

(1869) 01 CAL CK 0022

Calcutta High Court

Case No: Miscellaneous Appeal No. 438 of 1868

Raj Kumar Sing

APPELLANT

Vs

Kali Charan Sing and Another

RESPONDENT

Date of Decision: Jan. 23, 1869

Judgement

Kemp, J.

This was an application to enforce a private arbitration award, dated the 5th Aswin 1265. It is admitted that the application was made under the provisions of section 327 of Act VIII of 1859. It is also admitted that the application to file the arbitration award was not allowed by the lower Court. The opposite parties were served with notice to show cause why the award should not be filed. The Principal Sudder Ameen entered into elaborate enquiries in the case, and for the reasons given in his decision, refused the application. It appears that amongst the reasons given is that the award was not a bond fide one. The plaintiff is the appellant. Before hearing this appeal, the respondent put in an objection to the hearing of this appeal, and a ruling of the Full Bench in Baboo Chintaman Sing v. Rupa Kooer Case No. 353 of 1866, 31st August 1866, was quoted by the pleader for the respondent.

2. Mr. Allan, for the appellant, has argued that the present case has gone far beyond the limits of the case decided by the Full Bench. The pleader attempted to show that the Full Bench case referred to an order rejecting an application to file a batwara u/s 327 without any enquiry whatever; but that in the present case, there had been a full enquiry, and that the case was treated by the Principal Sudder Ameen in the form of a special case coming within the purview of section 325 of the Code.

3. We think that this contention is clearly incorrect: section 325 contemplates special cases submitted to the Court for its opinion. Section 327, under which the special appellant, the plaintiff, proceeded in this case, refers to applications to be permitted to file an arbitration award with a view to have its provisions enforced by a decree; and the section provides that before this can be done, the Court shall call upon the parties to the arbitration, other than the applicant to show cause why the award

should not be filed.

4. In this case, the other parties did appear and did show cause, and the Principal Sudder Ameen refused to permit the award to be filed. The judgment of the Full Bench, therefore, clearly applies to the present case. The result, if the award had been filed, would have been that it could have been enforced as a decree. The order disallowing the application to file the award is not a decree, and therefore is not appealable as a decree. It is to use the words of the decision of the Full Bench, "simply an order rejecting an application to file an award," and against such an order, no appeal is provided by Act VIII of 1859. The appeal is, therefore, dismissed with costs.