

REVISIONAL CIVIL.*Before Mr. Justice Abūl Raḥf.***MUSSAMMAT BAL KAUR AND OTHERS****(PLAINTIFFS) Petitioners,***versus***SHIE DAS (DEFENDANT) Respondent.**

1919

June 17

Civil Revision No. 937 of 1918.

Civil Procedure Code, Act V of 1908, order 33, rules 2, 5 (a) and 15—Pauper suit—application for permission dismissed because not accompanied by schedule of property—whether second application is barred.

The petitioners applied for permission to sue as paupers. This application was rejected because it was not accompanied by a schedule of moveable and immoveable property belonging to the applicants—*vide* rules 2 and 5 of order 33 of the Code of Civil Procedure. They then presented a second application for permission which was rejected as barred under rule 15 of the same order.

Held, that rule 15 of order 33 of the Code does not bar a second application, where the first application was rejected under rule 5 (a).

Howa v. Sit Sain (1), referred to.

Atul Chandra Sen v. Raja Feary Mohan Mookerjee (2), distinguished.

Revision from the order of Rai Sahib Lala Jaswant Rai, Subordinate Judge, 1st Class, Lahore, dated the 17th June 1918, dismissing the application.

TIRATH RAM, for Petitioners.

TEK CHAND, for Respondent.

ABDUL RAḤF, J.—The facts out of which this petition for revision has arisen may be stated as follows. The petitioner applied for permission to sue as a pauper on the 26th of February 1917. This application was not accompanied with a schedule of moveable and immoveable property belonging to the applicant as required by rule 2, order XXXIII of the Code of Civil Procedure. On account of this defect the

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application was rejected on the 16th of August 1917. The Court recorded the order in the following words :—

“This is an application for permission to sue as a pauper, but was not accompanied by a schedule of any property belonging to the applicant, as required under order XXXIII, rule 2, Civil Procedure Code, and is therefore hereby rejected under order XXXIII, rule 5, Civil Procedure Code.”

The applicant then made a second application, dated the 23rd December 1917, which has been rejected again by the Court. He has therefore come up to this Court for revision. The reason given for the rejection of the present application is that it is barred under order XXXIII, rule 15, Civil Procedure Code. In support of this opinion the learned Subordinate Judge has relied upon the case of *Atul Chandra Sen and others v. Raja Peary Mohan Mookerjee and others* (1). Having regard to the special features of that case it can hardly be said to be applicable to the present case. In the present case beyond the fact of an application being presented without the required schedule and the appearance of the parties, nothing further was done. In the case relied upon evidence was taken on both sides, and it was found that the applicant had made false statement, that his own *purohit* contradicted him, and that he was owner of a house. The first application in that case therefore was rejected not for want of any formality, but because the applicant had been found to be possessed of property. The order no doubt purported to have been made with reference to the provisions of rule 2, namely, that the applicant had not furnished the particulars required with regard to the plaint. In substance, however, the order was made within the meaning of rule 7, order XXXIII, Civil Procedure Code.

It is contended on behalf of the respondent in this case that according to the ruling relied upon the second application was prohibited by rule 15, because the order was made under rule 5 (a), and according to the said ruling orders made under rule 5 (a) barred a

second application with reference to the provisions of rule 15. The learned Judges at page 813 of the report remarked:--

“The question therefore narrowed itself to this namely, whether the rejection under rule 5 (a) in all cases is free from the bar laid down in rule 15.”

Evidently the learned Judges meant to imply that there may be some cases in which an order made under rule 5 (a) may be barred under rule 15, and there may be other cases in which such an order may not be a bar to a second application. This ruling was cited in a Full Bench case reported in *Hoica v. Sit Shein* (1) decided by the Lower Burma Chief Court. The learned Judges in a very exhaustive judgment examined the provisions of the different rules under Order XXXIII, Civil Procedure Code, and came to the conclusion that an order made under rule 5 (a) could not bar a second application. It is needless for me to examine all the rules under order XXXIII. It is enough to say that I entirely agree in the opinion expressed by the majority of the learned Judges of the Lower Burma Chief Court.

In my opinion therefore the Court below was not justified in rejecting the present application. I set aside the order of the Court below and send the case back to it to be disposed of according to law.

Revision accepted.

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