necessary to provide that in any case in which a legal practitioner had 'acted' or 'agreed to act', he should be liable to be sued for negligence and be entitled to sue for his fees. The long title of the Act of 1926 describes it as an Act "to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties." The preamble of the Act is in the same terms. Section 2(a) of the Act defines a 'legal practitioner' to mean a legal practitioner as defined in s. 3 of the Legal Practitioners Act, 1879 according to which a 'legal practitioner' means "an Advocate, Vakil or Attorney of any High Court, a Pleader, Mukhtar or Revenue Agent". Section 3 of the Act of 1926 provides that any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services. Section 5 of the Act provides that no legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties. Section 4 of the Act of 1926 which is the sheet anchor of Mr. Parekh's argument reads thus :

> "4. Right of legal practitioner to sue for fees.
>
> Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner."

In the first place, as explained above, the Act of 1926 was passed for an entirely different purpose with which we are not concerned in the present case. Secondly, and that is more important, section 4 on which the appellants rely deals, as shown by its marginal note, with a limited question viz., the right of a legal practitioner to sue for his fees. It may be that since an Attorney is included within the meaning of the expression 'legal practitioner', he will be governed by the provisions contained in s. 4 of the Act of 1926 if he brings a suit for the recovery of his fees. But we are not concerned in this case to determine the scope and extent of an Attorney's right to sue for his fees. It must further be borne in mind that s. 4, which is in two parts, provides in the first place that a legal practitioner 'shall be entitled' to institute and maintain a legal proceeding for the recovery of any fee due to him under an agreement. This part of the section confers an additional entitlement on legal practitioners and cannot justifiably be construed as detracting from any other right which they may possess in regard to the taxation and recovery of their fees. Section 4 provides by its second part that if there is no agreement between the legal practitioner and his client in regard to the fees payable to him, he shall be entitled to institute and

maintain legal proceedings for the recovery of a fee computed in the manner provided therein. This also is in the nature of an entitlement, the right recognised thereby being the right to bring a suit to recover the fees in the absence of an agreement. Any legal practitioner who wants to enforce the right which is specially created and conferred by the Act of 1926 will have to comply with the conditions on which that right is conferred. When a statute creates a special right, it can only be enforced in the manner and subject to the conditions prescribed by the statute. Therefore, the fees for the recovery of which legal proceedings are brought under s. 4 cannot be any larger than the fees computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner. But, as we have stated earlier, the provisions of the Act of 1926 are entirely beside the point. They have no bearing on the question whether an Attorney can have his bill taxed by the Taxing Master in respect of the work done by him in courts other than the High Court of Bombay and if so, on what scale.

The Bombay High Court in the judgment under appeal thought that there was an apparent conflict between s. 4 of the Act of 1926 and the Original Side Rules relating to the taxation of an Attorney's bill of costs. We would like to make it clear that bearing in mind the true object and purpose for which the Act of 1926 was passed and the drive of s. 4 thereof, there is no conflict, apparent or real, between any of the provisions of the Act of 1926 and the rules of taxation contained in the Original Side Rules of 1957. In that view, it is unnecessary to resort to the principle of harmonious construction which the High Court alternatively relied upon for holding that the Taxing Master has the jurisdiction to tax the respondents' bill in the instant case and on the Original Side scale.

Mr. Parekh then relied upon the rules framed by the Bombay High Court under s. 224(1)(d) of the Government of India Act, 1935 which corresponds roughly to art. 227(3) of the Constitution and contended that the respondents' bills must be taxed in accordance with those rules and not according to the scale prescribed by the Original Side Rules. This contention too is unacceptable. The rules on which counsel relies were framed by the High Court "for fixing and regulating by taxation or otherwise the fees payable as Costs by any party in respect of the fees of his adversary's Attorney appearing, acting and pleading upon all proceedings in the Bombay City Civil Court." These rules, according to their very terms, have nothing to do with the taxation of any Attorney's bill of costs as between himself and his own client. The rules govern the fees payable by way of costs by any party in the City Civil Court, in respect of the fees of his adversary's Attorney. That is to say, if an order of costs is passed in favour of a party to a suit or proceeding in the City Civil Court, he is entitled to recover from his adversary by way of professional charges incurred by him, the fees computed in accordance with the rules framed under s. 224(1)(d) of the Government of India Act and not what he has in fact paid to his

