

Before Mr. Justice Banerji and Mr. Justice Richards.

BAHADUR SINGH (OPPOSITE PARTY) v NEGI PURAN SINGH, APPLICANT.*
*Civil Procedure Code, sections 522, 523 - Private arbitration - Award made a
 rule of Court - Appeal.*

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 February 3.

When an award made in a private arbitration has been made a rule of Court and a decree passed thereon, no appeal will lie except so far as the decree is in excess of or not in accordance with the award. In this respect there is no difference between a decree based upon a private award and a decree based upon an award made through the intervention of the Court. *Mustafa Khan v. Phulja Bibi* (1) distinguished.

THIS was an application under section 525 of the Code of Civil Procedure to have an award made a rule of Court. On the 25th of January 1904 the parties had referred the matters in dispute between them to arbitration without the intervention of a Court, and on the 20th of October 1904 the arbitrator made his award. The opposite party raised certain objections to the filing of the award, which were, however, overruled, and the Court (Subordinate Judge of Dehra Dun) ordered the award to be filed and passed a decree in accordance therewith. From this decree the opposite party appealed to the High Court.

Babu Sital Prasad Ghosh, for the appellant.

The Hon'ble Pandit Sundar Lal, for the respondent.

BANERJI and RICHARDS, JJ.—This appeal arises out of a suit brought under the provisions of section 525 of the Code of Civil Procedure for the filing of an award made by an arbitrator appointed without the intervention of a Court. The parties referred their disputes to the arbitration of an arbitrator on the 25th of January 1904. The arbitrator made his award on the 20th of October 1904. Objections were raised on behalf of the appellant in regard to the award, which were overruled, and the Court ordered the award to be filed and made a decree in accordance with it. From this decree the present appeal has been preferred. A preliminary objection is taken on behalf of the respondent to the effect that no appeal lies. In our judgment this objection must prevail. Section 526 of the Code of Civil Procedure provides that if no ground such as is mentioned or referred to in section 520 or section 521 be shown against the award, the

* First Appeal No. 276 of 1905, from a decree of S. P. O'Donnell, Subordinate Judge of Dehra Dun, dated the 25th of July 1905.

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Court shall order it to be filed, and such award shall take effect as an award made under the provisions of Chapter XXXVII. As soon, therefore, as the Court orders an award to be filed the provisions of section 522 become applicable. One of those provisions is that on a judgment being given by the Court a decree shall follow, and no appeal shall lie from such a decree except in so far as the decree is in excess of or not in accordance with the award. It is admitted that the decree in the present case is not in excess of the award. It is further admitted that if the decree in the present case had been a decree in a suit which the parties had referred to arbitration through the intervention of the Court no appeal would have lain. But it is contended that there is a difference between such a case and a case in which a reference is made without the intervention of a Court. We fail to see that any such distinction exists. As we have said above, according to the provisions of section 526 when a Court orders an award to be filed, section 522 must apply, that is to say, a decree must be made on judgment being pronounced by the Court; so that if this decree be not in excess of the award or does not vary the award no appeal would lie. We have been referred by the learned vakil for the appellant to the case of *Mustafa Khan v. Phulja Bibi* (1). In that case a Bench of this Court entertained an appeal under similar circumstances, but the question whether an appeal lay or not does not appear to have been raised, and it certainly was not decided. We are therefore unable to regard that case as an authority for the contention that in the case of a private arbitration when a decree is made by a Court in accordance with the award an appeal lies. We accordingly allow the objection, and holding that no appeal lies dismiss the appeal with costs. The objection preferred under section 561 of the Code of Civil Procedure necessarily fails. We dismiss it.

Appeal dismissed.

(1) (1905) I. L. R., 27 All., 526.