
(1886) 12 AHC CK 0010
In the Allahabad High Court

Gula Kuar

APPELLANT

Vs

Baldeo and Others

RESPONDENT

Date of Decision : 06-12-1886

Acts Referred:

Citation : (1887) ILR (All) 129

Hon'ble Judges : Oldfield, J;Brodhurst, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Oldfield, J.—In this case the respondent before us made an application to be allowed to sue in forma pauperis. This application was, by a petition put in by her, withdrawn; she subsequently repudiated the petition and desired to proceed with her application.

2. The first Court did not deal with the application on the merits, but dealt only with the question whether she did really withdraw, and on that question the Court held that she had withdrawn and entered into another contract. The order of the Court was "that the case be struck off; the petitioner is at liberty to bring a maintenance suit on the contract if she wishes to do so." This order was appealed to the Judge, who set it aside, and directed the lower Court to restore the application of the respondent to its file and hear it on its merits. Against this order of the Judge an appeal has been preferred to this Court on the ground that the Judge had no jurisdiction to make it. It appears to me the Judge had jurisdiction, and that the question depends on whether the first Court's order was a decree within the meaning of Section 2 of the Civil Procedure Code, so as to allow of an appeal to the Judge. I think it was. The matter disposed of by the Court was, in fact, whether the plaintiff had a right to institute the suit, and the effect of the order was to negative that right and to strike the case off the file, and I think it was an adjudication in respect of a right within the meaning of Section 2; and I may add that it might also be regarded as analogous to an order rejecting a plaint, the application, by Section 410 of the Code, in the event of its

being granted, being to be deemed to be the plaintiff in the suit.

3. On these grounds I would affirm the Judge's order and dismiss the appeal with costs.

Brodhurst, J.

4. I entirely concur.