
(1914) 08 MAD CK 0030
In the Madras High Court

Aiya Koundan and Others

APPELLANT

Vs

Jagan Mandalathipathiar, Gopanna Marudiar

RESPONDENT

Date of Decision : 19-08-1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115(c)

Citation : (1914) 1 LW 726 : (1914) 27 MLJ 480

Judgement

1. We disallow the preliminary objection that no Letters Patent Appeal lies with reference to Rama Aiyyar v. Venkatachella Padayachi ILR (1906)

M. 311. There is no doubt that an ill-advised grant of permission to withdraw a suit with leave to sue again, under Order XXIII, Rule 1(2)(b) may

be such a material irregularity as is contemplated by Section 115(c) of the Civil Procedure Code. Here the District Munsif granted permission,

after a substantial portion of the plaintiff's case had been heard, on his affidavit that (1) he could not attend the hearing owing to his brother's death

(2) he wished for the issue of a commission, apparently then first mentioned (3) that he had to have certain measurements made and a plan

prepared,

2. We are prepared to hold that the "" sufficient ground referred to in Order XXIII, Rule 1(2)(b) must be ejusdem generis with the defect referred

to in Rule 1(2)(a) with reference to the usual interpretation of these words elsewhere in the Code, and to the explicit authority of Burathgunta

Pentadu v. Kurla Pathi Rajamma (1911) M.W.N. 105. And that it is clear that the District Munsif acted on nothing in any way resembling a formal

defect and that his order is unsustainable. But whether or no this interpretation of the phrase ""sufficient ground "" be adopted, we must hold that his

discretion was not exercised judicially, since it was exercised in spite of the defendants' opposition to condone defects in the plaintiff's conduct of

his case, which were due entirely to his own default and for which no excuse was attempted. The facts closely resemble those dealt with in Bui

Kashi Bai v. Shidappa Annappa ILR (1913) B. 683, a decision in which we express our respectful concurrence. The Letters Patent Appeal and

Petition are allowed with costs. The District Munsif's order is set aside and he is directed to restore the suit and dispose of it according to law.