

(1926) 01 MAD CK 0050
In the Madras High Court

Acha

APPELLANT

Vs

Sankaran and Others

RESPONDENT

Date of Decision : 18-01-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1926 Mad 768 : (1926) 23 LW 752 : (1926) 50 MLJ 497

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—This is an application to revise the order of the Subordinate Judge of South Malabar directing the plaintiff to pay additional Court-fee.

2. The first question for determination is whether this Court will interfere with such an order u/s 115 of the Civil Procedure Code. No doubt in *Sudali Muthu Pillai v. Sudalimuthu Pillai* (1922) 17 LW 623 Oldfield, J., held that such a case did come within Section 115 and he accordingly passed an order under that section. It may be observed however that in that particular case the order demanding additional Court-fee was coupled with an order dismissing the appeal in case of default. In the present instance, we have no such conditional dismissal but time was granted for the payment of the fee. In the Patna High Court it has consistently been held that the Court would not interfere in such" a case vide *Musammat I.achmibati Kumari v. Nand Kumar Singh* (1920) 5 Pat LJ 400 and the same view was taken by a Bench of the Calcutta High Court in *Gobindu Das Nath v. Nitya Kali Dasi* (1919) 51 IC 58. With all respect it appears to me that this is the right course to follow. Even if the plaint is rejected on the ground that the Court-fee has not been paid the plaintiff will have a right of appeal and if he pays the extra fee and has a trial of the suit and the suit is dismissed the question can again be raised by him in appeal. This being so, it seems useless to interfere in revision with what is in effect an interlocutory order which can be questioned hereafter. The mere admission of this petition has led to nearly eighteen months delay in the trial of the suit. Taking this view, I must dismiss this petition with

costs. Plaintiff will have another month within which to pay the extra Court-fee.