

(1936) 08 CAL CK 0007
In the Calcutta High Court

Serajgunj Co Operative Urban Bank, Ltd. and Another	APPELLANT
Vs	
Bindhubashini Dassya and Others	RESPONDENT

Date of Decision : 03-08-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 44 Rule 1

Citation : 170 Ind. Cas. 688

Hon'ble Judges : Guha, J; Bartley, J

Bench : Division Bench

Judgement

1. This Rule is directed against the order passed by the learned Subordinate Judge, Second Court, Pabna, on January 13, 1936, holding that an application for review of judgment by a party who has been allowed to appeal as a paper was maintainable, without payment of court-fees. The question raised in the case, namely whether an application for review of judgment passed on appeal which was allowed to be presented by the party concerned as a pauper, under Order XLIV, Rule 1, Civil Procedure Code, attracted the provisions of the Court Fees Act, relating to an application for review of judgment, is an important one but in our judgment, there is no difficulty in answering the same in the negative in view of the clear provisions of the law contained in the Code of Civil Procedure, relating to suits and appeals by paupers. As was pointed out by the Allahabad High Court in Umda Bibi v. Naina Bibi 20 A. 410 the word "suit" meant the suit instituted on permission to sue as a pauper being given.

2. That suit is then to proceed as an ordinary suit under the Code of Civil Procedure. One of the incidents of such a suit is that a party aggrieved by a decree or order in that suit may under certain circumstances present an application for review. The presentation of such an application is a proceeding connected with the suit. It follows, therefore, that when an application for review of judgment is presented in the course of the proceedings in a suit in forma pauperis, that application like the plaint in the suit, is not liable to any court-fee. The observations of the learned Judges of the Allahabad High Court referred to

above with which we entirely agree, apply with equal force to the case of an application for review of judgment passed by a pauper, regard being had to the specific provisions contained in Order XLLV, Rule 1, Civil Procedure Code, allowing a person to appeal as a pauper, subject in all matters to the provisions relating to suits by paupers, in so far as those provisions are applicable. There can be no question that an application for review of judgment passed on appeal, must, under the law, be considered to be in continuation of the appeal itself which was in forma pauperis; and both sound reason and obvious justice in a case of this description demand, that such an application must be held to be maintainable without payment of court-fees, at the time of filing the same, as in the case of the memorandum of appeal allowed to be presented without payment of adequate court fees.

3. It may be stated that it cannot possibly be presumed that the Legislature intended that when a suit or an appeal is allowed to be presented by any party as a pauper and exemption in the matter of payment of court-fees is granted under the law; any application for review of judgment arising out of the same proceeding would require payment of court-fees. The Rule is discharged; the order of the Court below, rejecting the preliminary objection raised by the petitioner in this Court on the question of court fees is affirmed. The opposite party is entitled to her costs in the Rule. The hearing-fee in this Court is assessed as two gold mohurs.