

CHAPTER XXXI

TAXATION AND ADVOCATE'S FEE

600. Definitions – In Rules 601 to 604, unless the context otherwise requires, the word “attorney” will mean an attorney or firm of attorneys, practicing as such prior to 1st January 1977, and “High Court” will mean the Original Side of the High Court at Bombay

601. Time for lodging Bill of Costs by Attorneys – In –

- (a) every suit or proceeding in the High Court disposed of prior to 1st January 1977;
- (b) every matter completed prior to 1st January 1977, which is not subject to any proceedings in Court, and
- (c) any matter whether subject to Court proceedings or not, where it is desired to have bill of costs taxed for work done upto 31st December 1976

an attorney shall lodge his bills of costs for taxation whether the bill be between party and party or otherwise on or before 31st December 1982;

Provided that bills of costs which could not have been lodged for taxation without an order of the Chamber Judge under the Rules in force prior to 1st January 1977, shall not be accepted by the Taxing Master without an order of the Chamber Judge, permitting such bills to be lodged on sufficient grounds.

602. Enlargement of time – The Chamber Judge may on sufficient cause being shown enlarge the time appointed by Rule 601 fixed by an order enlarging time, upon such terms, if any, as he may think proper.

603. Fixed costs in pending cases – In any suit or proceeding pending on 1st January 1977, where any party is presented by an attorney prior to 1st January 1977, the Court disposing of the suit or proceeding shall, if costs are awarded to any party, quantify the amount of such costs after taking into consideration the work done through attorneys prior to 1st January 1977.

604. Earlier rules to apply in certain cases – All the rules and provisions in the Rules and Forms of the Bombay High Court on the Original Side, in its several jurisdictions, relating to taxation of Bills of Costs of attorneys, and relating to recovery of such costs, as in force prior to 1st January 1977, shall, if not inconsistent with the above rules, continue to apply to taxation by the Taxing Master, of all pending Bills of Costs and any new Bills of costs to be taxed hereinafter pursuant to Rules 601 and 602 above, and also to recovery of such costs.

605. Duty of the Attorney to return the papers on discharge – When in any proceeding, pending on 31st December 1976, the attorney engaged for any part ceases to appear for such party, or is subsequently discharged before the final disposal of the matter, the Court or the Judge hearing the matter may direct the attorney to return to the client immediately all papers entrusted to the attorney in connection with the matter, on the client paying to the attorney his costs as may be settled or taxed or paying to the attorney or depositing in Court, such amount towards the costs of the attorney, as provisionally fixed by the Court, Where the amount provisionally fixed as cost is paid or deposited as and when the costs of attorney discharged as aforesaid are finally determined, the amount paid or deposited as aforesaid shall be adjusted towards such costs.

R.606. Computation of Advocate's fee.—Where costs are awarded to a party in any proceeding in the High Court the amount of the Advocate's fee to be taxed in the bill of costs recoverable by such party, if represented by an Advocate from his adversary, shall be computed in accordance with the rules herein below:—

- (1) In the following matters, viz:—
 - (a) Suits which are decided on merits;

- (b) Appeals from decrees decided on merits (including preliminary decrees) other than appeals from execution proceedings,
- (c) References under Land Acquisition Act, I of 1894 or appeals, therefrom decided on merits, the amount of Advocate's fees shall be computed on the amount or value of the subject matter in dispute in the suit, appeal or reference at the rates specified below:—

If the amount or value of the subject-matter in dispute does not exceed Rs. 25,000 at 8 per cent.

If such amount or value exceeds Rs. 25,000 but does not exceed Rs. 50,000, on Rs. 25,000 as above and on the remainder at 6 per cent.

If such amount or value exceeds Rs. 50,000 but does not exceed Rs. 1,00,000, on Rs. 50,000 as above and on the remainder at 4 per cent.

If such amount or value exceeds Rs. 1,00,000 but does not exceed Rs. 5,00,000, on Rs. 1,00,000 as above and on the remainder at 2 per cent.

