

(1913) 06 BOM CK 0017
In the Bombay High Court

Bai Kashibai

APPELLANT

Vs

Shidapa Annapa and Others

RESPONDENT

Date of Decision : 26-06-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Citation : (1913) ILR (Bom) 682

Hon'ble Judges : Beaman, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—In this case the Subordinate Judge of Athni, after the case of both the plaintiff and the defendant was closed and all their witnesses had been examined, gave time to the plaintiff from the 13th to the 27th of September to adduce documents to counteract the effect of documents filed on the 13th by the defendant. Then on the 27th, on the application of the plaintiff and the allegation that the documents had not yet been obtained, although no specific documents were mentioned, the learned Judge allowed the plaintiff to withdraw from the suit with liberty to institute a fresh suit on the same subject-matter on payment of the defendant's costs. The permission was given under Order XXIII, Rule 1, which enables the Court to give such permission if it is satisfied that the suit must fail by reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. Having the grounds of the order before us, we are of opinion, that the learned Subordinate Judge has acted with material irregularity in the exercise of his jurisdiction. The hearing was finished and it was a very ill-advised order which permitted the plaintiff to try and produce documents to counteract the documents filed by the defendant after all the witnesses had been examined. His failure to produce such documents was not sufficient ground for allowing him to put the defendant to the trouble and annoyance of a fresh suit. The case is very much the same as one which came before the Calcutta High Court: *Hira Lal Mitra v. Uday Chandra Dey* 16 C W.N. 1027. We make the rule absolute with costs. We set aside the order of withdrawal and direct that the suit be proceeded with.