

(1904) 01 CAL CK 0017
In the Calcutta High Court

Case No : Application for Leave to Appeal to His Majesty in Council No. 25 of 1903

Babu Sakan Sing and Babu Dirgopal Lall APPELLANT

Vs

Gopal Chandra Neogi RESPONDENT

Date of Decision : 19-01-1904

Acts Referred:

Citation : (1904) 01 CAL CK 0017

Judgement

Maclean, C.J.—This is an application for a certificate that the present case is a fit and proper one for appeal to His Majesty in Council. The order from which it is sought; to appeal to the Privy Council is one passed by a Division Bench of this Court on the 22nd of July 1903 under the revisional powers vested in the Court under sec. 622 of the Code of Civil Procedure.

2. It appears that there was an application made to the District Judge by the Respondent to sue in forma pauperis. The District Judge found that the Respondent was a pauper, but did not allow him to sue as such, and according to the view of the Court substantially decided the suit on the merits. Then there was an application to this Court under sec. 622 of the CPC praying that the order of the District Judge should be set aside, practically on the ground that he had exceeded his jurisdiction. That application was acceded to, and the case was remanded to the District Judge with an indication of the opinions of this Court that the District Judge had exceeded his powers and that the applicant ought to be allowed to sue in forma pauperis. With the rights and wrongs of that decision we have nothing to do on the present occasion. All we have to decide is, whether the applicant has brought his case within the Code of the Civil Procedure, or within the Charter, so as to enable us to grant the certificate which is now asked for. In my opinion he has failed to do so.

3. It is reasonably clear that the order made under sec. 622, which only decided that the Respondent should be at liberty to sue in forma pauperis, was not a final decree passed in an appeal within the meaning of sec. 595 of the Code of the

Civil Procedure, nor do I think it is a final judgment made on appeal within the meaning of sec. 39 of the Letters Patent of 1865. That being so, it seems to us that the present applicant has failed to bring his case within the Code of the Civil Procedure or the Letters Patent and that we have no power to grant him a certificate.

4. The application is refused with costs, 5 gold mohurs. This decision will govern the application for leave to appeal to His Majesty in Council, in Privy Council Appeal No. 1 of 1904, which is also refused with costs, 5 gold mohurs.