

(1911) 12 CAL CK 0005
In the Calcutta High Court

Munshi Rajbans Sahay

APPELLANT

Vs

Soorja Lal and Others

RESPONDENT

Date of Decision : 27-12-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104(1)(c)

Citation : 15 Ind. Cas. 519

Hon'ble Judges : Mookerjee, J;Carnduff, J

Bench : Division Bench

Judgement

1. The substantial question of law which calls for decision in this appeal relates to the construction of Section 104, Sub-section (1), Clause (c), of the CPC of 1908. That clause pro-vides that an appeal shall lie from an order modifying or correcting an award. On behalf of the appellant, it has been argued that this clause, in effect, confers an unrestricted right of appeal; in other words, that when an order has been made by which an award has been modified or corrected, in an appeal preferred against that order, the validity of the whole award may be called in question. On behalf of the respondent, it has been argued, on the other hand, that the true effect of the clause is to allow an appeal against the order only in so far as it modifies or corrects the award. In our opinion, there is no room for controversy that the contention of the appellant is unfounded. If the argument of the appellant were to prevail, the result would be that the party in whose favour the award has been modified or corrected would be at liberty to prefer an appeal and to question the propriety of the award in so far as it went against him. This could hardly have been intended by the Legislature. In the case before us, the appellant was the defendant in an action for money commenced against him by the plaintiff-respondent. The matters in controversy were referred to three arbitrators who submitted their award in due course. The defendant took exception to the award on all possible grounds. The Subordinate Judge considered those objections in detail and overruled every one of them except the objection as to costs. He held that the arbitrators had no authority to make an award as to the costs of the litigation. The result was that

the Subordinate Judge modified the award in so far as the order for costs was concerned and confirmed the award in every other respect. The appellant now contends that as an order had been made modifying the award, although the modification is in his favour, he is entitled in the present appeal to re-agitate all the questions on the merits which were decided against him by the Subordinate Judge. In support of this view, reference has been made to decisions under the Code of 1882, of which *Kali Prosanno Ghose v. Rajani Kant* 26 C. 141 may be taken as the type, where it was held that upon an appeal against a decree made in accordance with an award it was competent to the Court to consider whether there was any legal award on which a valid decree could be founded. Those decisions are of no assistance to the appellant, whose case must be determined with reference to the terms of the provisions of the Code of 1908. We are, therefore, of opinion that the only question open for consideration in the present appeal is the question of costs. In so far as that question is concerned, it has not been suggested that it is in any way improper.

2. The result, therefore, is that the order of the Court below is affirmed and this appeal dismissed with costs. We assess the hearing fee at one gold mohur.