

Before Mr. Justice Chamier and Mr. Justice Piggott.

DUMI CHAND (PETITIONER) v. ARJA NAND AND OTHERS (OPPOSITE PARTIES).\*

*Civil Procedure Code (1908), order XLIII, rule 1—Appeal—Order dismissing an application to be substituted in an appeal in place of the original plaintiff.*

*Held* that an order dismissing an application to be brought upon the record as a plaintiff is not a decree and no appeal lies against such an order.

THE facts of this case were, briefly, as follows:—

During the pendency of an appeal arising out of a civil suit the plaintiff appellant died leaving a widow. Thereupon one Dumi Chand, alleging himself to be the adopted son and the legatee of the deceased appellant, applied to be substituted in the appeal in place of the original plaintiff. The court dismissed his application on the merits. He appealed against this order. The court had passed no order abating or dismissing the appeal.

Munshi *Parmeshwar Dayal*, for the respondents, took a preliminary objection that no appeal lay under order XLIII, rule 1, of the Code of Civil Procedure from the order of the lower court, which was passed under order XXII, rule 5. The old Code allowed an appeal, under section 388, clause (18). But in enacting the new Code the Legislature had deliberately omitted the remedy of an appeal in such cases. No order had yet been passed abating or dismissing the appeal. If the widow so chose she could apply to be substituted in place of the original plaintiff and the appeal would continue.

Mr. *Nihal Chand*, for the appellant, in reply to the preliminary objection urged that the order passed by the lower court must be deemed to have been made under rule 9 or rule 10 of order XXII of the Code of Civil Procedure and therefore an appeal lay under order XLIII, rule 1. Should the order be considered not to have been made under either of these two rules the case might be taken up as an application in revision. The lower court had acted with material irregularity.

CHAMIER and PIGGOTT, JJ.—This is an appeal against an order of the Additional Judge of Saharanpur, dismissing the appellant's application to be made plaintiff in the suit in the place of Nihal Singh deceased, the original plaintiff. The defendants respondents contend that no appeal lies. In our opinion the

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\* First Appeal No. 114 of 1914 from an order of Banko Behari Lal, Additional Judge of Saharanpur, dated the 19th of May, 1914.

contention is well founded. It is not suggested that the order amounts to a decree as defined in the Code. As an order it is certainly not appealable, for it was not passed under either rule 9 or rule 10 of order XXII. We were asked to treat the appeal as an application for revision. We are not prepared to do this. The court below does not appear to have acted without jurisdiction or with material irregularity in the exercise of its jurisdiction. Moreover, Nihal Singh left a widow, who appears to be his legal representative, if the appellant is not the adopted son, and who may yet succeed in getting herself made plaintiff in place of her deceased husband. It may also be possible to appeal against the order of the court, when passed, dismissing the suit as having abated. There are two reported decisions of this Court that no such appeal lies, but the Bombay and Madras High Courts have held that such an order is tantamount to a decree and is appealable as such.

The present appeal is dismissed with costs.

*Appeal dismissed.*

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

GANGES SUGAR WORKS LD. (PLAINTIFF) v. NURI MIAH (DEFENDANT)\*.

*Act No. VI of 1882 (Indian Companies Act), sections 67, 96 and 123—Contracts entered into by companies—Agreement to refer to arbitration—Whether seal of the company necessary.*

*Held* that section 96 of the Indian Companies Act, 1882, did not require that an agreement entered into by a company with a person who held a contract for the working of a certain portion of the company's business, to refer disputes which might arise between the parties to arbitration, should be made under the seal of the company.

THE facts of this case were as follows :—

The plaintiff was a company registered under the Indian Companies Act and carried on the work of manufacturing sugar in the district of Unao. The registered office of the Company was situated at Cawnpore. The parties entered into a partnership by an agreement, dated the 7th of February, 1912, to work the refinery. One of the conditions of the contract was that should any dispute arise between the parties concerning the working of

\* First Appeal No. 31 of 1914, from a decree of Murari Lal, Subordinate Judge of Cawnpore, dated the 22nd of December, 1913.

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