

(1904) 03 CAL CK 0018
In the Calcutta High Court

Gauri Shankar

APPELLANT

Vs

Maida Koer

RESPONDENT

Date of Decision : 29-03-1904

Acts Referred:

Citation : (1904) ILR (Cal) 516

Hon'ble Judges : Mitra, J;Brett, J

Bench : Division Bench

Judgement

Brett and Mitra, JJ.—It appears that the opposite party in this Rule made an application u/s 525 of the CPC in the Court of the Subordinate Judge of Patna to have a certain award, which had been made without the intervention of the Court on the 21st November 1902, filed in Court. The present petitioner objected. Issues were framed, evidence on both aides was gone into, and finally, when the case was being argued, the opposite party applied u/s 373 of the CPC to withdraw the application without permission to (sic) fresh one. The Subordinate Judge allowed the application (sic) the 2nd paragraph of Section 373 of the Code, and directed that the suit might be withdrawn, without permission to bring a fresh suit.

2. The petitioner afterwards applied to this Court and obtained a Rule in the following terms on the opposite party, to shew cause why the order of the Subordinate Judge mentioned in the petition should not be set aside on the ground that he ought to have dismissed the application of the plaintiff, and not given him liberty to withdraw the application u/s 373 of the Code of Civil Procedure.

3. We have heard the learned pleaders in support of the Rule and showing cause against it, and in our opinion the Rule should be discharged. Section 525 distinctly provides that an application under that section shall be numbered and registered as a suit between the applicant as plaintiff and the other party as defendant and that the further proceedings shall be as in a regular suit. Under these circumstances we think that there is no ground for the contention that

Section 373 of the Code does not apply to such an application, and, as we hold that the provisions of Section 373 apply, we are of opinion that the opposite party was at liberty at any stage of the hearing of the suit prior to the delivery of judgment and preparation of the decree to withdraw from the suit. The Subordinate Judge in his judgment has distinctly noted that the application is made under the 2nd Clause of Section 373 of the Code and that the plaintiff has been allowed to withdraw the suit without permission to bring a fresh suit, and under such circumstances we do not think that there is any ground whatever for the apprehension which the petitioner appears to entertain. At the same time we are unable to find any provision in the Code, which would empower us to direct the Subordinate Judge to dismiss the suit rather than pass the order which he has passed u/s 373 permitting the plaintiff to withdraw the suit. Under these circumstances the Eule must be discharged.

4. The Rule is discharged with costs.