

Malik Mohammad Ayub Vs. Malik Mohammad Mahmood and ors.

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Court : Allahabad

Decided On : May-25-1910

Reported in : 6Ind.Cas.831

Judge : Karamat Husain and ;Chamier, JJ.

Appellant : Malik Mohammad Ayub

Respondent : Malik Mohammad Mahmood and ors.

Judgement :

Karamat Husain, J.

1. This is an application to revise an order passed by the learned Subordinate Judge of Allahabad granting an application to sue in forma pauperis. The ground taken is that there was no valid presentation of the application to sue in forma pauperis and the Court below was bound to reject it. At the hearing of this revision, a preliminary objection is taken that inasmuch as the order is an interlocutory order it cannot be revised. In support of this contention reliance is placed on Har Saran Singh v. Mohammed Raza 4 A. 91, and on Bhulnesri Dat v. Bidia Das A.W.N. (1882) 69. In the latter case, Straight and Oldfield JJ., following the rulings of this Court, held 'that they could not interfere in revision with the Subordinate Judge's order refusing the application of the petitioners to sue in forma pauperis.' The learned Advocate for the applicant relies on Faiz Mohammed Khan v. Azizunnissa A.W.N. (1893) 218, in which a single Judge of this Court came to the conclusion

the a revision of an order rejecting an application to sue in forma pauperis would lie to this Court. This case was followed by, Banerji, J., in Musammat Changia v. Joti Persad 6 Ind. Cas. 703 (Civil Revision No. 24 of 1910 decided on the 24th of May 1910), in which an application for revision of an order of the District Judge, rejecting an application in forma pauperis, was allowed. The learned Advocate for the applicant also relies on Ghulam Sabbir v. Dwarha Persad 18 A. 163, which lays down that the High Court could interfere in revision under Section 622 of Act XIV of 1882, although it was possible that the matters complained of might be grounds for a separate suit, and also on Debi Das v. Ejaz Husain 28 A. 72 : A.L.J. 749 : A.W.N. (1905) 19, which lays down that the revisional powers of the High Court, will not invariably be confined to matters in respect of which no other remedy is open to the party grieved. Having regard to the course of decisions of this Court, I am of opinion that the preliminary objection taken by the learned Advocate must prevail. A distinction, however, is to be drawn between the cases in which an application in forma pauperis is rejected and cases in which it is granted. When it is rejected, the 'case' of the applicant comes to an end and is to be governed by the rulings in the cases of Faiz Mohammad Khan v. Aziznissa A.W.N. (1893) 18 and Musaammatt Changja v. Joti Persad 6 Ind. Cas. 703, decided on the 24th of May 1910. But when the application is granted, the 'case' of the pauper is not, in my opinion, decided within the meaning of Section 115 of the new Code of Civil Procedure. Following, therefore, the rulings in Har Saran Singh v. Mohammed Raza 4 A. 91 and in Bhulnesri Bat v. Bidia Das A.W.N. (1882) 69, I would give effect to the preliminary objection and dismiss the application.

Chamier, J.

2. I agree.

3. Under the present Code of Civil Procedure, it seems to be quite clear that 'the case' must have been decided before the High Court can interfere in revision. I am not prepared to subscribe to the view that no proceeding can be a 'case' unless it terminates in a decree. But giving the word 'case' the widest meaning that was given to that word in Section 622 of the Code of 1882, I am unable to hold that the order against which, this application for revision is presented decided any 'case.' It

appears to me that there is a clear distinction between the case of an application for permission to sue or appeal in forma pauperis being dismissed or rejected and case in which a similar application is allowed. In the former, it may be said that the case had been decided while in the latter the order appears to be merely interlocutory.

4. The application is rejected with costs including fees on the higher scale.

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