

*Civil Petition.*1864.
Dec. 8.*Ex parte* BA' LKRISHNA BHA'SKAR GUPTA.

Award—Application to file—Appeal—Jurisdiction—Act VIII. of 1859, Secs. 12 and 327—Act XXIII. of 1861, Sec. 3—Act XIV. of 1859, Sec. 14—Reg. II. of 1827, Sec. v., Cl. 2.

An application to file an award, under Sec. 327 of Act VIII. of 1859, should be made to the court of the lowest grade competent to receive it; and no appeal lies to the High Court from an order by a District Court confirming in appeal an order of a subordinate court declining to file such an award.

THIS was an application to set aside an order made by R. H. Pinhey, District Judge of the Konkan, in Miscellaneous Petition No. 440 of 1864 of the District Court.

The decision of the District Judge was as follows:—

“In this application Bálkrishna appeals against an order passed by Ráv Bahádur Krishnaráv Viṭhal Vinchúrkar, Principal Şadr Amín at Tháná, on the 11th day of August 1864, by which he refused to file an arbitration award, presented by Bálkrishna for that purpose, under Sec. 327 of the Code of Civil Procedure.

“The Principal Şadr Amín in his order says that the immoveable property, to which the award relates, is not within his jurisdiction; and, therefore returned the award for being filed, in the proper court, under Sec. 3 of Act XXIII. of 1861.

“Bálkrishna appeals on the grounds: (1) The Principal Şadr Amín's jurisdiction extending over the whole zillá, he was wrong in refusing to file the award because a portion of the property was situated within the jurisdiction of the Panvel Munsif's Court; (2) the section of the Act quoted by the Principal Şadr Amín does not apply to his case.

“The applicant, who is a pleader in the Principal Şadr Amín's Court, being called on to quote the law authorising an appeal from an order, passed under Sec. 327 of the Code of Civil Procedure, refusing to file an award, says that this is not an appeal, but an application to have his award filed in the District Court, as the Principal Şadr Amín refuses to file it.

1864.
Ex parte
 BA' LKRISHNA
 B. GUPTA.

“There appear, however, to me to be objections to the said award being filed in the District Court of the Konkan. In the first place, the award was made on the 27th of January 1864; but the present application was not made till the 10th of September 1864: while Sec. 327 of the Code of Civil Procedure says that an application that an award be filed in court shall be made within six months from the date of the award. In the second place, the same section requires that an application that an award be filed in court be made to the court having jurisdiction in the matter to which the award relates; but a portion of the property to which the award [in this case] relates is situated in the Puná District, over which the District Court of the Konkan has no jurisdiction.

“The applicant represents that this court should apply to the High Court at Bombay for authority to file the award; but there is nothing in Sec. 327 that would warrant such a course. There is nothing in Sec. 327 indicating an intention that the District Court should proceed to acquire jurisdiction over property, after an award affecting it has been passed, similar to the provision of Sec. 12 of the Code, as regards property the subject of a civil suit, wherein the court obtains authority over property before proceeding to adjudicate concerning it.

“Even, however, if an application to the High Court would otherwise be proper in this case, the fact of more than six months having elapsed since the award was made would prevent my making such an application.

“This application is rejected.”

Dhirajlál Mathurádás, for the applicant:—The Judge rejected the application on two grounds: (1) that there was no appeal against the order of the Principal Sadr Amín; and (2) that the application, if treated as an original one, had not been made to the District Court within six months from the date of the award. But it would seem that an appeal against the order of the court having jurisdiction and refusing to file the application does lie, under Sec. 327 of Act VIII. of 1859, which directs that “The application shall be

written on the stamp paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force, and shall be numbered and registered as a *suit* between the applicant as plaintiff and the other parties as defendants." The written petition of the applicant is treated under this section as a *plaint*; and, under Sec. 36, an appeal lies from the order rejecting a *plaint*. As to the second objection, if the Principal Sadr Amín was unable, from "defect of jurisdiction or other cause," to decide upon the application, the time during which the applicant was engaged in prosecuting his suit *boná fide*, and with due diligence, in a wrong court, should be excluded from computation, under Sec. xiv. of Act XIV. of 1859. The Principal Sadr Amín should have applied to the High Court, as in the case of a suit under Sec. 12 of Act VIII. of 1859, for "authority to proceed with the same." (b) At all events, this court may proceed under Reg. II. of 1827, Sec. v., Cl. 2. (c)

1861.
Ex parte
 BA' LKRISHNA
 B. GUPTA.

COUCH J., :—No appeal lies to this court, as already decided in *V. R. Jogekar v. Balaji Anandrao* (d), and there is no ground for our acting under Reg. II. of 1827, Sec. v., Cl. 2.

The application under Sec. 327 should be made to the court of the lowest grade competent to receive it.

Treating the case; then, either as an appeal to the District Judge, or as an original application under the Regulation, this court ought not to interfere.

WARDEN, J., concurred.

Petition rejected.

(b) "In like manner, if the property be situate within the limits of different districts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other immoveable property in suit is situate, but in such case the Court in which the suit is brought shall apply to the Sadr Court for authority to proceed with the same; if the suit is brought in any Court subordinate to a District Court, the application shall be submitted through the District Court to which such Court is subordinate."

(c) "It shall also be competent to the said Court to call for the proceedings of any subordinate Civil Court, and to issue such orders thereon as the case may require."

(d) 1 Bom. H. C. Rep., 184.