

(1919) 03 CAL CK 0051
In the Calcutta High Court

Srimatya Baroda Dasi

APPELLANT

Vs

Upendranath Mandal and Others

RESPONDENT

Date of Decision : 21-03-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 115

Citation : AIR 1919 Cal 330(2) : 52 Ind. Cas. 562

Hon'ble Judges : Walmsley, J; Charles Chitty, J

Bench : Division Bench

Judgement

Charles Chitty, J.—This is a Rule issued at the instance of Baroda Dasi, whose application to sue in forma pauperis has been refused by the Subordinate Judge. I feel some doubt whether the case comes within the provisions of Section 115, Civil Procedure Code, but, apart from that difficulty, I do not think that the application should be granted. It appears that on 17th September 1917 the petitioner made a similar application before the Subordinate Judge which was registered, and notices were issued to the Collector and the opposite party. The case was adjourned on several occasions. On the 15th December 1917 the Government Pleader submitted a report after enquiry to the effect that the petitioner was not a pauper. The case was then further adjourned and ultimately came on for hearing on 23rd February 1918. On that occasion the petitioner applied for permission to withdraw from her application. The learned Judge thought that Order XXIII, Rule 1, Civil Procedure Code, relating to withdrawal of suits did not apply to this application and declined to allow her to withdraw. The petitioner thereupon refused to prosecute her application further and it was accordingly dismissed with costs to the opposite party. On 27th February 1918 she filed the present application, which is similar to the previous application, namely, to be allowed to sue in forma pauperis. The learned Subordinate Judge has thrown out her application, holding that her previous application having been rejected she could not present another one. The question turns on the interpretation to be put on Order XXXIII, Rules 5, 7 and 15. Rule 15 is clear that an order refusing to allow the applicant to sue as a pauper shall be a bar to any

subsequent application of a like nature by him in respect of the same right to sue, but, of course, the applicant may file a suit in the usual way on payment of fees. This is not a case of an application being dismissed for want of appearance. The petitioner was in Court with her Pleader, but under the circumstances, declined to proceed. It is now suggested that we might allow her to withdraw this and the previous application and to begin again with a third application. That we cannot possibly do. This appears to be an order refusing to allow her to sue as a pauper, and the fact that no evidence was taken was due to the refusal of the petitioner herself to proceed. In the circumstances we are not disposed to exercise our revisional powers, even if the matter comes within Section 115, Civil Procedure Code. The Rule must, therefore, be discharged. We make no order as to costs.

Walmsley, J.

2. I agree.