

B.B. and C.I. Ry. Co. Vs Mitthu

Court: Allahabad High Court

Date of Decision: April 10, 1931

Hon'ble Judges: Mukerji, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mukerji, J.

These are two applications in revision in two different suits of a similar nature, which were heard together and decided by the

learned Subordinate Judge on 25th February 1930.

2. It appears that there was a railway accident and certain persons were hurt. Two suits were instituted for recovery of damages against the

railway administration. The plaintiffs in the suits declared that they were paupers and unable to pay the courtfee stamp. An enquiry was started,

after giving information to the Government Pleader and to the opposite party. The enquiry has resulted in a declaration that the plaintiffs are entitled

to sue as paupers.

3. The railway has come up in revision.

4. The first question is whether a revision lies.

5. The learned Counsel for the appellant has argued that if a revision is not entertained the result will be that at no subsequent stage, either in the

suit or in an appeal, his client will be entitled to question the validity of the order of the learned Subordinate Judge. In other words, he assumes that

because no appeal is provided for under the law against the decision of the learned Subordinate Judge, that a plaintiff should be allowed to sue as a

pauper, a revision should lie. No authority for such a broad proposition was cited and could be cited.

6. The question whether court fee should be paid or not is really a matter that is important from the point of view of Government and Government

alone. The Court fees Act, Section 12, lays down that:

every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum

of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as

between the parties to the suit.

7. Again, there is a similar provision in the Stamp Act which says that where a document, even if it is insufficiently stamped, is admitted as

sufficiently stamped by a Court, at subsequent stages of the litigation, the parties are not entitled to question the validity of the order.

8. The principle seems to be that, where a question as to taxation has to be decided, the decision of the first Court should be taken to be final so

far as the parties are concerned. This will go to show that it cannot be contended on principle, that because an appeal is not allowed a revision

should be entertained.

9. Now we come to interpret the relevant section, namely, Section 115, Civil P.C. It lays down that the High Court may call for the record of any

case which has been decided by any Court subordinate to such High Court. The question is whether any case has been decided by the learned

Subordinate Judge. The result of the decision of the learned Subordinate Judge is really to start a case and not to put an end to a litigation or any

controversy. It has been held in *Sumatra Devi, Mt. Vs. Hazari Lal and Another* that a decision disallowing an applicant to sue as a pauper is a

case decided"". That has been so held because the matter ends there, and unless the applicant is prepared to pay-court fees, he cannot prosecute

his application by way of suit any further. There the matter ends. But, in this [particular case, the matter does not come to an end; but the litigation

continues. We cannot therefore say that a case has been decided. The order is more or less in the nature of an interlocutory order and not a final

order.

10. In *Muhammad Ayub v. Muhammad Mahmud* [1910] 32 All. 623 a Division Bench of this "Court held that where an application to "sue as a

pauper is accepted, no revision lies. Thus, we have got a clear authority in support of the proposition that no revision is maintainable. We agree

with that view and dismiss the present applications with costs.