
(1891) 04 CAL CK 0005
In the Calcutta High Court

Kazem Ali

APPELLANT

Vs

Azim Ali Khan

RESPONDENT

Date of Decision : 07-04-1891

Acts Referred:

Charter Act, 1861 — Section 15

Citation : (1891) ILR (Cal) 383

Hon'ble Judges : Prinsep, J; Banerjee, J

Bench : Division Bench

Judgement

Prinsep and Banerjee, JJ.—This matter arises out of an order by the District Judge u/s 18 of Act XX of 1863, refusing to give leave to the petitioner to institute a suit having reference to a Mahomedan endowment.

2. The first question raised for our decision is, whether there is any right of appeal. There is no such right conferred by the Act, but it is argued that, under the new definition of a decree given in the CPC of 1882, a right of appeal against such an order is given, because such an order would amount to a decree.

3. We are not prepared to accept such an interpretation of this definition of a decree. The order in question is a refusal to give leave to institute a suit. It does not come within the definition of the term "decree," either as amounting to a formal expression of an adjudication upon a right claimed, or as amounting to an order rejecting a plaint. The order, as we understand it, merely determines that there are no prima facie grounds for instituting a suit. There is no adjudication of any right inherent in the petitioner. Nor can it be regarded as an order rejecting a plaint, because it is an order refusing leave to file a plaint. In that view we think there is no ground of appeal.

4. In giving a special order for the admission of an appeal subject to any objections that may be taken at the hearing, another Division Bench of this Court gave permission to the petitioner to move the Court u/s 622 of the Code of Civil Procedure, or u/s 15 of the Charter Act, with a view to set aside the order of the

District Judge. We have accordingly heard all the arguments which could be raised against the merits of the order passed. We think, however, that there are no sufficient grounds for our interference with the order under the special powers thus conferred on this Court, nor do we think, if we were to consider the case of the petitioner on the merits, that there is any sufficient ground to question the correctness of the District Judge's order. The allegations contained in the petition were of the vaguest description, and not such as would warrant the Judge to give permission to the petitioner so as to make any of those allegations the foundation of a suit for misconduct against the President of the Committee. We further have the satisfaction of learning that in the course of these proceedings, a third member has been appointed to the Committee, who will thus afford the means of forming a quorum, so as to guarantee the proper management of the endowment and satisfy any complaints that may arise.

5. The appeal must therefore be dismissed with costs.