APPELLATE CIVIL.

Before Mukerji and Guha JJ.

1930

Dec. 1, 3, 11.

RABINDRANATH CHAKRABARTI

v.

JNANENDRAMOHAN BHADURI.*

Arbitration—Award—Settlement varying terms of award—Judgment—Decree —Court—Jurisdiction—Nullity—Executing court, powers of—Execution of award—Indian Arbitration Act (IX of 1899), s. 15.

On an award being filed by the arbitrator on the Original Side of the High Court, two petitions were filed by the parties before the Court containing certain terms of settlement amongst themselves, in accordance with which the parties wanted the award to be varied. The learned Judge, thereupon made a decree in which it was declared that "the said award as modified by the terms of settlement ought to be carried into effect" and he "ordered and decreed accordingly." This decree the executing court at Hooghly refused to execute, holding it to be a nullity.

Held that, when an award is made under the Indian Arbitration Act, the court, after satisfying itself as to its validity, will order it to be filed, and execution can be taken on it as though it were a decree, but the court can neither pronounce a judgment on it nor make a decree.

Jnanendramohan Bhaduri v. *Annapurna Debi* (1) followed.

Held, further, that where a decree presented for execution was made by a court, which apparently had no jurisdiction, whether pecuniary or territorial or in respect of the judgment-debtors' person, to make the decree the executing court is entitled to refuse to execute it on the ground that it was made without jurisdiction and that only within these narrow limits the executing court is authorised to question the validity of the decree.

Gora Chand Haldar v. *Prafulla Kumar Roy* (2) followed.

A decree passed in excess of the limits prescribed may also be regarded as void on the ground of lack of inherent jurisdiction.

Held, also, that treating the decree as a nullity, the decree being merely a superimposition, unnecessary and void, and the award being under section 15 of the Act enforceable as a decree and having been referred to in the petition for execution itself, this application for execution of that decree may, in substance, be regarded as an application for execution of the award and the proceedings should be allowed to be carried on and be dealt with on their merits.

Held, in addition, that the decree being void, the provision in schedule I thereto (containing the terms of the aforesaid settlement) cannot be executed as a provision contained in a decree, but, on the other hand, may be pleaded as an agreement in bar of the execution.

*Appeal from Original Order, No. 443 of 1929, against the order of Gopal das Ghosh, Subordinate Judge of Hooghly, dated June 29, 1929.

(1) (1927) 31 C. W. N. 517. (2) (1925) I. L. R. 53 Calc. 166.

APPEAL FROM ORIGINAL ORDER by the decree-holder.

The facts of the case, out of which this appeal arose, appear fully in the judgment under report herein.

Rupendrakumar Mitra (with him *Manilal Bhattacharya*) for the appellant.

Bijankumar Mukherji (with him *Apurbadhan Mukherji*) for the respondent.

Cur. adv. vult.

MUKHERJI AND GUHA JJ. This is an appeal by a decree-holder from an order upholding the judgment-debtors' objection under section 47, Civil Procedure Code, and dismissing the application for execution. The court below has held that the decree sought to be executed was passed without jurisdiction and was, therefore, a nullity.

Disputes having arisen over the provisions of a will left by one Rajendralal Goswami, which was proved on the 19th December, 1917, there was an arbitration held by the late Mr. B. Chakravarti under the Indian Arbitration Act, and Mr. Chakravarti made his award on the 29th July, 1918. On the award being filed, there were two petitions filed by the parties before the Court, the Original Side of the High Court, containing certain terms of settlement amongst themselves, in accordance with which the parties wanted the award to be varied. The learned Judge sitting on the Original Side, thereupon, made a decree, in which it was declared that "the said "award as modified by the terms of settlement ought "to be carried into effect" and he "ordered and "decreed accordingly." This is the decree, which forms the subject-matter of the present execution.

The decree-holder is one Rabindranath Chakrabarti, who, at the date of the decree, was an infant under the age of 18 years, but has now attained majority. The contesting judgment-debtors are Jnanendramohan Bhaduri and Girindra-mohan Bhaduri, who were executors to the will and

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beneficiaries under it and also parties to the award and the decree. In the case of *Jnanendramohan Bhaduri* v. *Annapurna Debi* (1), which also arose from the same decree, it has been pointed out that, when an award is made under the Indian Arbitration Act, the court after satisfying itself as to its validity, will order it to be filed and execution can be taken on it as though it were a decree, but the court can pronounce no judgment on it and make no decree. The question, therefore, which arises at the outset, is whether the executing court is competent to go behind the decree and question its validity. Connected with this question is the question as to what is the true character of the decree; in other words, is the decree a nullity?

