

Shib Kumar and ors. Vs. Sheo Ghulam and ors.

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Court : Allahabad

Decided On : Nov-21-1921

Reported in : AIR1922All90; (1922)ILR44All209

Judge : Piggott and ;Walsh, JJ.

Appellant : Shib Kumar and ors.

Respondent : Sheo Ghulam and ors.

Judgement :

Piggott and Walsh, JJ.

1. This first appeal from order comes before us under the following circumstances. On objection taken by the judgment-debtors a certain sale_was set aside. The court, however, for reasons given, saw fit to order that the judgment-debtors should not merely bear their own costs of that objection but should also pay the costs of the other side. The judgment-debtors have submitted to the order in so far as it directed them to bear their own costs of the proceeding. They have no quarrel with the order directing the sale to be set aside, which was indeed passed at their instance. They appeal against that part of the order which directed them to pay the costs of the other side. An objection is taken that no appeal lies. In *Balkissen Dass v. Luchmееput Singh* (1881) I.L.R. 8 Calc. 91 the principle was broadly laid down that, if an order is itself appealable, an appeal will lie from that part of the order which relates to costs. This decision has been followed in *Moshingan v. Mozari*

Sajjad. (1885) I.L.R. 12 Calc. 271 and the Bombay High Court has expressed the same opinion in the case of Vasudeva Ramchandra v. Bhavan Jivraj (1891) I.L.R. 16 Bom. 241. The words of Order XLIII, Rule 1(j), give an appeal 'from' an order setting aside a sale. This may fairly be interpreted as meaning that, where an order has been passed setting aside a sale, any party to the proceeding dissatisfied with any portion of the order passed has the right of appeal. This seems to have been the view taken by the Bombay and by the Calcutta High Courts, and we are prepared to agree. On the merits it seems to us that the order of the court below, saddling the appellants with the costs of the opposite party, proceeds upon no principle and is one which could have been challenged, even in a second appeal, as being erroneous in law. The court was dissatisfied with the manner in which the judgment-debtors had conducted themselves through out the whole execution proceedings; but in the particular matter upon which it was adjudicating, and in connection with which it passed the order now under appeal, it held that the objections taken by the judgment-debtors to the sale were well founded and must prevail. If so, the judgment-debtors were justified in objecting to that sale and no valid reason can be given for requiring them to pay the costs of the other side. They were made to bear their own costs because they had produced certain evidence which the court below treated as both unnecessary and unreliable; but they have submitted to that portion of the order against them and it is not in question here. We think this appeal must prevail, and we allow it accordingly, by setting aside so much of the order under appeal as directed that the objector should bear the costs of the opposite party. The appellants are entitled to their costs of this appeal, and we order accordingly.