

(1930) 05 CAL CK 0042
In the Calcutta High Court

Harendrachandra Ghosh

APPELLANT

Vs

Kailashchandra Ghosh

RESPONDENT

Date of Decision : 05-05-1930

Acts Referred:

Citation : AIR 1931 Cal 571

Hon'ble Judges : Rankin, C.J; Mukerji, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case, an application has been made for a rule to show cause why a certain memorandum of appeal should not be received, the office having refused to accept the same.

2. It appears that my learned brother, S. K. Ghose, J. heard a second appeal and decided it and, on being asked to give a certificate that the case was a fit one for a further appeal under the Letters Patent, he refused the certificate. From this order, it is proposed now to bring an appeal.

3. In my opinion, such an appeal is quite incompetent and I agree with the decision which has already been given by the Madras High Court in the case of Ramanayya Vs. Kotayya and Another, . Mr. H. D. Bose for the applicants was desirous of maintaining before us that an order refusing leave to appeal was a judgment under Clause 15 of the Letters Patent. I desire to say that I agree with the following observations in the judgment of Anantakrishna Ayyar, J., in the case to which I have referred:

Whether the order refusing leave to appeal be a "judgment" or not, it is clear that no leave that might be granted by a Division Court would satisfy the requirements of the clause which provides that an appeal would lie only when the Judge who heard the second appeal grants leave to appeal.

4. If His Majesty, in ordaining the amendment in the Letters Patent, had intended to provide that a refusal of leave to appeal should be open to challenge, it is reasonably plain that the Letters Patent would have contained a provision for an

appeal to the Court either upon leave being obtained from the learned Judge who tried the second appeal or from any Division Bench of the High Court. As the Letters Patent now stand, the first is the sole and necessary condition.

5. The application must therefore be rejected.

Mukerji, J.

6. I agree.