

(1881) 03 CAL CK 0028

Calcutta High Court

Case No: None

Lulit Singh and
Another

APPELLANT

Vs

Wazir Mahton and
Another

RESPONDENT

Date of Decision: March 12, 1881

Citation: (1881) ILR (Cal) 166

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

This is a second appeal against a decree in conformity with an award made by an arbitrator. The first Court held that the objections raised by the defendants should be disallowed, and passed a decree in conformity with the award. The second Court expressed its opinion that the faults, which it found with the award, were not such as would allow it to disturb the judgment.

2. It has been strenuously contended before us, that the proceedings in the first Court were such as to make it incumbent on the lower Court to bear the appeal on the merits. This objection, we may say at once, cannot be supported. If the decision of the first Court, for any reason, was not final, the second Court could do no more than remand the case to that Court for disposal on the merits.

3. The case being governed by the old Code of Civil Procedure, we have to determine whether there was an award and a judgment in conformity therewith. If so, by Section 325 of that Code, the second Court had no jurisdiction to hear an appeal or to express any opinion on what had passed in the first Court.

4. It has been contended that there was no award at all, on the ground that the Court in which the suit was pending superseded the award and recalled the suit u/s 318, Act VIII of 1859. Apparently such an order was made on the 26th September

1877, but it did not take effect, because, as we understand the proceedings, the case was again returned to the arbitrator at the request of the parties expressed through their pleaders on the 28th September. Moreover, this objection, if it was taken, was not one of those urged before the first Court, and although it was taken in the second Court, no opinion seems to have been given upon it.

5. We must, we think, take it that the case was duly left in the hands of the arbitrator, who made an award on the 12th November 1877.

6. Objections were urged to the award, which, in the opinion of the Court, did not justify it in remitting it u/s 323, or in setting it aside u/s 324, Act VIII of 1859. Judgment was, therefore, given according to the award.

7. A number of cases have been referred to, as supporting the appellant's contention that an appeal will lie, notwithstanding the provision of Section 325t that a judgment according to an award shall be final. But the only cases in which an appeal has been allowed are *Maharaja Jaimangal Singh v. Mohanram Marwari* 8 B.L.R. 319 N.S.C., 23 W.R. 429 *Ganga Narain Ghose v. Ram Chand Ghose* 12 B.L.R. 48 and *Boonjad Mathoor v. Nathoo Shahoo* ILR Cal. 375. In the first of these cases *Moharaja Jaimangal Sing v. Mohanram Marwari* 8 B. L. R. 319 ; 23 W. R. s. c. 429 the decree on the award had, on previous occasions, been set aside on account of an informality in the proceedings of the arbitrators, and then on rectification of the informality the second decree was held to be final.

8. In the other two cases there were such irregularities patent on the face of the proceedings in the case, that the judgments were held not to be judgments u/s 325.

9. In the present case we are not able to say that there are any grounds for holding that there has not been an award and a judgment in conformity therewith. We, therefore, think that no appeal lay to the second Court and we dismiss this appeal with costs.