

1920
 HAILES,
In re.

I do not think that this applicant has brought himself under the section.

A. P. B.

Application refused.

Attorney for the insolvent applicant: *Subodh Ch. Mitter*

Attorneys for the creditor respondent: *Pugh & Co.*

PRIVY COUNCIL.

RAMCHAND MANJIMAL

v.

GOVERDHANDAS VISHANDAS RATANCHAND
 (AND FIVE OTHER APPEALS CONSOLIDATED).

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER
 OF SIND.]

Appeal to Privy Council—Order reversing an order to stay suit—“Final order”—Order finally disposing of rights of parties—Contract with arbitration clause—Arbitration Act (IX of 1899) s. 19—Civil Procedure Code, 1908, ss. 109-110—Grant of certificate that value of matter in dispute exceeded Rs. 10,000.

The decision of the Court of Appeal in England as to what is a “final order” is that an order is final if it finally disposes of the rights of the parties.

Salaman v. Warner (1) and *Bozson v Altrincham Urban District Council* (2) referred to.

In a suit for damages for an alleged breach of contract for the sale of cotton, the contract contained an arbitration clause, and the defendant applied under section 19 of the Indian Arbitration Act (IX of 1899) for a stay of proceedings with a view to the issues being referred to arbitration under that section. The Trial Judge granted a stay, but on appeal the Court of the Judicial Commissioner of Sind reversed that order and refused to stay

³*Present*: VISCOUNT CAVE, LORD MOULTON, SIR JOHN EDGE AND MR. AMEER ALI.

(1) [1891] 1 Q. B. 734.

(2) [1903] 1 K. B. 547.

the proceedings. On an application to the Judicial Commissioner for a certificate under section 109 of the Civil Procedure Code, 1908, with a view to appeal to the Privy Council the Court of the Judicial Commissioner being of opinion that the order refusing a stay was a "final order," granted a certificate under section 110 that the value of the matter in dispute exceeded Rs 10,000 ; and the appeal came to His Majesty in Council. On a preliminary objection by the respondent that the order refusing a stay was in fact not final, and that the appeal did not lie :—

Held, that the order under appeal did not finally dispose of the rights of the parties but left them to be determined by the Courts in the ordinary way. It was, therefore, not a "final order" within section 109 of the Civil Procedure Code, 1908, which relates to appeals to the Privy Council ; and the appeal was, therefore, dismissed.

Consolidated appeals 157, 158, 159, and 161 of 1919 from six orders and decrees (16th April 1918) of the Court of the Judicial Commissioner of Sind which reversed orders (12th March 1918) of the Additional Judicial Commissioner of Sind, acting as District Judge.

The defendants were appellants to His Majesty in Council.

The facts were that by several contracts made on various dates in 1917, the appellants sold to the respondents a large number of bales of Sind cotton deliverable on any date in January 1918 not later than 25th. Both appellants and respondents were members of the Karachi Indian Merchants' Association, and the contracts were all made on the printed forms issued by the Association which contain the following arbitration clause :

" Any dispute whatsoever, including construction of this document, arising out of this contract, shall be referred to the arbitration of two merchants, who are members of the Karachi Indian Merchants' Association under the provisions of the Indian Arbitration Act (IX of 1899), as subsequently amended. If one party fails to appoint an arbitrator for seven clear

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days after the other party, having appointed his arbitrator, has served the party making default with a written notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference. Should the two arbitrators be unable to agree, the disputes shall be referred to an umpire nominated by the said arbitrators. If the arbitrators are unable to agree to an umpire the latter shall be nominated by the Managing Committee of the Karachi Merchants' Association. The decision of the arbitrator, arbitrators or the umpire, as the case may be, shall be final and binding."

The cotton was not delivered on due dates, and on various dates in January 1918 the respondents instituted six suits against the appellants in the District Court of Sind claiming damages for breach of the contracts. Thereupon the appellants on various dates in February and March 1918 applied to the Court under section 19 of the Indian Arbitration Act, 1899, to stay the proceedings in the suits, and the Additional Judicial Commissioner made an order to that effect on 12th March 1918. His order was reversed by the Judicial Commissioners who were of opinion that the Court should exercise its discretion under section 19 of the Arbitration Act by refusing to stay the suits.