Attorney. Rule 9 on which counsel relies particularly, makes this position clear by providing : A

> "9. Where costs are awarded to a party in any proceeding the amount of the Attorney's fee to be taxed in the bill of costs is recoverable by such party if represented by an Attorney from the adversary and shall be computed in accordance with the rules above unless such fee has been settled under the provisions of section 3 of the Legal Practitioner's (Fees) Act, 1926, for a lesser amount in which case not more than such lesser amount shall be recoverable." B

The combined effect of this rule and s. 4 of the Legal Practitioners (Fees) Act, 1926 is that if an Attorney who has appeared or acted for his client in the City Civil Court sues his client for fees, he cannot recover in the suit anything more than is permissible under the rules framed by the High Court under s. 224(1)(d) of the Government of India Act, 1933. Neither those rules nor anything contained in the Act of 1926 is calculated to affect the Attorney's right to have his bill taxed by the Taxing Master on the Original Side scale, for work done by the Attorney in the City Civil Court. C D

The Bombay City Civil Court Act, 69 of 1948, provides by s. 18(1) that all suits and proceedings cognizable by the City Civil Court and pending in the High Court, in which issues have not been settled or evidence has not been recorded shall be transferred to the City Civil Court. By s. 18(2), costs incurred in the High Court till the date of the transfer of the suit are to be assessed by the City Civil Court in such manner as the State Government may after consultation with the High Court determine by rules. Mr. Parekh drew our attention to rule 8 framed by the Government of Bombay under s. 18(2) but we do not see its relevance on the issue under consideration in the instant case. That rule shows that even as regards the fees of Attorneys, the Registrar of the City Civil Court is given the power to tax and allow all such costs and out of pocket expenses as shall have been properly incurred by an Attorney up to the date of the transfer of the suit. The rule further provides that after the date of the transfer such fees shall be taxed and allowed as in the opinion of the Registrar are commensurate with the work done by the Advocate having regard to the scale of fees sanctioned for the Advocate in the City Civil Court by the High Court. Rule 2, being a rule framed under s. 18(2) of the Act of 1948, governs transferred suits only and it expressly authorises the Registrar to tax the Attorney's bill for the work done in such suits both before and after the transfer of the suit from the High Court to the City Civil Court. There is no corresponding rule which can apply to suits and proceedings instituted in the City Civil Court after the Bombay City Civil Court Act, 1948 came into force and in the absence of such rule, the rules framed under s. 18(2) cannot support the appellants' contention. Mr. Parekh also drew our attention to the "Rules of the Bombay City Civil Court, 1948" framed by the Bombay High Court under s. 224 of the Government of India Act, 1935 but we see nothing E F G H

A in those rules either which can assist his contention regarding the power of the Taxing Master to tax an Attorney's bill as between himself and his client.

While we are on this aspect of the matter it would be useful to refer to the Supreme Court Rules, 1966 and the Bombay High Court Appellate Side Rules, 1960. The Supreme Court Rules contain B elaborate provisions in Order XLI and XLII thereof regarding costs of proceedings and taxation of costs. Rule 13 of Order XLII provides that except as otherwise provided in the rules or by any law for the time being in force, the fees set out in the Second and Fourth Schedules to the Rules may be allowed to Advocates and officers of the Court respectively. Rules 23 to 29 of Order XLII deal specifically with Advocate and Client taxation. The Second Schedule con- C tains detailed provisions under which fees are payable to Advocates for various types of professional services rendered by them. Similarly, Chapter 14 of the Appellate Side Rules of the Bombay High Court contains various rules for computing the fees which an Advocate is entitled to charge his own client. Similar provision is to be found in England in the Supreme Court Costs Rules, 1959 (see The Annual Practice 1965, p. 1998/300). Mr. Nariman who appears on behalf D of the Incorporated Law Society, Bombay, drew our attention to rule 29 of the last mentioned rules under which a Solicitor's bill can be taxed as between himself and his client. These provisions are on a par with the rules of taxation of the Original Side of the Bombay High Court. The important point to be noted is that the Rules of the City Civil Court do not, except in regard to suits transferred from the High Court, contain any provision under which an Attorney can have E his bill taxed as between himself and his client.

