

(1919) 12 BOM CK 0036

Bombay High Court**Case No:** Civil Application No. 105 of 1919

Bai Rami

APPELLANT

Vs

Jaga Dullabh

RESPONDENT

Date of Decision: Dec. 5, 1919**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (1920) 22 BOMLR 801 : 57 Ind. Cas. 556**Hon'ble Judges:** Norman Macleod, J; Heaton, J**Bench:** Division Bench

Judgement

Norman Macleod, Kt., C.J.

This is an application by the 6th defendant in the suit asking us to exercise our powers u/s 115 of the Civil Procedure Code. The facts are shown in the judgment of the Subordinate Judge dated the 25th January 1919:

The applicant was served with summons on 3rd August 1918; she had to be present on the 18th October; she remained absent on the said date as well as on two following dates namely 8th November and 12th December. On 10th January she presented this application praying the Court to set aside the order to proceed with the suit ex parte against her passed on 18th October.

2. The Judge said:

The application was opposed by the plaintiff; after carefully considering applicant's affidavit I am not satisfied that she was justified in being absent for about more than five months after she was served with a summons. Conceding that she was ill on 18th October, she, ought to have moved the Court as soon as she was cured; not having chosen to do so, she is not entitled to any indulgence in the matter, and so I reject her application with costs.

3. That was an interlocutory order which, whether it was right or whether it was wrong, does not decide the case. u/s 115 the High Court may call for the record of any Case which has been decided by any Court Subordinate to such High Court and in which no appeal lies thereto. We have, therefore, no power to call for the record of any case which is under trial by a Court Subordinate to the High Court. It seems necessary to point out that an application like this made during the course of a trial asking the Court to exercise its powers u/s 115 in the matter of interlocutory orders cannot be countenanced. If such applications are made in future they should not be admitted. The rule is discharged with costs.

Heaton, J.

4. I entirely agree. It seems to me that if there is one kind of case which Section 115 most emphatically points to as not falling within its terms, it is a case like the present, where there is an interlocutory order on an incidental matter which does not prevent the further progress of the suit. How that can be brought within the words "a decided case in which no appeal lies," I myself am unable to understand.