

## APPELLATE CIVIL.

1903  
November 3.*Before Mr. Justice Blair and Mr. Justice Banerji.*

KATIK RAM (PLAINTIFF) v. BABU LAL (DEFENDANT).\*

*Civil Procedure Code, section 525—Award—Order rejecting application to file award made out of Court—Appeal.*

*Hold* that no appeal will lie from an order refusing to file an award made between the parties without the intervention of a Court. *Bhola v. Gobind Dayal* (1) followed. *Ghulam Khan v. Muhammad Hassan* (2) distinguished.

THIS was an appeal arising out of an application under section 525 of the Code of Civil Procedure. The applicant came into court alleging that there having been a dispute between himself and Babu Lal concerning the partition of movable and immovable property the parties had, by a registered agreement, dated the 16th of May 1901, appointed Pandit Avadh Kumar as arbitrator. The arbitrator had made an award on the 3rd of July 1901, which had been signed and delivered to the applicant; and he therefore prayed that the award might be filed and a decree passed thereon. To this application various objections, which need not be detailed, were taken by the opposite party. The Court (Subordinate Judge of Ghazipur) on a finding that the arbitrator had committed acts amounting to misconduct, disallowed the application and refused to file the award. Against this order the applicant appealed to the High Court.

The Hon'ble Mr. Conlan, Mr. Abdul Majid and Mr. J. Simeon, for the appellant.

Mr. Ishaq Khan and Paudit Sundar Lal, for the respondent.

BLAIR and BANERJI, JJ.—This is an appeal from an order of the Court below refusing to file an award, which, until such application was made, had been an affair between the parties alone without the intervention of any Court. On behalf of the respondent a preliminary objection is raised that from such refusal no appeal lies. In that contention he is supported by a decision of the Full Bench of this Court in *Bhola v. Gobind Dayal* (1). That case does clearly and definitely decide this

\* First Appeal No. 276 of 1901, from a decree of Rai Anant Ram, Subordinate Judge of Ghazipur; dated the 18th September, 1901.

(1) (1884) I. L. R., 6 All., 186.

(2) (1901) I. L. R., 29 Calc., 167.

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very point. On the other hand our attention has been called to a dictum of their Lordships of the Privy Council in *Ghulam Khan v. Muhammad Hassan* (1). In that case the point for decision by their Lordships was a totally different one from that which is at issue in this case. Their Lordships entered into a discussion upon the various provisions of the Code of Civil Procedure by which arbitrators and awards were dealt with. The case before them was not one upon the same basis as the present one, in which the parties had proceeded without the intervention of a Court until an application was made to file the award. The question, therefore, was not before them for decision. Their Lordships, however, referring to applications for the filing of an agreement to refer, or for the filing of an award, observed as follows:—"In cases falling under Heads II and III proceedings described as a suit and registered as such must be taken in order to bring the matter—the agreement to refer, or the award, as the case may be—under the cognizance of the Court. That is or may be a litigious proceeding. Cause may be shown against the application; and it would seem that the order made thereon is a decree within the meaning of that expression as defined in the Civil Procedure Code." Relying upon these observations Mr. *Abdul Majid* for the appellant contends that an order refusing to file an award is a decree and is therefore appealable. In our opinion the remarks of their Lordships are capable of an interpretation entirely different from that which is put on them by Mr. *Abdul Majid*. It seems to us that what their Lordships said was intended to apply to cases where an order has been made directing an award to be filed and not to cases where such application is rejected. Under these circumstances we give effect to the preliminary objection and hold that no appeal lies in this case. The appeal is dismissed with costs.

*Appeal dismissed.*

(1) (1901) I. L. R., 29 Calc., 167.