

(1922) 05 CAL CK 0011
In the Calcutta High Court

Hara Prasanna Bandopadya

APPELLANT

Vs

Arab Ali and Others

RESPONDENT

Date of Decision : 19-05-1922

Acts Referred:

Citation : AIR 1924 Cal 353

Hon'ble Judges : Walmsley, J;Suhrawardy, J

Bench : Full Bench

Judgement

Walmsley, J.—This appeal is preferred by the defendant whose name is Hara Prasanna Bandopadya. The respondent, Sabdar Ali Choukidar, who does not appear, was one of the defendants in the suit brought by Hara Prasanna some years ago. That suit was eventually made over to arbitrators on the application of Sabdar Ali and some, but not all, of the other defendants. The decision of the arbitrators was against Sabdar Ali. He made an objection to the award, but that was dismissed for default. He made another objection in the course of execution proceedings. That was also rejected. Now, he has brought the suit, out of which this appeal arises, to have the award set aside, and the Courts below have set it aside on the ground that three of the defendants in the original suit, that is to say, Nos. 5, 6 and 7, were not parties to the application for reference to arbitration. In support of this view both Courts have referred to several decisions of this Court, one of them is the case reported as Girija Nath Roy v. Kanai Lal Mitra (1918) 27 C.L.J. 339 to which I was a party. The view we took there was that the entire foundation of the Court's jurisdiction to make the reference disappeared when it was found that all the persons interested had not joined in the application. It follows, therefore, that, in my judgment, the decision of the lower Appellate Court is correct and this appeal must be dismissed. We make no order for costs, as Sabdar Ali Choukidar does not appear.

Suhrawardy, J.

2. I agree.