

APPELLATE CIVIL.

Before Sir Gny Rutledge, Kl., K.C., Chief Justice, and Mr. Justice Carr.

I. E. ABOWATH AND THREE OTHERS

v.

A. E. ABOWATH AND TEN.

1927

Oct. 26.

Letters Patent, Clause 13—Order of Court sending back award to arbitrators to enable them to file award according to law not a judgment—No appeal.

Held, that an order of the Court directing the return of an award to the arbitrators to enable them to file it according to the proper procedure laid down by law which was originally disregarded, is not a judgment that decides any right between the parties, within the meaning of Clause 13 of the Letters Patent. Consequently no appeal lies against such order.

Yeo Eng Byan v. Beng Seng & Co., 2 Ran. 469—*followed*.

Doctor for the appellants.

S. N. Sen for the 1st respondent.

RUTLEDGE, C.J., and CARR, J.—This is an appeal from an order of the Judge sitting on the Original Side of this Court, holding that by reason of material irregularities in respect of conditions precedent to the filing of an award, he directed the award to be returned to the Advocate of the Arbitrators to enable them to issue the necessary notices to the parties under section 11 (2) of the Indian Arbitration Act.*

A preliminary objection was taken that no appeal lies, inasmuch as the order is not a judgment within the meaning of Clause 13 of the Letters Patent. For the objection reliance is placed on the decision of the Calcutta High Court reported in I.L.R. XLV Cal. at page 502, and on the decision of this Court in *Yeo Eng Byan v. Beng Seng & Co.*, (I.L.R. II Ran., p. 469). While for the appellants, reliance is placed on the decision in I.L.R. XLIV Cal., at pages 804 and 111 and in I.L.R. XXXV Mad., pp. 1 and 7.

* Reported in (1927) 5 Ran. 171.

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C.J.

We are of opinion that the objection must prevail. The late Chief Justice, Sir Sydney Robinson, remarks at page 473 of *Yeo Eng Byan's* case:—

“I agree that a decision which affects the merits of the question between the parties by determining some right or liability, may rightly be held to be a judgment; and I think that an order which merely paves the way for the determination of the question between the parties, cannot be considered to be a judgment, nor can a mere formal order merely regulating the procedure in the suit, or one which is nothing more than a step towards obtaining a final order.”

The learned Judge has not purported finally to decide any right between the parties. He has held that the arbitrators, by not giving notice to the parties before sending the award to the Court, acted with material irregularity and in breach of the statutory obligation imposed by section 11 (2) of the Indian Arbitration Act, and he ordered the award to be sent back to the arbitrators to enable them to act according to law. Such an order in our opinion cannot be held to be a judgment within the meaning of Clause 13 of the Letters Patent and the appeal must accordingly be dismissed.

As regards costs, while the arbitrators and their advocate acted with material irregularity in not complying with the provisions of section 11 of the Indian Arbitration Act, and Rule I of the High Court Rules, under the Arbitration Act this Court failed in its obvious duty in not promptly returning the award to the advocate of the arbitrators for due compliance, and further erred in accepting it and issuing notice to the parties. In these circumstances, we make no order as to costs.