

APPELLATE CIVIL.

Before Rankin C. J.

RAM CHARAN GOLDAR

v.

HAMID ALI.*

1928.

April 23.

Court-fee—Order of a Judge refusing certificate under cl. 15 of the amended Letters Patent, whether an order or a decree—Court-fees Act (VII of 1870), s. 4 and Sch. II, Art. 11 (b).

Court-fee on a memorandum of appeal against an order of a Judge refusing certificate under clause 15 of the Letters Patent as amended in 1927 is chargeable under Article 11 (b) of the Second Schedule to the Court-fees Act.

APPLICATION for Leave to Appeal under section 15 of the Letters Patent.

The plaintiffs-appellants brought a Second Appeal which was decided under the provisions of section 98 (2) of the Civil Procedure Code, the Hon'ble Judges being divided in opinion. An application was made under the amended clause 15 of the Letters Patent for a certificate, which was refused. Against that refusal, the appellants appealed. The memorandum of appeal was filed with a stamp of Rs. 2 only. The Stamp Reporter refused to accept it, his view being that it was governed by section 4 of the Court-fees Act and should be taxed under the provisions of the First Schedule governing *ad valorem* taxation. According to that view, the amount payable as court-fee is Rs. 120, the amount of the relief claimed throughout the litigation being Rs. 1,050. The vakil for the appellants contended that the appeal was governed by Article 11 (b) of the Second Schedule of the Court-fees Act, as amended by the Bengal Amending Act of 1922, and that the proper court-fee was Rs. 5. He was prepared to pay the deficit of Rs. 3.

The matter was placed before the Registrar in the Appellate Side of the High Court who referred it again

*Re: Application for Leave to Appeal under section 15 of the Letters Patent in Appeal from Appellate Decree, No. 809 of 1925.

to the Hon'ble the Chief Justice under section 5 of the Court-fees Act.

Babu Jitendra Kumar Sen Gupta (with him *Babu Prabodhe Chandra Kar*), for the appellants.

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RANKIN C. J. In this case two learned Judges differed in the decision of a Second Appeal and in the end Mr. Justice Cuming's view as the Senior Judge prevailed and the appeal was dismissed. Thereupon an application was made to Cuming J., under the amended Letters Patent for a certificate that the case was a fit one to be taken on further appeal. That application was made subsequently to the learned Judge upon a separate petition. It was rejected and the rejection was recorded in the order sheet: "Read an application filed on the 23rd February, 1928, and moved to-day. It is rejected." The order is dated the 24th February, 1928.

From that an appeal has been brought and the memorandum of appeal when lodged was excepted to by the Stamp Reporter on the ground that it was insufficiently stamped. It does not appear to have been sufficiently stamped, but the question of the correct court-fee has been referred to me by the Taxing Officer under section 5 of the Court-fees Act.

It is contended for the appellant that this case is governed by Article 11 (b), Schedule II of the Act, which applies to a memorandum of appeal when the appeal is not an appeal from a decree or an order having the force of a decree. I have examined the decree which has since been drawn up in the matter of the Second Appeal and I find in it no reference to the application for leave to appeal. In these circumstances it appears to me that the court-fee is chargeable on this memorandum of appeal under Article 11 (b) of the Second Schedule to the Court-fees Act as has been contended for on behalf of the appellant.

Accordingly the deficit court-fee will be accepted if put in by Monday next.