

(1904) 03 CAL CK 0023
In the Calcutta High Court

Khagendra Narain Singh

APPELLANT

Vs

Shashadhar Jha

RESPONDENT

Date of Decision : 25-03-1904

Acts Referred:

Citation : (1904) ILR (Cal) 495

Hon'ble Judges : Mitra, J; Brett, J

Bench : Division Bench

Judgement

Brett and Mitra, JJ.—In this case a Rule was issued calling upon the opposite party to show cause, why the order of the District Judge in the matter of the appointment of a Receiver mentioned in the petition should not be set aside and the case sent back to him so that the matter might be determined in accordance with law.

2. It appears that in a case pending in the Court of the Subordinate Judge of Mozufferpore the Subordinate Judge considered it necessary that a Receiver should be appointed and that he reported the matter to the District Judge nominating a certain person for appointment as Receiver and submitted the name of that person with the grounds for the nomination to the District Judge. The District Judge however after receiving the report appears to have taken into consideration the grounds stated by the Subordinate Judge and holding that there were no sufficient grounds for the appointment of a Receiver he declined to sanction the appointment and refused the application. This Rule has been obtained to set aside that order.

3. The Advocate-General, who appears for the opposite party, has raised a preliminary objection that, as an appeal lies against the order passed by the District Judge refusing the application, this Rule must be discharged.

4. We have been referred to the different cases in this Court and in the Madras Court, in which it has been held that there is an appeal against the order refusing to appoint a Receiver, and that where the District Judge receives a-

report from the Subordinate Court recommending the appointment of a Receiver, and on that report and recommendation he refuses to make the appointment, his order must be taken as, an order made u/s 503 of the CPC and not one falling u/s 505 of that Code. As it is an order falling u/s 503 it is appealable under Clause 24 of Section 588 of the Code.

6. We have considered the cases, to which we have been referred and are satisfied that they are sufficient to support the contention, and that the remedy open to the petitioners in this case was by way of appeal and not by way of an application u/s 622 of the Code of Civil Procedure.

7. That being the case this Rule must be discharged.