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In Re: Sm. Bhagabati Dasi

Court: Calcutta High Court

Date of Decision: June 30, 1950

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115
Constitution of India, 1950 â€" Article 1, 227

Citation: 54 CWN 795

Hon'ble Judges: Sen, J; Chunder, J

Bench: Division Bench

Advocate: Sudhansu Kumar Sen, for the Appellant; Chandra Sekhar Sen for the State and Binayak Nath Banerjee for the Bar Association, for the Respondent

Judgement

Sen, J.
These are eight applications and this Court is asked to exercise its powers under Art. 227 of the Constitution Act and sec. 32 (4)

of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, Court-fees of Rs. 2 have been offered by the applicant on each

application. The learned Registrar held the view that an application for relief under Art. 227 of the Constitution Act should be treated as an

application under sec. 115 of the CPC and that court-fees are payable as on an application under sec. 115 of the Code of Civil Procedure. For

this view he relies upon a resolution of the Full Court to the effect that the report of the Committee appointed to examine the matter as to how

applications under Art. 227 of the Constitution Act should be dealt with should be adopted. All that the Full Court decided was that these

applications under Art. 227 of the Constitution of India should be dealt with by the Court in the same manner as that in which applications under

sec. 115 of the CPC are dealt with. The Full Court did not in any way deal with the question of court-fees and indeed in our opinion the Full Court

would not have any power to pass any resolution affecting the provisions of the Court-Fees Act. The Full Court''s decision was purely an

administrative one and it laid down rules as to which Court should hear such applications and similar matters. We are of opinion, therefore, that the

learned Registrar has misappreciated the resolution. The question of court-fees has nothing to do with the resolution. We are thus relegated to

consider the matter with reference to the Court-Fees Act, Art. 1 (d) of the Second Schedule. The Court-Fees Act deals with this matter. It fixed

the court-fees on applications under sec. 115 of the Code of Civil Procedure, that is, fixed by (d) (i). By (d) (ii), applications other than those

under sec. 115 of the CPC are dealt with and the court-fee is prescribed for such applications. We are of opinion that Art. 1 (d) (ii) of Schedule II

of the Court-Fees Act applies to applications made under Art. 227 of the Constitution of India. Court-fees will, therefore, be payable under that

Article and court-fees should not be levied on the basis that these applications are applications under sec. 115 of the Code of Civil Procedure. The

next question which arises is, whether separate court-fees should be paid inasmuch as the applications have invoked the provisions not only of Art.

227 of the Constitution of India but also of sec. 32 (4) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. We are of

opinion that only one court-fee is payable where one application has been made.

2. We find no provision for levying court-fees separately for each section which may be mentioned in the application as empowering the Court to

interfere. There is only one application and, therefore, only one court-fee is payable. Let a copy of this order be sent to the Bar Association.

Chunder, J.

I agree.