

## PRIVY COUNCIL.

P.C.\*  
1932Nov. 22, 24, 25;  
Dec. 19.

JNANENDRAMOHAN BHADURI

v.

RABEENDRANATH CHAKRABARTI.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

*Arbitration—Decree on award under Indian Arbitration Act, if legal—Agreed modifications—Application to execute decree—Enforcement of award—Indian Arbitration Act (IX of 1899), s. 15.*

Disputes as to the construction of a will were referred to arbitration under the Indian Arbitration Act, 1899, by the executors (appellants), who were also residuary legatees, and the beneficiaries including the respondent, a minor. The arbitrator awarded, *inter alia*, that the respondent was entitled to certain property, and the award was filed in court. Objections were filed, but the parties agreed to modifications in the award; these modifications did not affect the respondent's right to the property awarded to him. On an application by the first appellant, a decree was made in the terms of the award as modified. The respondent upon attaining majority applied to execute the decree.

*Held* that the decree was made without jurisdiction, as the Indian Arbitration Act contains no provision, such as that in the Code of Civil Procedure, Schedule II, Article 21, for making a decree upon an award; but that it was within the discretion of the High Court to treat the application as one to execute the award, as by section 13 of the Indian Arbitration Act it was enforceable as a decree.

Order of the High Court (1) affirmed.

Appeal (No. 106 of 1931) from an order of the High Court (December 11, 1930) (1), reversing an order of the Third Subordinate Judge of Hooghly (June 29, 1929) and directing that an application by the respondent for execution of a decree should be entertained as an application for execution of an award.

The facts relevant to the appeal appear from the judgment of the Judicial Committee.

*De Gruyther, K. C.* and *Pringle* for the appellants.  
*Dune, K. C.* and *Parikh* for the respondent.

\**Present*: Lord Wright, Sir George Lowndes and Sir Dinshah Mulla.

(1) (1930) I. L. R. 58 Calc. 1018.

[Reference was made to *Jnanendra Mohan Bhaduri v. Annapurna Debi* (1), and *Ganendra Mohan Bhaduri v. Bhavani Charan Chakravarti* (2), both arising out of the same arbitration proceedings; also to the Indian Arbitration Act, 1899, sections 11, 13, 15, 20, and to the Code of Civil Procedure, 1908, section 89.]

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The judgment of their Lordships was delivered by

SIR DINSHAH MULLA. This is an appeal from an order of the High Court of Judicature at Fort William in Bengal, dated the 11th December, 1930, which set aside an order of the Third Subordinate Judge of Hooghly, dated the 29th June, 1929, and directed that an application for execution of a decree presented by the respondent to the court of the Subordinate Judge be entertained as an application for execution of an award.

The appellants are two of the executors of the will of Rajendralal Goswami, who died on the 21st August, 1917. The testator's widow, Annapoorna Debee (since deceased), was also an executrix of the will. The will is dated the 18th November, 1916, and it was admitted to probate on the 19th December, 1917.

The appellants are residuary legatees under the will. The respondent, the testator's widow and Radhikalal Goswami, are beneficiaries under the will.

Disputes arose as to the construction of the will, and by an agreement in writing, dated the 22nd December, 1917, the matters in difference were referred to the sole arbitration of Byomkesh Chakrabarti. The respondent was then a minor, and was represented by his father and natural guardian, Bhawanicharan Chakrabarti.

The arbitrator made his award on the 29th July, 1918. The terms of the award more particularly affecting the respondent are contained in clauses 6 and 10. By clause 6 it was declared that the gift to the respondent of the properties mentioned in

(1) (1927) 31 C.W.N. 517.

(2) (1929) 34 C.W.N. 268.

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schedule *ga* to the will was good subject to a charge for the payment of Rs. 13,063-12-0, and the executors were directed to make over the properties and all documents relating thereto, together with all accounts from the date of the death of the testator, to the respondent's father or such other person as may be appointed guardian of his person and property. By the same clause, it was declared that the respondent was entitled to a life policy mentioned in clause 13 of the will. By clause 10, the executors were directed to make up an account of all sums received and spent by them, and to hand over the balance to such persons as were declared entitled thereto.

On the 1st August, 1918, the arbitrator filed his award in the High Court at Calcutta. The first appellant filed objections to the award, but the parties eventually came to terms, and the award was modified by two agreements. The only modification which might possibly have affected the respondent was that contained in clause 5 of the first agreement, by which it was provided that the properties should be handed over to the respondent's father on his giving security for Rs. 12,000 to the satisfaction of the Registrar of the High Court, but this was not carried into effect.