If such amount or value exceeds Rs. 5,00,000 on Rs. 5,00,000 as above and on the remainder at 1 per cent subject to maximum of Rs. 25,000.

(2) In case of—

- (i) Summary suits under Order XXXVII of the first schedule to the Code of Civil Procedure, 1908, where the defendant does not appear or where leave to defend is refused or where a decree is passed on the defendant failing to comply with the conditions on which leave to defend was granted and appeals against decrees in such suits.

- (ii) Suit the claim in which is admitted but only time or installment for payment is asked for,
- (iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence, except evidence under rule 2 of Order X of the Code of Civil Procedure,
- (iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under rule 2 of Order X of the Code of Civil Procedure,
- (v) Suit in which judgment is given on admission under rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence except evidence under rule 2 of Order X of the Code of Civil Procedure,
- (vi) Short causes, commercial causes and long causes in which no written statement is filed and appeals from decrees in such suits,
- (vii) Suits compromised before the settlement of issues or recording of evidence except evidence under rule 2 of Order X of the Code of Civil Procedure,
- (viii) Any formal party to a suit or appeal e.g. a trustee or estate holder who only appears to submit to the orders of the Court and asks for his costs,
- (ix) A suit or appeal which has abated,
- (x) A plaint returned for presentation to the proper Court,

the amount of Advocate's fee to be allowed shall be fixed by the Court disposing of the matter and shall not exceed $\frac{1}{4}$ th of that payable according to the rate specified in sub-rule (1) above;

Provided that in no case falling under this sub-rule - the Advocates' fees shall be less than Rs. 300.

(3) Where at the hearing of any suit, reference under the Land Acquisition Act or appeal, disposed of on merits, more than one Advocates have appeared, the Court disposing of the matter may allow such fee, for a second Advocate, as it deems fit not exceeding half the fee allowable under sub-rule (1) above in the following cases:

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- (i) In a suit, reference under the Land Acquisition Act or appeal in which the amount or value of the subject matter exceeds Rs. 25,000:

Provided that the fees of two Advocates shall not be allowed –

- (a) in summary suits, disposed of as summary suits,
 - (b) in uncontested short causes,
 - (c) in undefended long causes,
 - (d) to any formal party to a suit or appeal, e.g. a trustee or an estate holder who only appears to submit to the orders of the Court and asks for his costs.
 - (e) In appeals from decrees in suits referred to in (a) to (c) above,
 - (f) In suits and appeals filed by indigent persons except where specifically ordered by the Court.
- (ii) In any suits, reference under the Land Acquisition Act, or appeal of which the amount or value of the subject-matter is less than Rs. 25,000 where the Court for reasons to be recorded in writing considers it proper to do so.

(4) In long causes, where there are several parties but all are not real contestants, the Chamber Judge on the Summons for Directions may direct which of the parties may engage two Advocates for the purpose of

taxing costs. No party, in whose favor such directions have not been given shall be allowed the costs of two Advocates under sub-rule (3) above.

(5) Subject to the provisions of sub-rule (12) below, the fee Prescribed in sub-rules (1) to (3) and (6) to (9) shall be taken to be the remuneration for the Advocate's service until the final decree or order is passed.

(6) In execution proceedings or in appeals in execution proceedings the Advocate's fee to be allowed shall be one-fourth of the fee calculated at the rates specified in sub-rule (1) on the amount or value of the relief or money claimed in the application to execute the decree. Such fee shall be chargeable only on the first application and on any subsequent contested application.

(7)(i) The fee for *ex-parte* and or on non-contested Chamber Summonses shall be Rs. 75. The fee for contested Chamber Summonses and appeals from orders on Chamber Summons shall be Rs. 150.

(ii) The fee for *ex-parte* and non-contested notices of motion shall be Rs. 150. The fee for contested Notice of Motion and appeals from orders on Notices of Motion shall be Rs. 300.

