

Before Mr. Justice Kemp and Mr. Justice Glover.

1869
Jan'y. 21.

MAHADEO OJHA (DEFENDANT) *v.* PARMESWAR PANDEY (PLAINTIFF)*

Appellate Court—Judgment.

An Appellate Court is bound to state its reasons for reversing the decision of a lower Court.

Baboo *Ashutosh Chatterjee* and *Jadab Chandra Seal* for appellant.

Baboo *Budhsen Sing* for respondent.

The judgment of the Court was delivered by

GLOVER, J.—It appears to us that the objection taken by the special appellant in this case must succeed. It has been oftentimes ruled by Division Benches of this Court that, when a Court of Appeal reverses the order of a Court of first instance, it is bound to give reasons for so doing in the judgment. In the present case, the Moonsiff gave his reasons at considerable length for believing the plaintiff's suit for possession to be unfounded, but the Judge, without going into, or controverting, any of those reasons, but saying simply that the plaintiff's case appears to him to be a just one, reversed the decision of the Court of first instance, and decreed the plaintiff's suit.

It appears to us that, according to a long current of decisions of this Court, he was not justified in doing so; and that before reversing the orders of his subordinate, he was bound to give his reasons, for which he was induced to do so.

The case must, therefore, go back to the Judge, for him to pass a fresh decision on the merits of the case, with reference to the above remarks.

Costs to follow the result.

Before Mr. Justice Kemp and Mr. Justice Glover.

1869
Jan'y. 23.

RAJ KUMAR SING (PLAINTIFF) *v.* KALI CHARAN SING AND ANOTHER
(DEFENDANTS.)†

Award—Appeal—Act VIII. of 1859, ss. 325 & 327.

An application was made under section 327 of Act VIII. of 1859 to file an arbitration award, and the Court after calling on the opposite party to show cause why it should not be filed, rejected the application. *Held*, that the case did not come within the meaning of section 325, and that the order being simply one "rejecting an application to file an award," was final.

* Special Appeal, No. 2855 of 1868, from a decree of the Officiating Judge of Sarun, dated 1st June 1868, reversing a decree of a Moonsiff of that district, dated the 5th July 1867.

† Miscellaneous Appeal, No. 438 of 1868, from an order of the Subordinate Judge of Patna, dated the 25th July 1868.

Messrs. E. T. Allan and O. Gregory, Munshi Mohamed Yusaff and Baboo Ramanath Bose for appellants.

1869

RAJKUMAR
SING
v.
KALICHARRA
SING.

Baboo Ananda Prasad Banerjee, Srinath Doss, and Krishna Sakha Mookerjee for respondents.

KEMP, J.—This was an application to enforce a private arbitration award, dated the 5th Aswin 1265.

It is admitted that the application was made under the provisions of section 327 of Act VIII. of 1859. It is also admitted that the application to file the arbitration award was not allowed by the lower Court. The opposite parties were served with notice to show cause why the award should not be filed. The Principal Sudder Ameen entered into elaborate enquires in the case, and for the reasons given in his decision, refused the application. It appears that amongst the reasons given is that the award was not a *bona fide* one. The plaintiff is the appellant. Before hearing this appeal, the respondent put in an objection to the hearing of this appeal, and a ruling of the Full Bench in *Baboo Chintaman Sing v. Rupa Koor* (1) was quoted by the pleader for the respondent.

Mr. Allan, for the appellant, has argued that the present case has gone far beyond the limits of the case decided by the Full Bench. The pleader attempted to show that the Full Bench case referred to an order rejecting an application to file a *batwara* under section 327 without any enquiry whatever; but that in the present case, there had been a full enquiry, and that the case was treated by the Principal Sudder Ameen in the form of a special case coming within the purview of section 325 of the Code.

We think that this contention is clearly incorrect; section 325 contemplates special cases submitted to the Court for its opinion. Section 327, under which the special appellant, the plaintiff, proceeded in this case, refers to applications to be permitted to file an arbitration award with a view to have its provisions enforced by a decree; and the section provides that before this can be done, the Court shall call upon the parties to the arbitration, other than the applicant to show cause why the award should not be filed.

In this case, the other parties did appear and did show cause, and the Principal Sudder Ameen refused to permit the award to be filed. The judgment of the Full Bench, therefore, clearly applies to the present case. The result, if the award had been filed, would have been that it could have been enforced as a decree.

The order disallowing the application to file the award is not a decree, and therefore is not appealable as a decree. It is to use the words of the decision of the Full Bench, "simply an order, rejecting an application to file an award," and against such an order, no appeal is provided by Act VIII. of 1859. The appeal is, therefore, dismissed with costs.