

(1933) 02 AHC CK 0030
In the Allahabad High Court

B. Jaipratap Narain Singh and Others	APPELLANT
Vs	
B. Rabi Pratap Narain Singh and Another	RESPONDENT

Date of Decision : 04-02-1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104

Citation : AIR 1933 All 453 : 145 Ind. Cas. 534

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This is an application for leave to appeal to His Majesty in Council in the following circumstances: First Appeal No. 143 of 1928 in which the applicants were the appellants came up for hearing on 13th April 1932. On that date it was dismissed for default as the learned Counsel stated that they had no instructions. An application was made for restoration of the appeal and hearing of it, but this application was dismissed on 21st June 1932. The present application is directed against that order of 21st June 1932, and it is contended that the applicants have a right to proceed before His Majesty in Council by way of appeal.

2. It is argued that Section 104 of the CPC and Order 43 of Schedule 1 of the same Code do not indicate any Court to which an appeal would ordinarily lie and therefore an appeal must lie from the High Court's order to His Majesty in Council. This argument however, does not take notice of Section 106 of the CPC which says that an appeal from an order would lie to the Court to which an appeal would lie from the decree in the suit in which such order was made and where such order is made by a Court in the exercise of appellate jurisdiction, then to the High Court. No mention is made in Section 106 of an appeal being filed to the Privy Council where an order complained against is passed by the High Court. It was then argued that an appeal would lie u/s 109 of the CPC inasmuch as it is a final order passed in appeal and inasmuch as it is a case which ought to have been certified as a fit one for appeal to His Majesty in

Council.

3. As regards the earlier argument it seems to us that the order complained of was not passed "on appeal." No doubt the order was passed in our appellate jurisdiction but it was not passed "on appeal." By the expression "final order passed on appeal" we understand an order which was made as the result of an appeal filed before the High Court. The last argument is whether this is a case which should be certified to be a fit one for appeal to His Majesty in Council. We have heard the learned Counsel for the appellants and we cannot persuade ourselves to take the view urged by him. The question for determination was whether, in the circumstances of the case, the appellants were justified in not paying fees to the counsel and thus to enable them to argue the appeal. It was a question to be decided on facts disclosed in the affidavits of the parties and the matter was decided on the evidence before the Court. No general question of law is involved. In the circumstances we are not able to certify the case as a fit one for appeal. The application is dismissed with costs.