

(1926) 05 CAL CK 0039
In the Calcutta High Court

Adar Mani Namasundrani and Another	APPELLANT
Vs	
Purna Chandra Malagi and Others	RESPONDENT

Date of Decision : 20-05-1926

Acts Referred:

Citation : 95 Ind. Cas. 704

Hon'ble Judges : B.B. Ghose, J

Bench : Single Bench

Judgement

B.B. Ghose, J.—In this case, the question is whether the lower Appellate Court had jurisdiction to entertain an appeal from an order passed by the Munsif refusing to restore an application made by the judgment-debtor opposite party under Order XXI, Rule 90, C.P.C., which was dismissed for default. The contention on behalf of the judgment-debtor opposite party is that there was such jurisdiction as is held in some of the reported cases in this Court. But, in my opinion, the matter is concluded by authority. The case of *Thakur Prasad v. Fakirulla* 22 I.A. 44 : 17 A. 106 : 5 M.L.J. 3 : 6 S. P.C.J. 526 : 8 Ind. Dec. 393 is against such a contention. I have been a party to several decisions in which the ruling referred to above has been applied and it has been held that in such case no appeal is allowed under Order XLIII, Rule 1 (c), C.P.C. The cases have again been considered in the case of *Basaratulla Mean and Others Vs. Reazuddin Mean and Others*, , where the learned Judges have held that no right of appeal is allowed by the law in such cases. In such circumstances, I must hold that the appeal entertained by the lower Appellate Court was without jurisdiction.

2. The case itself is a very strange one. The sale took place in August, 1918. The application for setting aside the sale was made in July, 1923. The application continued pending in the Court till 15th March, 1924, and then the opposite party being absent, it was dismissed for default. This is pre-eminently a case in which the revisional jurisdiction of this Court should be exercised in setting aside the decision of the lower Appellate Court ordering the re-hearing of the application of the judgment-debtor opposite party.

3. The Rule is made absolute. The judgment-debtor opposite party must pay the costs of the petitioners in this Court. The hearing fee is assessed at one gold mohur.