

(1898) 05 AHC CK 0013
In the Allahabad High Court

Umda Bibi and Others

APPELLANT

Vs

Naima Bibi

RESPONDENT

Date of Decision : 10-05-1898

Acts Referred:

Citation : (1898) ILR (All) 410

Hon'ble Judges : Dillon, J;Burkitt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Burkitt and Dillon, JJ.—This is an appeal against an order of the Subordinate Judge of Gorakhpur admitting a review of judgment. The plaintiff, respondent here, had sued to recover certain property and had got permission to sue in formd pauperis. Some time afterwards a petition was presented purporting to be on behalf of the plaintiff, and alleging that she and the defendants had compromised the suit on certain terms, and asking that a decree should be drawn up in the terms of the compromise. The Court ordered a decree to be drawn up as prayed. Within three months the plaintiff applied to the Court, substantially, though not formally, for a review of its judgment and of the decree passed on the compromise. In this application the plaintiff alleged f-at she had been cheated by her own legal adviser in collusion with the defendants; that the compromise as drawn up was not that to which she had agreed, and that she knew nothing of the compromise as presented to the Court. The USUHI proceedings having been taken, this application for review was admitted, and from the order admitting it the present appeal has been brought. The first contention, which has been most strenuously and ably argued by Maulvi Ghularn Mujtaba, was that under Clause 5, schedule I of the Court Fees Act the applicant ought to have paid on her application for review of judgment half the Court fee which would have been leviable on the plaint and that the Court below was wrong in admitting the application until that fee had been paid As a matter of fact the only fee paid on the application was an eight anna Court fee. Having

heard Maulvi Ghulam Mujtaba at great length on this point we are of opinion that the answer to his contention is to be found in Section 410 of the Code of Civil Procedure. That section is one of the sections in the chapter treating of "Suits by paupers." Its provisions are that as soon as an application to sue in formd pauperis has been granted "the application shall be numbered and registered and shall be deemed to be the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V." It then goes to make an exception in favour of a pauper plaintiff by providing that "the plaintiff shall not be liable to any Court fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit." Now the word "suit" undoubtedly means the suit instituted on permission to sue as a pauper being given. That suit is then to proceed as an ordinary suit under the Act. 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 in our opinion a "proceeding connected with the suit," such as is contemplated by the final words of Section 110. We think then that when an application for review is presented in the course of the proceedings in a suit in formd pauperis, that application, like the plaint in the suit, is not liable to any Court fee. To hold otherwise might, in our opinion, be productive of great injustice and hardship. For instance, in the present case the pauper plaintiff in order to get her application for a review of judgment admitted would have to pay something, like Rs. 2,500 in Court fees, while her plaint is not liable to any Court fee. The second matter which was argued for the appellants in this case was that the order admitting the application for review was in contravention of the provisions of Section 626 of the Code of Civil Procedure. The only provision of Section 626 on which the learned vakil relied was the second, and as to that it is sufficient to say that he ha³ failed to show anything which would have brought the case within that provision. For the above reasons we dismiss this appeal.