

1950

Present : Dias S.P.J. and Pulle J.

DE ZILVA *et al.*, Appellants, and CHATHUKUTTY, Respondent

S. C. 91—D. C. (Inty.) Colombo, 163 Special

Patents Ordinance (Cap. 123)—Section 11 (6)—Opposition to grant of patent—Costs—Must be specified by the Registrar of Patents.

When the Registrar of Patents makes an order for costs under section 11 (6) of the Patents Ordinance, the amount of the costs payable must be specified in the order and must not be left to be determined by the Court.

APPEAL from an order of the District Court, Colombo.

S. J. V. Chelvanayagam, K.C. with N. Kumarasingham, for the petitioners appellants.

C. Renganathan, with A. Nagendra, for the respondent.

Cur. adv. vult.

May 25, 1950. DIAS S.P.J.—

The late Mr. S. Mahadeva applied to the Registrar of Patents for a certain patent. The respondent opposed that application. During the pendency of the proceedings, S. Mahadeva died and he is now represented in these proceedings by his executors, the petitioners appellants. The Registrar allowed the application for the patent and ordered the respondent to pay the costs of the petitioner. For some reason the Registrar failed to specify the amount of costs payable to the petitioner. An appeal lies to the Attorney-General from the Registrar's order. The respondent did not appeal to the Attorney General.

Section 11 (6) of the Patents Ordinance (Chapter 123) provides that the Registrar of Patents may, after deciding a case where there has been opposition to the grant of a patent, "make such order as may be thought fit for the payment of costs by the applicant to the party giving notice or *vice versa*, and such order may be made a rule of Court on an application *ex parte*".

The petitioners produced the order of the Registrar before the District Court of Colombo and moved (a) that it may be made a rule of Court, and (b) that the respondent be ordered to pay to the petitioners the amount of their bill of costs—Rs. 894.50. The Court ordered notice to issue on the respondent who appeared and objected.

The relevant passage in the Registrar's order reads as follows:—"I direct that the opponent pays the applicant his costs in this case, and to me Rs. 60 being the costs of hearing". It will be seen, therefore, that while the Registrar exercised the discretion vested in him by section 11 (6) and ordered the respondent to pay the petitioners their costs, he left the amount undetermined. Whose duty is it to determine those costs? It is the duty of the Registrar, or is it the duty of the Court? In my opinion there can be but one answer to that question. When the Legislature enacted that "the Registrar may make such order as may be thought fit for the payment of costs", it did not intend the Registrar merely to say that A should pay the costs of B, and leave it to some third party, who knows nothing about the merits of the case,

to embark on a voyage of discovery in order to assess and fix the amount of the costs payable. It was the duty of the Registrar himself, in the same manner in which he assessed his own costs, to have decided whether costs had to be paid by one party to the other, and if so, by whom, and how much. He is not only the proper person to make that order, but is the most competent person to do so, having the threads of the enquiry in his hands and knowing the merits and demerits of each party's case. I am unable to accede to the argument of counsel for the appellants that it was the duty of the Court to do the work which the Registrar for some reason has left undone, and to embark upon a fresh enquiry to ascertain what costs were payable by the respondent to the appellants. I would go further and hold that the only document which can properly and lawfully be made a rule of Court under section 11 (6) is an order for costs *which is complete in itself*. That is to say, the order must show that costs are payable by one of the parties to the other, and the amount of the costs payable must be specified. If the document is deficient in either of these respects the Judge would be justified in rejecting it out of hand. It is only when an order complete in itself is produced that the jurisdiction of the Court to make it a rule of Court can be said to arise. This disposes of the main appeal.

The Judge, however, allowed the appellant's application to make the Registrar's order as it now stands "the opponent shall pay the applicant his costs of the case" a rule of Court. Against this order the respondent has filed cross-objections. It seems to me that while the respondent's cross-objections are sound, nevertheless, no harm will be done to him by allowing the District Judge's order to stand although it seems to me to be technically irregular. If the appellants succeed in obtaining an order from the Registrar of Patents specifying what the costs payable to them are, and if they thereafter appear before the District Judge and apply to supplement the earlier order, it will be open to the respondent to urge any legal objections he may have against that application being allowed, as well as against the original application made to the Court. The appellants will pay to the respondent the costs of this appeal.

PULLE J.—I agree.

Order provisionally confirmed.
