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more. Accordingly we hold that the District Judge was not competent to hear the appeal and we set aside his decree and direct that the memorandum of appeal presented in his Court be returned to the appellants for such action as they may think fit. The stamp on this appeal shall be refunded but as the appellants selected their forum in appealing to the District Court they must pay the respondent's costs both in this and in that Court.

R.M./R.K.

Decree set aside.

A. I. R. 1918 Lahore 247 (1)

SHAH DIN, J.

Mt. Fazal Nur and another—Plaintiffs—Appellants.

v.

Muhammad Hassan — Defendant — Respondent.

Second Appeal No. 1245 of 1917, Decided on 16th April 1918.

Civil P. C. (1908), Ss. 35 and 100—Costs—Lower appellate Court exercising discretion arbitrarily in awarding costs, High Court can interfere in Second Appeal.

Where a lower appellate Court exercises its discretion as to the award of costs in an arbitrary manner and not according to judicial principles, a second appeal lies from its decree. [P 247 C 2]

Plaintiff, a minor, sued through her brother as next friend for a declaration that she was not the lawfully wedded wife of the defendant and obtained a decree with costs, the Court holding that no valid marriage had taken place between the plaintiff and the defendant as alleged by the latter and that the plaintiff had never lived with the defendant as his wife. On appeal the District Judge, while agreeing with the lower Court on all points, held that the defendant had been badly treated as the customary reparation for the abduction of his sister by plaintiff's brother had been denied to him and that therefore the plaintiff's next friend must pay the defendant's costs:

Held: that inasmuch as the defendant's allegations as to the alleged marriage had been found to be false, the District Judge's order as to costs was wholly unjustifiable and must be set aside.

Muhammad Iqbal—for Appellants.

Badr-ud-Din Kureshi — for Respondent.

Judgment.— This second appeal relates only to costs; and it is urged by the appellants' counsel that since the District Judge has exercised his discretion as to the award of costs in an arbitrary manner and not according to judicial principles, a second appeal lies from his decree: *Daulat Ram v. Durga Prasad* (1). *Bhugobati Pal v. Mahomed Ali* (2) and *Ranchordas Vithaldas v. Bai Kasi*

1. (1893) 15 All 333.

2. (1903) 7 C W N 647.

3. (1892) 16 Bom 676.

(3). The facts which are relevant to the question of costs are briefly these: The appellant, who is a minor, brought a suit through her brother as next friend for a declaration that she was not the lawfully married wife of the respondent. The Subordinate Judge who tried the suit gave her a decree with costs, holding that no valid marriage had taken place between the appellant and the respondent in 1902, as alleged by the latter, that the appellant had never lived with the respondent as his wife, and that the agreement of 1902 between the appellant's step-brother and the respondent by which the appellant, who was then only two years of age, was to be married to the respondent, a boy of eighteen years, was opposed to public policy and as such, invalid. The District Judge while agreeing with the Subordinate Judge, on all points, has held that the respondent has been badly treated as the customary reparation for the abduction of his sister by the appellant's step-brother has been denied to him by the appellant's family, and that, therefore, the appellant's next friend must pay his costs. This is an entirely erroneous view of the situation. It is clear that the appellant was never married to the respondent, and yet in this litigation the respondent has set up a false claim to the effect that he is the husband of the appellant, that the appellant had lived with him as his wife for a great many years, and that she having attained puberty some years ago had ratified the marriage. These allegations have been found to be false; and yet the District Judge has awarded costs to the respondent simply and solely because the appellant's step-brother did not give full reparation to the respondent for having abducted his sister in 1902. It is clear that the District Judge's order as to costs is wholly unjustified and arbitrary. I accordingly accept this appeal and setting aside his decree as to costs restore that of the first Court.

R.M./R.K.

Appeal accepted.

A. I. R. 1918 Lahore 247 (2)

CHEVIS, J.

Wadhawa Singh—Insolvent—Appellant.

v.

Emperor—Opposite Party.

Criminal First Appeal No. 1080 of 1916, Decided on 10th February 1917.