

(1905) 03 CAL CK 0005

In the Calcutta High Court

Case No : Privy Council Application No. 7 of 1905

Guru Prasanna Lahiri and others

APPELLANT

Vs

Jotindra Mohan Lahiri and others

RESPONDENT

Date of Decision : 22-03-1905

Acts Referred:

Citation : (1905) 03 CAL CK 0005

Judgement

Maclean, C.J.—This is an application for leave to appeal to His Majesty in Council "The suit is one for contribution, and it has had rather a chequered career. It was originally decided in favour of the Plaintiff, and on appeal to this Court the decision of the Court below was modified. There was then an appeal to the Privy Council. It was remanded to this Court by their Lordships of the Judicial Committee in order that accounts might be taken on a certain footing.* A Division Pencil of this Court has taken those accounts to the best of their ability. Some of the Defendants are now dissatisfied with the result of accounts and ask for leave to appeal to His Majesty in Council. When the case was originally before us we felt a difficulty in holding that the case fell within sec. 596 of the Code Civil Procedure, but it subsequently occurred to us. that, although the case might not fall within either sec. 595 or 596 of that Code, a right to appeal to His Majesty in Council might be successfully claimed by the present Petitioner under sec. 39 of the Letters Patent, and we directed the matter to be mentioned again on this footing. We think on consideration that this is so, and the case appears to us to fall within that section. It is a final decree of a Division Court of the High Court from which an appeal does not lie to the High Court under clause 15 of the same Letters Patent.

2. It was suggested that the expression "a Division Court" in sec. 39 applies only to a Division Court sitting on the Original Side : We see no good ground for placing so restricted a meaning on those words.

3. The amount in dispute is over Rs. 10,000 and we therefore think that the applicant is entitled to a certificate under clause 39 of the Letters Patent. A

certificate will therefore be granted.