

(1912) 05 CAL CK 0042

Calcutta High Court

Case No: None

Mahiraja Sir Bijoy Chand
Mahatap

APPELLANT

Vs

Rakhad Chatteraj and Others

RESPONDENT

Date of Decision: May 20, 1912

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 2(2)

Citation: 15 Ind. Cas. 601

Hon'ble Judges: Mookerjee, J; Beachcroft, J

Bench: Division Bench

Judgement

1. The question of law raised in this Rule is, whether a decree under Rule 8 of Order IX of the Code of 1908, is an order of dismissal for default within the meaning of Sub-section 2 of Section 2 of the Code. It appears that the petitioner was the plaintiff in a suit for rent. "When the suit came on for trial, an application was made on his behalf for adjournment. That application was refused, whereupon his Pleader stated that he had no materials in support of the claim. The Court did not dismiss the suit, as the defendants had admitted a part of the claim: and a decree was. made in terms of Rule 8 of Order IX of the Code. That decree is to the effect that the portion of the claim admitted by the defendant be decreed and that the remainder of the claim be dismissed. In oar opinion, this decree is not an order of dismissal for default within the meaning of Sub-section 2 of Section 2. Consequently; an appeal against the decree was competent. Such an appeal was preferred, but the Subordinate-Judge erroneously declined to entertain it on the ground that the decree was really an order of dismissal for default and was consequently con-appealable.

2. The result is that this Rule is made absolute, the order of the Subordinate Judge set aside, and the case remitted to him in order that the appeal may be heard on the merits. As the Rule has not been opposed, there will be no order for costs.