The first appellant afterwards applied for a decree to the High Court at Calcutta, and on the 14th February, 1919, a decree was passed by consent of parties, by which it was directed that "the said award "as modified by the said terms of settlement ought to "be carried into effect, and the same is ordered and "decreed accordingly." Copies of the award and of the agreements were annexed to the decree. The decree was headed "In the matter of an Arbitration "and in the matter of the estate of Babu Rajendra'nal "Goswami."

No steps were taken by the respondent's father or any other person on his behalf during his minority in the matter either of the award or decree. The respondent attained majority in November, 1925, and in July, 1926, he took out a notice of motion headed in the same way as the decree. The notice is not

printed in the record, and their Lordships do not know the precise terms thereof. It came up for hearing before Greaves J., and the learned Judge, it would appear, made an order in terms of the notice. The order, however, was set aside on appeal on the ground that the reliefs claimed were such as could not be granted on a notice of motion made under the Indian Arbitration Act.

In 1927, the testator's widow applied for execution of the decree of the 14th February, 1919, against the appellants. The Subordinate Judge granted execution, and his order was confirmed on appeal by the District Judge. The appellants appealed to the High Court. The High Court held that the decree was a nullity, but the application might be regarded as one for execution of the award, and passed orders accordingly.

On the 15th February, 1928, the High Court, on the application of the respondent, transmitted the decree of the 14th February, 1919, for execution to the District Judge of Hooghly. On the 22nd February, 1928, the respondent made the present application to the Third Subordinate Judge of Hooghly for execution of the decree against the appellants. The application was in the form prescribed by Order XXI, rule 11, of the Code of Civil Procedure. In column 10, which relates to "the mode of assistance sought for from the court," it was stated: "It is prayed that possession may be delivered to the decree-holder of the properties mentioned in the schedule below according to the terms of the award, and orders may be passed," *etc.* On the 7th June, 1928, the appellants filed objections to the application.

The Subordinate Judge passed an order on the 29th June, 1929, dismissing the application on the preliminary ground that the decree was a nullity, as the court which passed it had no jurisdiction, and it could not, therefore, be executed. The respondent appealed to the High Court at Calcutta. The learned Judges of the High Court agreed with the Subordinate Judge in holding that the decree was a

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nullity, but held that the application might be treated as one for execution of the award, and directed that it should be entertained as such. It is from that order of the High Court that the present appeal has been brought to His Majesty in Council.

The powers of a court, in proceedings under the Indian Arbitration Act, are defined by the Act. Section 11 provides for the filing of an award by the arbitrators in court, section 13 for remitting it to the reconsideration of the arbitrators, and section 14 for setting it aside. By section 15 it is enacted that "an award on a submission, on being filed in the court in accordance with the foregoing provisions, shall (unless the court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the court." No order was made in the present case for remitting the award to the reconsideration of the arbitrator, nor was the award set aside. The award, therefore, remained filed in court, and it was enforceable as if it were a decree of the court.

The Act does not contain any provision for making a decree on an award such as is contained in schedule II, paragraph 21, of the Code of Civil Procedure. Such a decree, if made, is one without jurisdiction, and therefore a nullity.

Their Lordships agree with the view taken by the courts in India that the decree of the 14th February, 1919, was passed without jurisdiction, and was, therefore, incapable of execution as such.

The respondent, however, as a party to the arbitration, would be entitled under the Act to enforce the arbitrator's award through the court in exactly the same way as if it was a decree. If, therefore, there was an existing award in favour of the respondent, the objection to his application was one of form only and not of substance, and their Lordships think that it would be in the discretion of the High Court to treat it in the way they did.

The appellants contend that the award as an award had ceased to exist by reason of the variation of its terms to which some of the parties had agreed. But there was, in fact, no variation of the rights of the respondent, nor can he as a minor be regarded as consenting to the variations with which he was not concerned. There was, therefore, no reason why he should not enforce the award so far as it gave him rights against the appellants.

On the whole, their Lordships are of opinion that the appeal fails, and ought to be dismissed, and they will humbly advise His Majesty accordingly. The appellants must pay the respondent's costs of the appeal.

Solicitors for appellants : *Watkins & Hunter.*

Solicitors for respondent : *W. W. Box & Co.*

A. M. T.

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