Perhaps there is good reason for this because though under s. 224(1)(d) of the Government of India Act, 1935 and art. 227(3) of the Constitution, the High Court has got the power to settle tables of fees to be allowed to Attorneys practising in Subordinate Courts, that power has not been exercised by the High Court for the reason, F probably, that the Rules of Taxation on the Original Side of the High Court adequately and effectively take care of that matter. The High Court did exercise its powers under s. 224(1)(d) in relation to the City Civil Court but did not in the rules framed in the exercise of that power provide for taxation of an Attorney's bill of costs as between him and his client. It is not too much to suppose that the High Court did not want to do once over again what it had elaborately done G while framing the rules on the Original Side, which were in vogue for a large number of years and were working satisfactorily.

Mr. Parekh sought to derive some sustenance to his argument from a decision of the Calcutta High Court in *Messrs Sander sons & Morgans* v. *Mohanlal Lalluchand Shah*(1) but we find that the question which arose for decision therein was entirely different. The H appellants therein, a firm of Solicitors, submitted to the respondents a bill of costs for the work done by them for the respondents on the

(1) A.I.R. 1955 Cal. 319.

Original Side of the Calcutta High Court. The respondents challenged the bill by a Chamber Summons, which the appellants resisted on the ground that there was a private agreement between the parties to pay a particular amount by way of fees and therefore the bill was not liable to be taxed under the Original Side Rules. On a consideration of the Original Side Rules of the Calcutta High Court, Particularly rules 4 and 74 of Chapter 36, the High Court came to the conclusion that the solicitors were bound to have their bills taxed according to the Original Side scale, agreement or no agreement. We are concerned in the instant case with a different question under a different set of rules and as pointed out by the High Court, the Calcutta Rules are in material respect different from the Bombay Rules. We must interpret the Bombay Rules on their own terms and decisions on other statutes cannot afford material assistance unless, of course, any principle of general application is laid down.

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We have already mentioned that in *Messrs Pereira Fazalbhoy & Co.* Mody J., held that an Attorney was entitled to have his bill taxed on the Original Side scale even in respect of the work done by him outside the High Court. For the various reasons mentioned above we endorse that view.

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Before concluding, we ought to refer to a rather anxious plea made by Mr. Parekh which involves ethical considerations. Counsel urged that it is unfair that for small work done in the City Civil Court Solicitors should be permitted to charge high fees prescribed under the Original Side Rules. We find ourselves unable to share this concern. If anything, Solicitors are subject to the watchful supervision of the High Court wherever they may render professional services. The object of binding the Attorneys to the scale of fees prescribed in the Original Side Rules is not to confer on them any special benefit which is denied to other legal practitioners. The object on the contrary is to ensure that Attorneys shall always be subject to the jurisdiction of the High Court no matter whether they have acted on the Original Side or in any Court subordinate to the High Court. The only exception is made by rule 569 in regard to the work done on the Appellate Side of the High Court which, as indicated earlier, prescribes its own scale of fees as between an Advocate and his client. In fact, we are unable to see why a power similar to the power of taxation of a bill of costs between an Advocate and his client which is to be found in the Supreme Court Rules should not be conferred on appropriate officers of Courts subordinate to the High Court. Such a power may enable the Presiding Judges to control the professional ethics of the Advocates appearing before them more effectively than is possible at present. In this very case, a bill of Rs. 6000 odd lodged by the appellants was reduced on taxation to a sum of about Rs. 850/- only. If there were no machinery for taxing the bill, the appellants might perhaps have got off with the demand. We would only like to add that before allowing the costs claimed by an Attorney from his client, the Taxing Master must have regard to the fact that the Attorney has appeared in a Subordinate Court and to the scale of fees generally prevalent in that Court. A judicious exercise of

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A discretion postulates elimination of unfair play, particularly where one party to a transaction is in a position to dominate the will of the other. The client must receive the protection of the Court and its officers, whenever necessary.

For these reasons we confirm the judgment of the High Court and dismiss the appeal. There will however be no order as to costs.

P.H.P. *Appeal dismissed.*