

CALCUTTA HIGH COURT

Debendra Nath Das

Vs

Bibudhendra Mansingh

(Lawrence Jenkins, C.J. N Chatterjea, J.)

24.05.1915

JUDGMENT

Lawrence Jenkins, C.J.

1. This is an application for a certificate that, as regards amount or value and nature, the case fulfills the requirements of Section 110 of the Code of Civil Procedure, or that it is otherwise a fit one for appeal to His Majesty in Council.
2. To ascertain the amount or value, the matter was referred to the Court of first instance (Order XLV, Rule 5). That Court has determined the amount or value and has returned its report, according to which the amount or value exceeds Rs. 10,000. We see no reason to dissent from that determination.
3. It only remains to be seen whether as regards nature the requirements of Section 110 are fulfilled. The Court of first instance as well as the lower Appellate Court decided adversely to the present applicant. On appeal to the High Court, a single Judge reversed the decree of the lower Appellate Court. From this judgment of a single Judge there was an appeal to the High Court under Clause 15 of the Charter, with the result that the judgment of the single Judge was reversed by a Bench of two Judges. It will thus be seen that the first judgment of the High Court reversed the decree of the Court immediately below, but that this reversal was afterwards in effect cancelled, with the result that the only effective judgment of the High Court affirmed the decision of the Court immediately below (section 110, Civil Procedure Code).
4. This appears to me to be the true result of the Letters Patent and the Code, for the Code makes no provision for an appeal within the High Court, that is to say, from a single Judge of the High Court. This right of appeal depends on Clause 15 of the Charter.
5. And here I may point out that a Judge sitting alone is not a Court subordinate to the High Court, but performs a function directed to be performed by the High Court (clause 36, Letters Patent). And thus no decision of a single Judge can be revised under Section 115 of the Code.
6. But though in this view of the matter the decree of the Court immediately below has been affirmed, it will be right to grant a certificate for there is a substantial question of law involved,

and it makes the case all the more a fit one for appeal to His Majesty in Council that on the question involved, a Judge of the High Court took a different view from that which ultimately prevailed.

7. The certificate sought must, therefore, be granted that as regards amount or value and nature the case fulfills the requirements of Section 110 of the Code.

N.R. Chatterjea, J.

8. I concur.