

Present: De Sampayo and Porter JJ.

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FERNANDO v. SABARATNAM.

155—D. C. Colombo, 47,785.

Arbitrator's fee—District Judge fixing the amount of the fee and directing each party to pay an equal share after decree—Jurisdiction.

After decree was entered in terms of an award, the arbitrator asked for his fee, and the District Judge fixed the amount of the fee, and directed that it should be paid by both parties in equal shares.

Held, that the Court had jurisdiction even after decree to fix the amount and make the order it made.

THE facts appear from the judgment.

Hayley, for defendants, appellants.

Canakeratne, for arbitrator, appellants.

J. Joseph, for plaintiff, respondent.

October 5, 1922, DE SAMPAYO J.—

This is an appeal by the defendants from an order allowing certain amounts to the arbitrator as costs of the arbitration. It appears that the matter in dispute was referred to arbitration, and in the reference the arbitrator was given power to award costs of the proceedings as well as costs of the arbitration, but in making the award the arbitrator did not include any provision as to the costs. Subsequently the plaintiff, who was the successful party, moved that the Court should make an order allowing him the costs of the proceedings and of the arbitration. This motion would appear to have been made after the decree had been entered in terms of the award, and the District Judge refused the motion on the ground that he could not alter the decree when he had once entered it. There was an appeal to this Court by the defendants from the main order, and at the same time the plaintiff gave cross notice objecting to the refusal of his application for costs. This Court dismissed both the appeal and the cross notice. In this state of matters the arbitrator himself submitted to Court a bill and desired the Court to tax the bill, and, as it were, to allow him a reasonable amount for costs of the arbitration. The District Judge considered this matter, and fixed the amount due to the arbitrator at Rs. 249.30, and at the same time directed that this amount should be paid to the arbitrator by the parties in equal shares. The defendant has

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appealed again from this order. The first ground of appeal is that there is no authority for the Court to tax the bill of an arbitrator. There is undoubtedly no special provision with regard to it, but in substance the arbitrator's application amounted to asking the Court to fix a reasonable amount due to him. I think the form of the application need not prevent the Court from making the order for the arbitrator's costs. In the next place, it is urged that this is too late, as the Court had already refused to make an order, and this Court had dismissed an appeal from that refusal, but it must be remembered that the previous order was made on an application by the plaintiff, who applied that costs be allowed to him of the arbitration, and that the amount be embodied in the decree. I do not think the previous order, either of the District Court or of this Court, prevents the arbitrator from making the present application. As regards the jurisdiction of the Court to award the costs of an arbitrator, I think there is sufficient provision made in that respect by section 211 of the Civil Procedure Code. That no doubt has no special reference to arbitrator's costs, but it would seem from a work on *Practice in India* under a section of the India Code, corresponding with the above section of our Code, orders are made for arbitrator's fees, but, apart from that provision, I think section 689 of the Civil Procedure Code is specially applicable to a matter of this sort. That occurs in a chapter with reference to arbitration, and in dealing with the applications to set aside or correct an award, this section provides that a Court may also make such orders as it thinks fit respecting the costs of arbitration if any question arises respecting such costs, and the award contains no sufficient provision concerning them. That section appears to me exactly to fit the circumstances of this case. Mr. Hayley, for the defendant, finally says that he really would have had no objection to the Court fixing the amount by taxing the bill, but he does object to the Court ordering the defendant to pay half the amount. I do not see that the Court's power to apportion costs or to make a special order as to who shall pay the costs is restricted by section 689. Moreover, it would seem, when the original order referring matters to arbitration was made, it was specially directed that the costs of the arbitration should be paid by both parties in equal shares. I think the present order is merely carrying out the purpose of the original order, which was acquiesced in and acted upon by both parties.

I think the appeal should be dismissed, with costs.

PORTER J.—I concur, and for the same reasons.

Appeal dismissed.