
(1869) 06 CAL CK 0025

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 178 of 1869

Mussamut Bibi Nasran

APPELLANT

Vs

Syad Wali Alam

RESPONDENT

Date of Decision: June 15, 1869

Judgement

Kemp, J.

It appears in this case that certain disputes between the defendant, appellant and plaintiff, respondent, were referred to private arbitrators. The opposite party (Bibi Nasran) applied to the Court below, u/s 327 of Act VIII of 1859, on a stamp of the value of ordinary petitions to the lower Court, viz., one rupee.

2. The present appeal on the part of the defendant is brought on a stamp of two rupees, and not on a stamp required for a regular appeal. Two objections have been taken by the pleader for the opposite party; 1st, that no appeal at all will lie; and 2nd, that if any appeal will lie, the appeal ought to have been presented on a stamp required for a regular appeal, and not upon a two rupee stamp.

3. There is no ground for the first contention that no appeal at all will lie, inasmuch as there can be no doubt that, under the provisions of section 325 the order for the execution of the arbitration award must be considered to be a decree of Court; an appeal will therefore lie.

4. On the second ground, we are of opinion that this contention is good, and that in accordance with the ruling in the case of Ram Coomar Chowdhry v. Nobin Chunder Chowdhry W.R. 1861, Mis. 33, and in a decision Mis. Ap. 71 of 1863; Deo, 22nd, 1863 by Justices Loch and Norman, the appeal ought to have been made on a full stamp. The appeal is therefore dismissed with costs, without prejudice to the appellant to bring a fresh appeal within 20 days on a full stamp.