
(1901) 12 CAL CK 0007
In the Calcutta High Court
Case No : Appeal from Order No. 19 of 1901

Ganga Charan Roy and Others

APPELLANT

Vs

Sasti Mandal and Others

RESPONDENT

Date of Decision : 04-12-1901

Acts Referred:

Citation : (1901) 12 CAL CK 0007

Final Decision : Dismissed

Judgement

1. This is a second appeal from an order of the Subordinate Judge of Jessore. The facts of the case, out of which this second appeal arises, are as follows: The Plaintiff, the Appellant before us, brought a suit for enhancement of rent under sec. 30 of the Bengal Tenancy Act against the Defendant. By consent of both parties, the case was referred to the decision of an arbitrator. The arbitrator gave an award to a certain extent in favour of the Plaintiff. The Defendant objected to this award, but the Munsif passed a decree in accordance with the award. The Defendant then appealed to the Subordinate Judge, who held that the award was illegal, and that there had been misconduct, though not amounting to partiality, on the part of the arbitrator, and accordingly set aside the award and directed the Munsif to retry the case. The Plaintiff now appeals. He contends that the award was good, that there was no misconduct on the part of the arbitrator, and that the order of the Subordinate Judge is wrong.

2. These pleas would seem to be well founded. There appears to have been no misconduct on the part of the arbitrator. The terms of the application of the parties praying for reference of the case are very wide. They ask for the appointment of a certain gentleman as arbitrator. They declare that the parties will be bound by what the aforesaid arbitrator decides and pray that the case may be disposed of in accordance with his decision. In the face of the terms of this application, it is idle on the part of the Subordinate Judge to quibble as to the exact question referred to the arbitrator, or as to what are the exact terms of his finding. The arbitrator certainly came to a finding which he was quite justified

in coming to, having regard to the terms of the parties' application for his appointment and the reference by the Munsif of the case to his arbitration and which fully decided it.

3. The imputation of partiality made by the Defendant against him is entirely unfounded and is absurd, looking at the fact that the arbitrator was the Defendant's own pleader.

4. In these circumstances it would seem to us that the award was a good and valid one, as found by the Munsif and should not have been set aside by the Subordinate Judge. But a further question arises, viz., whether any second appeal lies to us. The terms of the last clause of sec. 522 and of sec. 588 would seem to preclude an appeal as well as a second appeal in cases in which a decree is given in accordance with, and not in excess of, an award. It has, however, been ruled in *Kali Prasanna Ghose v. Rajani Kant Chatterjee* ILR 25 Cal. 414 (1897) that an appeal will lie from a decree given in accordance with an award, when the award is not a valid and legal award. But it would seem to follow that when the award is found to be good and valid, as we find the award in this case to be, then, no appeal lay to the Subordinate Judge, and no second appeal lies to us. The order given by the Subordinate Judge in this case is certainly not a decree. So the provisions of sec. 584 cannot apply. Neither is it an order of remand under sec. 562. It is an order against which no appeal or second appeal is provided, and the award being valid the ruling above cited is inapplicable. The Plaintiff's remedy, if any, would, therefore, seem to be by an application under sec. 622. No such application has been made to us. We must accordingly dismiss this appeal without costs, which we accordingly do.