

Anwar Ali Vs. Jaffer Ali and anr.

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Court : Kolkata

Decided On : May-05-1896

Reported in : (1896)ILR23Cal827

Judge : Beverley and ;Jenkins, JJ.

Appellant : Anwar Ali

Respondent : Jaffer Ali and anr.

Judgement :

Beverley and Jenkins, JJ.

1. In this case a preliminary objection has been taken that no second appeal lies to this Court.

2. The appeal to the Lower Appellate Court was dismissed for default of prosecution. The order, is in these words: "The appellant does not appear, and the only pleader who can be found, says that he has no instructions; ordered that the appeal be dismissed with costs and the usual interest.' It has been recently held by this Court in the case of Jagarnath Singh v. Budhan I.L.R. 23 Cal. 115 that an order to this effect is not a 'decree' within the definition in Section 2 of the Code of Civil Procedure, and that no second appeal will lie therefrom. We have also been referred to Mansab Ali v. Nihal Chand I.L.R. 15 All. 359, which is the most recent of several decisions of the Allahabad Court on this subject, and is to the same 29]

effect as the case just referred to. Our attention has been drawn by the learned pleader for the appellant to the case of Ram Chandra Pandurang Naik v. Madhav Purushottam Naik I.L.R. 16 Bom. 23 which was considered by this Court in the judgment in I.L.R. 23 Calcutta. The facts of that case were quite different from those of the present case, and the decision appears to have been merely that of one of the two Judges, who formed the Bench which disposed of the case. Without expressing any opinion as regards the correctness of the decision in that case, We are of opinion that the case in I.L.R. 23 Calcutta, was rightly decided, and we are bound to follow it.

3. We think, moreover, that it is clear that no appeal will lie under Section 584 of the Civil Procedure Code in a case of this sort, inasmuch as such an appeal cannot be brought within any of the grounds therein mentioned. Section 585 distinctly says that no second appeal shall lie except on those grounds. And further we may point out that, although an appeal is specially given by Section 584 against an appellate decree passed ex pa He, the provisions of the Code appear to draw a marked distinction between appeals dismissed for default and appeals heard ex parte.

4. The proper remedy in a case like the present is provided by Section 558, and an appeal is allowed by the Code against an order passed under that section.

5. For these reasons we think this appeal will not lie, and must be dismissed with costs.