The Court or Judge disposing of the matter shall have discretion to increase the fees prescribed in this rule in a fit case.

(8) In all applications, petitions, references or other proceedings or appeals contested or otherwise under: -

- (i) Chartered Accountants Act, 1949,
- (ii) Copy Right Act, XIV of 1957,
- (iii) Estate Duty Act, XXXIV of 1953,
- (iv) Gift Tax Act, XVIII of 1958,
- (v) Guardians and Wards Act, VIII of 1890,
- (vi) Indian Arbitration Act, X of 1940,

- (vii) Companies Act, (I of 1956)
- (viii) Indian Divorce Act, IV of 1869,
- (ix) Income-tax Act, 1961 (XLIII of 1961)
- (x) Indian Succession Act, XXXIX of 1925,
- (xi) Indian Trust Act, II of 1882,
- (xii) Insurance Act, IV of 1938,
- (xiii) Lunacy Act, IV of 1912,
- (xiv) Patents and Designs Act, II of 1911,
- (xiv-a) Patents Act, (XXXIX of 1970),
- (xv) Presidency Towns Insolvency Act, III of 1909,
- (xvi) Sales Tax Act, 1959, (LI of 1959),
- (xvii) Super Profit Tax Act, (XIV of 1963)
- (xviii) Trade and Merchandise Marks Act, XLIII of 1958,
- (xix) Wealth-tax Act, XXVII of 1957,
- (xx) Any other special or local Acts unless special provision is made in the Act itself or otherwise, and
- (xxi) In originating Summons,
 - (a) the fee for ex parte or non-contested applications, petitions, references or appeals shall be Rs. 150.

- (b) the fees for contested applications, petitions, references or appeals shall be Rs. 300. The Court or Judge disposing of the matter shall have discretion to increase the fees prescribed in this rule in a fit case.

(9) The Advocate's fee in an application made under Article 226 of the Constitution and in an appeal from an order passed on such application shall be Rs. 300:

Provided that Court hearing such application or appeal may, having regard to the labour involved in the preparation of the case or the complexity of issues arising therein or for any other sufficient reason allow such higher fees as it deems proper.

(10) If a suit is compromised after the settlement of issues or recording of any evidence other than evidence under Rule 2 of Order X of the Code of Civil Procedure, the suit shall be treated as decided on merits.

(11) An Advocate who has been employed by the heirs of a deceased party is not entitled to have fresh fees taxed.

(12) In all proceedings in which a Commission is issued to examine any person under the provisions of section 75 of the Civil Procedure Code the Advocate's fee shall consist of an amount computed in accordance with the above rule *plus* such fee per day for appearing before the Commissioner as the Court may in its discretion allow.

(13) Where costs are awarded to a party in any proceeding the amount of the Advocate's fee to be taxed in the bill of costs is recoverable by such party if represented by an advocate from his 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.

(14) Where in any proceeding there are several parties having the same interest, or putting forward the same defense, they shall not, if awarded costs, be allowed more than one set of Advocate's fee on taxation unless the Court otherwise directs.

607. Charges for interpretation and administration of Oath – The fees paid by a party for interpretation of an affidavit or for administering an oath or solemn affirmation should be held to be costs incurred in the case and included in the bill of costs.

608. Travelling allowance of a public servant. - Traveling allowance paid by the Government or a public authority to a public servant who was summoned as a witness in any case as also the amount deposited by a party to cover the traveling allowance payable to such public servant should be included in the bill of costs.

609. Court's power to fix costs where no provision is made – When the amount or scale of Advocate's fee in respect of any proceeding is not otherwise prescribed under these rules relating to the taxation of costs, the Court disposing of the matter shall quantify the Advocate's fee to be allowed in the bill of costs.

610. Rounding off - In calculating the Advocate's fee under Rule 606, the fraction of a rupee should be rounded up by increasing the amount to the next rupee.
