

# ALLAHABAD HIGH COURT

Baijnath

Vs

Dhani Ram

(Mukeshji and Niamatullah, JJ.)

26.04.1929

## JUDGMENT

### **Niamatullah, JJ.**

1. This is a second appeal by one who was the defendant in the suit. The parties to the suit, at one stage of it agreed that the learned Munsif before whom the suit was, should decide the case, after hearing certain documentary evidence and making an inspection of the locality. They agreed that they would accept the decision of the learned Munsif. On the case being decided by the Munsif, an appeal was filed by the defendant before the learned District Judge. The District Judge held that the parties had constituted the Munsif an arbitrator and no appeal lay from what was virtually an award. In this view, the learned Judge dismissed the appeal. In this second appeal, the view of the learned District Judge has been contested.

2. We are of opinion that the view of the learned District Judge is correct and we dismiss this appeal. On the question of costs, we are of opinion, that the 1929 A/73 & 74 respondent should not have any. We have refused to hear the learned Counsel for the respondent. The reason was this. It was reported that there was a deficiency in the Court-fee paid by the plaintiff-respondent in the Court of first instance. The respondent was called upon to make good the deficiency, but he has not done it. The learned Counsel for the respondent has urged that the only consequence of the non-payment of the Court-fee by his client should be that this Court will refuse to "issue the decree" in his favour till he makes good the deficiency. The learned Counsel relies on the Full Bench case of Mohon Lal v. Nand Kishore [1905] 28 All. 270. In that case, the question was whether the respondent, who had failed to make good the deficiency should have his appeal before the lower appellate Court (which had succeeded) dismissed or whether there was some other remedy to compel him to make good the deficiency. All that the learned Judges held was that the procedure of dismissing the respondent's appeal before the lower appellate Court was not a right procedure, and that the proper thing to do would be to:

stay issuing the decree in favour of the respondent, if such should be passed, until such time as the additional Court-fee due by him may be paid.

3. As we read the judgment, the learned Judges never indicated that this was the only way of

bringing pressure on the respondent to make good the deficiency. The Court-Fees Act does not provide any means by which the deficiency in Court fee can be realized. The Courts have always taken it upon themselves to realize it by such lawful means as might be open to them. One of us, and the learned Chief Justice, sitting together, have, more than once held that one of the ways that was open to the Court of enforcing payment would be not to hear the counsel for the respondent, who was in contempt. We followed this procedure and refused to hear the respondent's counsel in second appeal. In the result,