

VYANKATESH RA'MCHANDRA JOGEKAR ..... *Applicant.*

1864.  
March. 9

BA'LA'JIRA'V bin ANANDRA'V and others ... *Respondents.*

*Award—Appeal—Civ. Proc. Code, Sec. 327.*

No appeal lies against an order disallowing an application to file an Award under Sec. 327 of Act VIII. of 1859.

VYANKATESH applied to this Court on the 4th of January 1864, stating that the Collector of Ratnágirí, by an order dated the 29th of October 1863, had refused to file an award made by arbitrators, "without the intervention of a court of justice," in a matter referred by the applicant and others on the one side, and the respondents on the other. The matter decided was a boundary dispute, and, under Sec. 327 of Act VIII. of 1859, and cl. 5 of Sec. 13, Reg. XVII. of 1827, an application to register the award was made to the Collector, who refused to file it, because no plan of the boundary in dispute accompanied the award, although the boundary in question was specified in sufficient detail by a delineation of the natural objects, &c.

The application was heard by COUCH and NEWTON, JJ.

*Vishvanáth Náráyan Mandlik* appeared in support of the application.

COUCH, J. :—Before we can go into the propriety or otherwise of the Collector's order, you must show by what authority you appear before this Court on appeal.

*Vishvanáth* submitted that this application was a suit under Sec. 327; that the Collector had gone into the merits of the case, and had the parties before him; and that his decision was, therefore, in the nature of a decree, and as such appealable.

COUCH, J., delivered judgment:—In this case I think an appeal does not lie against the Collector's refusal to receive and file the award. Sec. 327 of the Civil Procedure Code provides that "the application shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants, and if no sufficient cause be

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shown against the award, the award shall be filed, and may be enforced as an award made under the provisions of this chapter," but no appeal is given by this or any of the previous sections of the chapter. In the case of the rejection of a plaint which the application under Sec. 327 is made to resemble, an appeal is expressly given; Sec. 36. The general appeal clause, Sec. 23 of Act XXIII. of 1861, does not apply to this case, as the refusal of the Collector cannot be considered as a decree, nor does it fall within Sec. 363 of Act VIII. of 1859; and if we examine the previous sections of Ch. VI., the object of the Code appears to be to discourage further litigation where an award has been made. Sec. 325 lays down that "*in every case in which judgment shall be given according to the award, the judgment shall be final.*"

If in this case the Collector had filed the award, and had given judgment according to it, the other party would not have had the right of appealing against it; and, therefore, it is but equitable that in the case of a refusal to file the award you should have no right to appeal. The refusal to file the award does not invalidate it. It only prevents the award being enforced in the summary way provided, and, although not filed, it remains an award, and may be used in any other proceeding for what it may be worth. The petition must, therefore, be rejected.

*Petition rejected.*

March 14. MAHA'DA'JI RA'MCHANDRA MULE ..... Applicant.  
VITHAL VISHVANA'TH..... Respondent.

*Practice—Review—Application for Review—Civ. Proc. Code, Sec. 374.*

Applications for reviews should be drawn up in the the same manner as applications for the admission of special appeals, and should set forth concisely the grounds of objection to the decision sought to be reviewed.

Dhirajlál Mathurádás appeared before NEWTON and TUCKER, JJ., to support an application for review in this case. On its being called on for hearing, Newton, J., remarked that it was so lengthy, prolix, and argumentative, that the first question for consideration was whether it could be received.