

(1902) 05 CAL CK 0039
In the Calcutta High Court
Case No : Rule No. 72 of 1902

Debi Churn Manna

APPELLANT

Vs

Bipra Prosad Jana and others

RESPONDENT

Date of Decision : 26-05-1902

Acts Referred:

Citation : (1902) 05 CAL CK 0039

Judgement

Harington, J.—In this case a rule was granted calling upon the opposite party to show cause why the order permitting him to withdraw the suit, and bring a fresh suit, in respect of the same subject-matter, should not be set aside, The rule was granted upon two grounds : first, that the order was made without jurisdiction ; and, secondly, that there was no ground stated in the order permitting the withdrawal of the suit under sec. 373, C. C. P. The suit was brought for the recovery of land. By consent it was referred to arbitration. Within the time limited for making the award the arbitrators made the award, which was against the Plaintiff. On the 30th September 1901, the Plaintiff put in a petition of objection to the award under sec. 521, C. P. C. Before any order had been made on that petition, he put in, on the 2nd October, a petition for permission to withdraw the suit, and bring a fresh action in respect of the same subject-matter ; and on that petition the order was made which it is now sought to be set aside.

2. In our opinion the rule for setting this order aside must be made absolute. The award had been duly made by the arbitrators, and as to that award the Court had certain powers conferred on it under Chap. XXXVII, C. C. P. It might, for certain reasons specified in sec. 520, have remitted the award for the reconsideration of the arbitrators. It might have set aside the award if grounds for taking that course, which are set out in sec. 521, had been established by the objector. If no cause for remitting the award was established, or if the application under sec. 521 were refused, the Court was bound to give judgment according to the award, and a decree of necessity follows in accordance with the judgment. In this case the Court has not dealt with the award according to any of the sections

to which we have referred, but has acted under sec. 373. In our opinion, the more general powers conferred upon the Court by sec. 373, are, when the award has once been duly made by the arbitrators, limited by the particular provisions contained in the sections of Chap. XXXVII to which we have referred. In our opinion the lower Court ought to have dealt with the petition of the 30th September and ought either to have set aside, or to have refused to set aside, the award. It has done neither, but purports to have acted under sec. 373. Now sec. 373 provides for the withdrawal of the suit, if the Court is satisfied that the suit as framed must fail for some formal defect, or if there are sufficient grounds for permitting the withdrawal of the suit. It has been held that the grounds should be something ejusdem generis with a formal defect in the action. As to this we express no opinion, because in the particular case before us no grounds are alleged in the judgment at all : and it is impossible for us to say whether there were, or were not, sufficient grounds for permitting the withdrawal within sec. 373. It has not been shown to us that there were any special grounds. The grounds stated in the vernacular petition, which has been read us in English, being that it was not convenient to the Petitioner to examine some of his witnesses. The learned vakil who showed cause against the rule met the difficulty which was put to him, arising under sec. 521, by saying that the order of the Munsif amounted practically to the setting aside of the award. The difficulty which arises from this aspect of the case is that there is no finding of any fact which would justify the setting aside of the award under sec. 521, and no ground is stated, or any circumstances, which would enable us to say that any ground within that section existed. If the rule were discharged, it would in effect nullify sec. 521, C. C. P., and enable the award to be set aside on grounds other than the limited grounds on which they may be set aside by virtue of that section. The result is, that this rule must be made absolute, and the order permitting the withdrawal of the suit, and the bringing of a fresh suit be set aside. The case must be remitted to the lower Court with a direction that it will be dealt with in accordance with law, as laid down in Chap. XXXVII, C. C. P. The Petitioner in this case will have his costs, the hearing fee being assessed at two gold mohurs.