

**Kailash Chandra Das and anr. Vs. Narayan Chandra Das and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/865484](http://sooperkanoon.com/865484)

**Court :** Kolkata

**Decided On :** Apr-18-1934

**Reported in :** AIR1934Cal786,152Ind.Cas.97

**Appellant :** Kailash Chandra Das and anr.

**Respondent :** Narayan Chandra Das and ors.

**Judgement :**

1. In this case a rule was issued on the opposite party to show cause why the order complained of should not be set aside or why such other or further order should not be made as to this Court may seem fit on the grounds stated in the petition. The facts are that the opposite party had brought a suit on accounts valuing their suit at Rs. 1,200 and paying court-fees upon that amount. The trial Court finally decreed the suit for a sum of Rs. 9,154. Against that decree the\* petitioner made an appeal. The Court of appeal below on a preliminary objection came to the conclusion that the appeal is to be valued for the purposes of court-fees at Rs. 9,154 only and that the court-fee payable on that sum is Rs. 705 and that this court-fee must be paid or the appeal will stand dismissed.

2. It is urged before us that the plaintiffs, opposite party, having paid the court-fees on Rs. 1,200 only the petitioners are not bound to pay the court-fee for a larger sum specially because the plaintiffs have not paid the court-fees on the decree of Rs. 9,154. It is urged on behalf of the opposite party that under 8. 11, Court-fees Act, the plaintiffs are not bound to pay the additional court-fee until they apply for

the execution of the decree. From this fact it is urged that the amount for which the decree is to be executed is uncertain and that therefore this appeal comes properly under Schedule 2, Article 17(6) which applies to suits where it is not possible to estimate money value of the subject matter of a dispute and where such a suit is not specially provided by the Court-fees Act. In our opinion, the appeal does not properly come under the clause quoted. To bring the case within the scope of this clause, it must be established that it is not possible to ascertain even approximately the money value of the subject matter of the dispute. In this case there is a decree for Rs. 9,154 against the petitioner. Unless the petitioner succeeds in getting that decree set aside or altered in appeal the decree will stand until the contingency arises when the opposite parties do not; pay the requisite court-fees in execution. But this contingency in our opinion, does not alter the value of the decree as against the petitioner. In our opinion the order; of the Court of appeal below was correct and this rule must be discharged with costs-hearing fee one gold mohur.

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