

IN THE HIGH COURT OF LAHORE

Decided On: 12.01.1923

Appellants: **Begaum**
Vs.
Respondent: **Jafar Hassan**

Hon'ble
Abdul Raof, J.

Judges/Coram:

JUDGMENT

1. This is an application asking this Court to revise an order refusing to allow the applicant to sue as a pauper. The applicant first made an application on the 23rd of November, 1920, for permission to sue as a pauper. On the 30th of November, 1920, some sort of compromise was effected between the applicant and the opposite party in consequence of which the applicant did not press her application and the Court on the 1st of December made an order refusing the application on the ground that it was not pressed. On the 25th of August, 1921, the applicant applied for a review of the order of refusal but the review was not granted. The present application was made on the 3rd of October, 1921, in respect of the same right to sue and was rejected on the ground that in consequence of the compromise the petitioner was not entitled to sue. The question which I have to decide is whether this application is barred or not by the provisions of Order 33, Rule 15, Civil Procedure Code. This rule provides that "an order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right."

2. It was contended on behalf of the applicant that Rule 7, Order 33, Civil Procedure Code, under which it is said the order of refusal was made contemplates an inquiry into the question of pauperism and that it is only after holding such an enquiry that the Court can make an order under that rule either allowing or refusing to allow the applicant to sue as a pauper. The argument is that as the first application was rejected without an enquiry into the

pauperism of the petitioner the order of refusal cannot be said to have been made under Rule 7 and that, therefore, the order of refusal made on the first application, cannot be a bar to the present application. A similar question under almost similar circumstances was raised before the Bombay High Court in the case of *Ranchod Morar v. Bezanji Edulji* (1896) 20 Bom. 86 and it was held "that the order rejecting the plaintiff's first application was an order under Section 409 of the Code of Civil Procedure; that 'both the applications were made in respect of the same right to sue, and that the order rejecting the first application operated as a bar under Section 413 of the Code to the entertainment of the second application.'" Rule 7 of Order 33 of the present Code makes the same provision as was contained in Section 409, Civil Procedure Code, and Rule 15 of the same order is almost the same as Section 413 of the old Code. In the Bombay case the Court had made an order of refusal as the petitioner had refused to go on with his application. In the present case also the petitioner had refused; to press her application in consequence of the alleged compromise.

3. A further contention was put forward on behalf of the petitioner, that in this case there was no order of refusal but simply an order rejecting the application and therefore, neither Rule 7 nor Rule 15 applied. A similar argument was put forward in the Bombay case and the learned Judges held that Section 409 was the only section in the Code under which the order rejecting the application could have been made and that, therefore, it must be taken to be an order of refusal. In

the case of Naraini Kuar v. Makhan Lal (1895) 17 All. 526 the learned Judges of a Division Bench at page 528 are reported to have made the following observation:

It is obvious from Section 413 that when an order... under Section 409 is made... there is a bar to any further application to sue as a pauper.

4. Following the two above decisions I must hold that the present application is barred. The application is rejected with costs.

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