On 15th May 1918 the appellants applied for leave to appeal under Order XLV, rules 2 and 3, and sections 109 and 110 of the Civil Procedure Code, and though the respondents opposed the application on the ground that the order of 16th April 1918 was not a final order, the Court acting in its High Court Jurisdiction (FAWCETT AND RAYMOND JJ.) on 25th October granted leave to appeal on the ground that if the stay applied for had been granted it would have finally terminated

the suit; and accordingly the Appellate Court certified that under section 110 the value of the matter in dispute was more than Rs. 10,000.

On this appeal the respondents raised a preliminary objection as to whether the orders from which the appeal was made were 'final orders' within the meaning of the Civil Procedure Code, 1908, section 109(a), in other words whether the appeal lay. Those orders were orders, reversing orders which stayed (under section 19 of the Indian Arbitration Act (IX of 1899), the proceedings in the suits for breach of contract on the ground that the contract included an agreement between the parties to submit the matter in the suits to arbitration.

In support of their objection to the appeal being heard,

Sir John Simon, K. C., and *E. B. Raikes*, for the respondents, supported the preliminary objection and contended that the order refusing to stay the suit was not a "final order" within section 109 (c) of the Code; and therefore the case required to be specially certified as one fit for appeal. This the Appellate Court did not do, though a prayer to that effect was included in the petition of appeal. Reference was made to *Salaman v. Warner*(1) where the test according to the English rule, Order LVIII, rules 2 and 3, was whether the decision, however given, disposed finally of the suit. In a later case that text was taken to be what was the effect of the order made: see *Bozson v. Altrincham Urban District Council* (2). But under either test the order appealed from in the present case was not a "final order." The appeal consequently cannot be maintained, and it should be dismissed.

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Upjohn, K. C., and *Kenworthy Brown*, for the appellants, contended that before raising this preliminary objection the respondents should have appealed from the order made by the Appellate Court under Order XLV granting leave to appeal under s. 111 of the Code. The appeals against the orders of the Additional Judicial Commissioner were incompetent, and the Appellate Court had no jurisdiction to hear them; and in any case that Court should not have interfered with the discretion exercised by the Lower Court under section 19 of the Arbitration Act. The appeals should not be dismissed, but should be remanded in order that the Appellate Court might make an order under section 109 (c) of the Civil Procedure Code.

Sir John Simon, K. C., in reply, contended that for a respondent to dispute that an appeal is competent without his having appealed from the order giving leave to appeal, was not inconsistent with the practice of the Board. Here, however, there was only a certificate as to the value of the subject matter of the suit, and no order to appeal from.

The judgment of their Lordships was delivered by

VISCOUNT CAVE. These are suits for alleged breaches of certain contracts for the sale of cotton. Each contract contained an arbitration clause, and the defendants in each suit applied under section 19 of the Indian Arbitration Act of 1899 for a stay of proceedings with a view to the issues being referred to arbitration under the clause. The first Court granted a stay, but on appeal the Judicial Commissioner of Sind reversed the orders and refused a stay of proceedings. Applications were made to the Judicial Commissioner for certificates under section 109 (a), or in the alternative under section 109 (c) of the Civil Procedure Code of 1908, with a view to

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an appeal to this Board. The learned Judges of the Judicial Commissioner's Court took the view that the orders refusing a stay were final orders and, accordingly, granted a certificate under section 110 to the effect that the value of the matter in dispute exceeded Rs. 10,000. Thereupon the appeals were brought to His Majesty in Council, and the objection is raised that the orders refusing a stay were in fact not final, and, accordingly, that the appeals do not lie.

Their Lordships have considered the matter, and are of opinion that the preliminary objection succeeds. The question as to what is a final order was considered by the Court of Appeal in the case of *Salaman v. Warner* (1) and that decision was followed by the same Court in the case of *Bozson v. The Allrincham Urban District Council* (2). The effect of those and other judgments is that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way.

In their Lordships' view, the orders were not final, and accordingly the appeals cannot proceed, and their Lordships will therefore humbly advise His Majesty that they should be dismissed with costs.

Two of the appeals have already been withdrawn, as regards certain of the parties, and therefore the order will not apply to those.

Four of the Appeals dismissed with costs.

J. V. W.

Solicitors for the appellants: *Wontner & Sons.*

Solicitors for the respondents: *T. L. Wilson & Co.*

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(2) [1903] 1 K. B. 547.