
(1870) 02 CAL CK 0029

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 80 of 1870

Mussamat Banu

APPELLANT

Vs

Narayan Sahu

RESPONDENT

Date of Decision: Feb. 25, 1870

Judgement

Norman, Officiating C.J.

1. The facts of this case are that the plaintiff and the defendant, by a private agreement in March 1867, agreed to refer a claim by the plaintiff to rupees 104, exclusive of interest, for money alleged to be due on a bond, to the arbitration of two arbitrators. In August 1868, one of the arbitrators made an award declaring the plaintiff entitled to rupees 247-7 for principal and interest. The plaintiff applied, under the provisions of section 327, Act VIII of 1859, to the Moonsiff of Sassiram that the award should be filed in Court. The Moonsiff made an order to that effect, notwithstanding an objection by the defendant to the validity of the award. From the decision of the Moonsiff, an appeal was presented to the Subordinate Judge of Shahabad. The Subordinate Judge reversed the order of the Moonsiff, holding that as that which purported to be the award was made by one only of the arbitrators, it was no award. From this decision a special appeal has been presented by the plaintiff to this Court. Baba Anand Gopal Paulit, for the respondent, took an objection that under the provisions of section 27, Act XXIII of 1861, no special appeal We are of opinion that the contention is well founded. It has already been decided by this Court in [Elam Paramanick Vs. Sojaitullah Sheikh](#) , that a Small Cause Court has jurisdiction u/s 327 of Act VIII of 1859, to entertain an application to file a private arbitration award relating to a debt not exceeding the amount cognizable by such Court. Now, the matter to which the award in question related, viz., a claim to rupees 104 amounting with interest and costs to rupees 247, was clearly one cognizable by a Small Cause Court. Section 27 provides that no special appeal shall lie from any decision or order passed on regular appeal in any suit of the nature cognizable in Courts of Small Causes "under Act XLII of 1860." We think it includes not only suits of the nature made cognizable by Act XLII of 1860, but all suits cognizable in Courts of Small Causes

constituted under that Act, and therefore, even assuming that a suit upon an award made upon a private arbitration is made cognizable by Small Cause Courts not by any express provision to that effect in Act XLII of 1860, but by section 327 of Act VIII of 1859, we think it is within the meaning of section 27 of Act XXIII of 1861.

2. The result is, that in our opinion, this special appeal must be dismissed with costs.

3. The appellant attempts to contend that no appeal lay to the Judge of Shahabad. Upon that point we do not express any opinion. We must leave him to the remedy to which he thinks he is entitled u/s 36 of Act XXIII of 1861. As the matter stands at present (1), we cannot say that the decision of the Subordinate Judge is wrong, for, if he is right as to the facts there is no award.

Bayley, J.

Under the facts of the case I think that this is a suit in which u/s 27 Act XXIII of 1861, no special appeal lies.