

(1943) 12 CAL CK 0006
In the Calcutta High Court

A.N.M. Azizal Bari

APPELLANT

Vs

Jew Mahammad Khan Kabuli and Another

RESPONDENT

Date of Decision : 07-12-1943

Acts Referred:

Bengal Money Lenders Act, 1940 — Section 38

Citation : AIR 1944 Cal 230

Judgement

1. This appeal raises a question of court-fees. The appellant filed an application u/s 38, Bengal Money-lenders Act, and obtained a declaration that the amount due was Rs. 1085. He has filed an appeal by which he asks the Court to say that only Rs. 150 is due. Thus there can be no question that, if any ad valorem fee is demanded, it must be paid on the sum of Rs. 935. The learned Judge observed that the appellant has not paid ad valorem court-fee and thereupon dismissed the appeal.

2. The contention of the appellant is that a fixed fee of Rs. 1 is payable under Article 11 of Sch. 2, Court-Fees Act. If he is wrong, then the case must come within Article 17. The question is not free from difficulty. It depends upon whether it can be said that the appeal is not from a decree or an Order having the force of a decree. The appeal is specifically provided for by Section 38 (3). That Sub-section provides:

A declaration under this section shall be subject to appeal, if any, as if it were a decree of the Court, and every decision in appeal shall be subject to appeal to the High Court in the same manner as a decree passed in appeal.

3. In view of that specific provision it seems to me to be impossible to say that the appeal is not one from an Order having the force of a decree. That, however, is not sufficient to dispose of the matter. The only relief which the petitioner asks for is a declaratory decree. For this there is a fixed court-fee of Rs. 20 and not an ad valorem court-fee. The appeal is accordingly allowed and the Order of the lower appellate Court dismissing the appeal is set aside. The appellant will be given one month from the date of the arrival of the record in the lower appellate

Court to file the deficit court-fee. If he does so, the Judge will hear and determine in accordance with law. If he does not do so, the appeal will stand dismissed. The respondents will pay the costs of the appellant in this appeal in any event-hearing-fee one gold mohur. No Order is necessary on the application.