

(1924) 05 CAL CK 0011
In the Calcutta High Court

Munshi Masihul Azam and Others

APPELLANT

Vs

Golzar Ahammad Mia and Others

RESPONDENT

Date of Decision : 28-05-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104

Citation : AIR 1925 Cal 924 : 95 Ind. Cas. 773

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

Bench : Full Bench

Judgement

Walmsley, J.—This was Rule obtained at the instance of the Plaintiffs. They brought a suit against the Defendants alleging that the first Defendant Golzar had been their tehsildar and that money was due to them on account and they asked that an account should be taken and a decree passed for the sum of money found due after accounting. After some adjournments it was agreed that there should be a preliminary decree passed to the effect that the Defendant No. 1 was liable to account to the Plaintiffs and that the amount to be paid by the Defendant No. 1 should be left to the decision of five persons named in the petition. These five gentlemen made an award which was submitted to the Court. Thereupon the Plaintiffs filed an objection and the learned Munsif remitted the award on the ground that the arbitrators had failed to decide three important points. One of the strive arbitrators refused so sit any further. The other four ratified their former order. The learned Munsif then held that there had been no reconsideration of the original award and that the arbitrators had shown bias in favour of the Defendants. He accordingly set aside the award and directed that the suit should be heard on its merits. The Defendants then preferred an appeal to the District Court and the learned Judge overruled the objection that no appeal lay, set aside the order of the first Court and directed the Munsif to accept the award of the arbitrators and draw up the final decree. The Plaintiffs then obtained this Rule and in support of it, their first argument is that no appeal lay to the Court of the District Judge. It appears to me that this contention is right. The rules as to appeals are contained in Section 104 and in Order 43 of the

Code. It is conceded by the learned pleader for the Opposite Party that this appeal could not be brought within the scope of Section 104. He says, however, that it comes within Order 43 as an appeal against an order refusing to record a compromise. This is the view which the learned District Judge took. The first question we have to decide is whether the learned Judge was right in taking this view and the question is really simply this whether there was an intervention on the part of the Court at the instance of the parties by which the Court referred the matter to arbitration. The learned pleader on behalf of the Opposite Party contends that the wording of the petition is against that view and that all that the parties intended was that the matter should be compromised out of Court on terms to be settled by the five persons named in the petition. This argument, it appears to me, is untenable on the simple ground that the learned Munsif in drawing up the preliminary decree clearly referred the matter of the final decree to the award of the arbitrators. [The wording of the preliminary decree which was in Bengali was quoted. No objection was ever taken to the form of this decree. It appears to me that the correct interpretation to be put upon it is that the parties asked the Court to refer the matter to the decision of the arbitrators and the Court did do so. It follows from that that the matter comes within the second schedule of the Code of Civil Procedure, and that no appeal lay against the Munsif's order to the District Judge. Consequently, I think the Judge's order was passed without jurisdiction. It must), therefore, be set aside and the case remitted to the Court of first instance for that Court to proceed to hear the matter on its merits and draw up a final decree The costs of, this Rule are to be paid by the Defendants to the Plaintiffs. The hearing-fee is assessed at one gold mohur.

Chakravarti, J.

2. I agree.