

(1916) 11 CAL CK 0010
In the Calcutta High Court

Pakari Pramanik and Others

APPELLANT

Vs

Sarat Sundari Debya and Others

RESPONDENT

Date of Decision : 24-11-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : 37 Ind. Cas. 835

Hon'ble Judges : Richardson, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This Rule was issued calling on the opposite party to show cause why the order of the District Judge complained of should not be set aside on the ground that no appeal lay to him. The plaintiffs brought a suit to enforce a mortgage security, and obtained an ex parte decree. Under the provisions of Order IX, Rule 13, Civil Procedure Code, the defendant No. 2 applied to have the ex parte decree set aside. That application was rejected on the ground that the said defendants did not appear in support of it. Against that order of rejection, the defendant No. 2 appealed to the District Judge. The District Judge set aside the order rejecting the application and directed the Court of first instance to hear it on its merits. The present Rule was obtained on the ground that the learned District Judge had no jurisdiction to hear an appeal from an order rejecting an application made under Order IX, Rule 13, of the Code when it was dismissed for default. No such limitation can be placed upon the right of appeal given by Order XLIII, Rule 1 (d), Civil Procedure Code, in the case of the rejection of an application made under Order IX, Rule 13. It seems to me that the learned District Judge clearly had jurisdiction to hear and dispose of the appeal. This Rule, therefore, must be discharged with costs one gold mohur. Richardson, J.

2. I agree.