

**(1869) 02 CAL CK 0011**

**Calcutta High Court**

**Case No:** Miscellaneous Regular Appeal No. 483 of 1898

Roy Priyanath Chowdhry

APPELLANT

Vs

Prasanna Chandra Roy  
Chowdhry and Others

RESPONDENT

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**Date of Decision:** Feb. 15, 1869

**Final Decision:** Dismissed

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**Judgement**

Loch, J.

It appears to me that this case comes under the ruling in Chinta Man Sing v. Rupa Kooer (Case No. 353 of 1866, 31st August 1866), and is similar to another case that of Digamburee Dossee v. Poornanund Dey (7 W.R., 401), decided by Norman, Seton-Karr, and L.S. Jackson, JJ., in which the Judges held, that, though the lower Court entered into the merits of the case, yet the order rejecting the application for filing the award was merely an order, from which no appeal lies to this Court. In the present case the Judge, after following the course prescribed in Section 327, Act VIII of 1859, viz., after having numbered and registered the application as a suit, called upon the opposite party to show cause why the award should not be filed in the Court; and after hearing what the opposite party had to say, ruled that the opposite party had shown sufficient cause for rejecting the application, which he dismissed and gave costs as in a regular suit.

2. It is now contended that the costs should not have been awarded in this manner; that with regard to costs, the procedure must be considered as a miscellaneous case, and not more than quarter costs should have been allowed.

3. I do not think that this objection can be admitted. The application is regarded as a suit; and costs if the Judge sees proper, can be awarded accordingly. I see, therefore, no valid ground to admit this appeal, which must be dismissed with costs.

Mitter, J.

4. If I were at liberty to dispose of the preliminary objection taken by the respondent that no appeal lies from an order refusing to file an award, according to my own view of the law, I am bound to say that I would have decided it against him. In my opinion a regular appeal ought to lie to this Court against an order of the lower Court refusing an application for filing an award u/s 327, Act VIII of 1859. This section most clearly and distinctly states that such an application is to be numbered and registered as a regular suit, and I see no reason whatever why an order refusing such an application or granting it, should not be considered as a decree passed in a regular suit.

5. Section 23, Act XXIII of 1861 which takes the place of Section 332, Act VIII of 1859, most distinctly says that, "except when otherwise expressly provided in this or any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the Courts of original jurisdiction to the Courts authorized to hear appeals from the decision of those Courts." Now in this case there can be no doubt that a decision has been passed by the Judge, which is tantamount to a decree disallowing the claim of the applicant to the properties in suit; and in the absence of any express provision allowing an appeal from such a decision, I would have held that an appeal ought to lie to this Court exactly in the same way as in cases decided under Sections 229 and 230 of the Code of Civil Procedure. As the case stands, however, at present, I am bound to dispose of it according to the ruling in *Chinta Man Sing v. Rupa Kooer* (Case No. 353 of 1866, 31st August 1866) and I, therefore, dismiss this appeal with costs.