

1937

Present : Fernando A.J.

SENARATNE v. PERERA.

206—C. R. Panadure, 2,655.

Taxation of bill of costs—Bill reduced by more than one-sixth—Costs of taxation—Appeal from order—Civil Procedure Code, s. 214 and 216.

Section 216 provides that a proctor, who taxes a bill, will not be entitled to charge any fee for taxation if, as a result of the taxation, a bill is reduced by more than one-sixth.

The section does not enable the party against whom the bill was taxed to recover the costs of taxation from the proctor in such a case.

An appeal lies to the Supreme Court from an order of a Court of Requests reviewing the taxation of a bill of costs.

A PPEAL from an order of the Commissioner of Requests, Panadure.

C. Seneviratne, for purchaser, appellant.

N. E. Weerasooria, for defendants, respondents.

Cur. adv. vult.

¹ (1935) 15 Cey. Law Rec. 123.

² 1 Times Law Rep. 90.

May 17, 1937. FERNANDO A.J.—

The appellant purchased a land which was sold in execution of a decree entered in this action, and that sale was set aside on an application made by the defendants-respondents. The purchaser-appellant was also ordered to pay to the defendants-respondents their costs of that inquiry.

Proctor for the respondents then filed his bill of costs amounting to Rs. 268.50 and the taxing officer taxed the bill at Rs. 135.85.

The appellant filed objection to this taxation, and the learned Commissioner of Requests ordered that a further sum of Rs. 49.94 be deducted from the sum of Rs. 135.85 at which the bill had been previously taxed. The appellant appeals against this order, and Counsel for the respondent contended that such an appeal did not lie, but before considering this objection, I think it desirable to consider the objections themselves.

The petition of appeal raises three questions: (1) Is the item Rs. 2.50 claimed for obtaining a copy of notes of inquiry X 5 regular? (2) Was the appellant bound to pay the sum of Rs. 2.50 which is claimed as batta paid to a clerk in the Fiscal's Office? (3) More than 36 per cent. of the Bill having been disallowed, was the appellant entitled to the costs of the inquiry into the taxation?

With regard to the first item, Counsel for the respondent contends that whatever the fee that was payable to the officer who prepared the copy of the notes of inquiry, the charge that has been allowed is in fact a payment to the proctor for his services in obtaining that copy, and includes payment for letters written in order to obtain the copy, and perhaps, attending on the officer for that purpose. In the statement of objections dated July 21, 1936, proctor for the plaintiff stated that the amounts charged for this and several other items were not in accordance with the scale of fees allowed for such copies, and the taxing officer himself has disallowed a portion of the amount claimed for documents X 6, X 7, X 9, X 10, &c. The Commissioner of Requests also appears to have considered this item and he stated that the charge of Rs. 2.50 for X 5 is in order. I do not think it unfair to the appellant that I should read this observation of the Commissioner of Requests as meaning that the charge is in accordance with the scale of fees ordinarily allowed for a copy like X 5. In the schedule to the Civil Procedure Code that refers to Courts of Requests, there is no fixed scale for documents of this kind, but there probably is in every Court of Requests a scale that is generally adopted, and if according to that scale the amount claimed is reasonable, I am not prepared to say that that amount is excessive, merely because the amount payable to the officer who prepares the copy is less than the amount claimed by the proctor.

With regard to the second objection, I see that the taxing officer himself in his minute dated September 17, 1936, notes that this item which is item 6 in the objections is not disputed. Here again the question is as to how much is allowed as batta to an officer, and I see no reason to interfere with the order of the Commissioner of Requests. It would also appear that this witness had been summoned by both

sides, and if the respondent has in fact paid batta for the attendance of the witness, it is no answer to his claim to say that the appellant also paid batta to the same witness. If it is true in fact that the witness had been paid batta twice over, then the appellant will be able to get a refund of the amount paid by him on the ground that the witness had already drawn batta from the other side.

With regard to the third point, Counsel for the appellant referred to section 216 of the Civil Procedure Code, which provides that if more than one-sixth of the amount of any bill of costs is disallowed by the taxing officer, the proctor shall bear the expense of the taxation. That section clearly provides that the proctor who taxes a bill will not be entitled to charge any fee for the taxation, if as a result of the taxation, the bill is reduced by more than one-sixth. I do not see any item in the bill of costs which contains any charge for taxation, so that the bill is regular and no objection can be taken to it under the section. Counsel for the appellant, however, contended that the effect of section 216 was to enable the party against whom the bill was taxed to recover the costs of taxation from the taxing party, but this is not the effect of section 216 and this objection must therefore fail.

Counsel for the respondent contended that there was no appeal against an order of the Court of Requests on the question of costs, but I do not think this principle conflicts in any way with section 214 of the Civil Procedure Code, which provides for an appeal to this Court from the decision of the court in review of taxation of costs. In other words, although a party cannot appeal against an order made by the Commissioner of Requests ordering him to pay costs of the other side, or refusing to give him costs as against the other side, there is nothing to prevent an appeal to this Court from an order made in the process of taxation of the costs.

In view of the observations I have made with regard to the objections against the bill of costs, that have been raised in the Petition of Appeal I would dismiss this appeal with costs.

Appeal dismissed.

