

(1906) 02 CAL CK 0013
In the Calcutta High Court

Ramesh Chandra Dhar

APPELLANT

Vs

Karunamoyi Dutt

RESPONDENT

Date of Decision : 14-02-1906

Acts Referred:

Citation : (1906) ILR (Cal) 498

Hon'ble Judges : Pargiter, J; Ghose, J

Bench : Division Bench

Judgement

Ghose and Pargiter, JJ.—The question raised in these appeals is whether the Court of appeal below acted illegally in setting aside an award made by certain arbitrators, when the Court of first instance, where the award was filed, made a decree in accordance with it. It appears that the matter was referred to three arbitrators. Two of them agreed in making an award, but the third arbitrator did not agree, the result being that he did not sign the award. But notwithstanding this, the award was filed in Court and received. Subsequently the dissentient arbitrator came into Court and signed the award, and the Court, in accordance with such award, made a decree. The party against whom the decree was thus pronounced appealed to the higher Court, and that Court has held that the award is not a valid and legal award, and no decree could be made upon it. It has been contended on behalf of the appellant in these cases that, having regard to the provisions of Section 522 of the Code of Civil Procedure, and as expounded by the decision of the Privy Council in the case of Ghulam Khan v. Muhammad Hassan ILR (1901) Cal 167; ILR. IndAp 51, the Court of appeal below had no authority to set aside the decree of the Court of first instance--that decree having been in accordance with the award. Our attention has, however, been drawn to several other cases bearing upon the matter; and we think, upon consideration that there is no just reason to interfere with the judgment of the lower Appellate Court in these cases. It seems to us that as soon as the award was made and filed in Court, the powers of the arbitrators came to an end; they became functus officio, and it was not open to the dissentient arbitrator to come in afterwards and sign the award, nor had the Court any power to allow him to

sign it. In this view of the matter, the award was not a valid and legal award. And we are of opinion that the question whether, u/s 522 of the CPC an appeal lies against a decree made in accordance with an award depends upon whether the award itself is valid and legal. Section 522 of the Code presupposes, as we understand it, a valid and a legal award, and not an award, upon which no decree could be pronounced; and this view is in accordance with the principle underlying the cases of Raja Har Narain Singh v. Chaudhrain Bhagwant Kaur I.L.R.(1891) All. 300 : IL.R. IndAp 55, Jafri Began v. Syed Ali Rasa ILR (1901) All. 383 and Kali Prosanno Ghose v. Rajani Kant Chatterjee I.L.R (1897) Cal. 141. The result is that these appeals are dismissed with costs.