
(1910) 08 CAL CK 0054
In the Calcutta High Court
Case No : Privy Council Appeal No. 32 of 1910

Dwarka Nath Sarkar and Another

APPELLANT

Vs

Haji Mahomed Akbar and others

RESPONDENT

Date of Decision : 08-08-1910

Acts Referred:

Citation : (1910) 08 CAL CK 0054

Judgement

1. In this case the value of the subject-matter of the appeal is admittedly over Rs. 10,000 and the judgment against which it is sought to appeal is one of reversal. Under ordinary conditions therefore the Petitioners would have a right of appeal. It is however argued in opposition that as the order of this Court is not a decree or a final order, as provided by sec. 109, cl. (a), C. P. C, the Petitioners have no right of appeal. The suit out of which the appeal arose was a suit for the winding up of a partnership business and for the taking of partnership accounts. The Court of first instance had arrived at a certain decision in respect of the liabilities of the parties and has directed an account to be taken. There was an appeal to this Court against that order, and this Court has disagreed with the Court of first instance in respect of the respective liabilities of the parties and has come to different findings and has remanded the suit to the Court of first instance for a fresh taking of the accounts and also to ascertain the liability of each partner.

2. In our opinion the decision of this Court on this cardinal question as to the respective liabilities of the different parties is such a decision as was held by the Judicial Committee in the case of *Rahimbhoy Hibibhoy v. Turner* L. R. 18 I. A. 6 (1890), and in the case of *Syed Muzhar Husein v. Bodha Bibi* L. R. 22 1. A. 1 (1894), to constitute such a final decision on the points in issue between the parties as to the amount to a decree in suit. The decision of this Court on these points cannot be disturbed by the lower Court in the taking of the accounts.

In our opinion, therefore, the case is one in which in accordance with the view taken by the Judicial Committee in the cases we have referred to we should hold

that the Petitioners are entitled to leave to appeal to His Majesty in Council. A certificate will therefore be granted.