

**(1928) 04 CAL CK 0021**

**Calcutta High Court**

**Case No:** None

Ram Charan Goldar and Others

APPELLANT

Vs

Hamid Ali and Others

RESPONDENT

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**Date of Decision:** April 26, 1928

**Acts Referred:**

- Court Fees Act, 1870 - Article 11(b), 5

**Citation:** AIR 1929 Cal 575 : 117 Ind. Cas. 595

**Hon'ble Judges:** Rankin, C.J

**Bench:** Division Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

Rankin, C.J.

In this case two learned Judges differed in the decision of a second appeal and in the end Cuming, J., under the amended letters prevailed and the appeal was dismissed Thereupon an application was made to Patent for a certificate that the case was a fit one to be taken on further appeal. That application was made subsequently to the learned Judge upon a separate petition. It was rejected and the rejection was recorded in the order sheet ;

Bead an application filed on 23rd February 1928, and moved to-day. It is rejected.

2. The order is dated 24th February 1928.

3. From that an appeal has been brought and the memorandum of appeal when lodged was excepted to by the stamp reporter on the ground that it was insufficiently stamped. It does not appear to have been sufficiently stamped, but the question of the correct Court-fee has been referred to me by the Taxing Officer u/s 5, Court-fees Act.

4. It is contended for the appellant that this case is governed by Article 11(b), Schedule 2 of the Act, which applies to a memorandum of appeal when the appeal is not an appeal from a decree or an order having the force of a decree. I have examined the decree which has since been drawn up in the matter of the second appeal and I find in it no reference to the application for leave to appeal. In these circumstances it appears to me that the Court-fee is chargeable on this memorandum of appeal under Article 11(b), Schedule 2 to the Court-fees Act as has been contended for on behalf of the appellant.

5. Accordingly the deficit Court-fee will be accepted if put in by Monday next.