In the Full Bench decision of this Court in the case of *Gora Chand Haldar* v. *Prafulla Kumar Roy* (2), it was pointed out that the correct view to take of the aforesaid question was to hold that, where a decree presented for execution was made by a court, which apparently had no jurisdiction, whether pecuniary or territorial or in respect of the judgment-debtors' person, to make the decree, the executing court is entitled to refuse to execute it on the ground that it was made without jurisdiction; and that only within these narrow limits the executing court is authorised to question the validity of the decree. In laying down the limits, as aforesaid, the learned Judges were emphasising the distinction between the absolute lack of what may be said to be the inherent jurisdiction of a court and the irregular or illegal exercise of that jurisdiction. This distinction has been clearly pointed out in several decisions of this Court, amongst which may be referred the cases of *Ashutosh Sikdar* v. *Behari Lal Kirtania* (3), *Hriday Nath Roy* v. *Ram Chandra Barna Sarma* (4) and *Ishan Chandra Banikya* v. *Moomraj Khan* (5). The limits prescribed in *Gora Chand's* case (2) would,

(1) (1927) 31 C. W. N. 517.
(2) (1925) I. L. R. 53 Calc. 166.
(3) (1907) I. L. R. 35 Calc. 61, 73.
(4) (1920) I. L. R. 48 Calc. 138.
(5) (1926) 30 C. W. N. 940.

in the case of a court of general jurisdiction, exclude all but cases of absolute lack of inherent jurisdiction. There may, however, be cases where the court is not a court of general jurisdiction or where being a court of general jurisdiction its jurisdiction is limited to special purposes only. In those cases also, it may be rightly said that the court has no inherent jurisdiction over a particular cause, though it has jurisdiction, pecuniary, territorial, as well as over the parties, or that the jurisdiction of the court is limited in a particular way. A decree passed in excess of the limits prescribed may also be regarded as void on the ground of lack of inherent jurisdiction. If a decree for money is passed against an infant in a guardianship matter, or if a foreclosure decree is made on an application for probate—though such things will hardly ever come to pass—it would be an instance of the former kind of lack of inherent jurisdiction. Similarly, once a cause is converted into a matter under the Indian Arbitration Act, the inherent jurisdiction, which the court of general jurisdiction possessed over it, is curtailed and the court retains a limited jurisdiction only for the purposes of supervision and control over the proceedings of the arbitration, *e.g.*, of appointing an arbitrator, umpire or third arbitrator; of enlarging the time for an award; of remitting the award or of setting it aside, and so on; and it is this limited jurisdiction only that it exercises so long as the matter remains as one under the said Act. It has no jurisdiction to treat the cause as a suit pending before it, as one on which it can pass a judgment or make a decree. In this view, it may not unreasonably be held that the decree under execution was not the result of a mere irregular or illegal exercise of the court's jurisdiction in the shape of the adoption of a wrong procedure, but was one made in excess of the inherent jurisdiction of the court. The executing court, in our judgment, was competent to treat the decree as a nullity and in doing so was well within

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the spirit of the Full Bench decision in *Gora Chand's* case (1) referred to above.

Treating the decree as a nullity, the question arises as to whether the decree-holder is entitled to proceed with the execution as on the award. It appears that in the case of another decree-holder against the same executors, execution as upon the award has been permitted by this Court [See *Ganendra Mohan Bhaduri* v. *Bhavani Charan Chakravarti* (2)]. The decree being merely a superimposition, unnecessary and void, and the award being under section 15 of the Act enforceable as a decree and having been referred to in the petition for execution itself, the application may, in substance, be regarded as an application for execution of the award. The facts have to be investigated a little further in order to decide whether this should be permitted.

The provisions, in respect of which execution has been applied for, are said, in the application for execution, to be contained in paragraphs 6 and 10 of the award. Connected therewith is a further provision contained in clause 5 of the terms of settlement, which are annexure schedule B to the decree. The decree being void, the said provision cannot be executed as a provision contained in a decree, but, on the other hand, may be pleaded as an agreement in bar of the execution. The prayers in the execution petition were for delivery of possession of certain immoveable properties and a life policy and documents relating to the said properties, for adjustment of accounts by appointment of a commissioner, and for enforcement of such delivery and rendering of accounts by arrest of the judgment-debtors, if necessary. It was also prayed that leave might be reserved to the decree-holder for fresh execution for the purpose of realisation of the money, which would be found due on the taking of accounts. Now, paragraph 6 of the award directed the executors

(1) (1925) I. L. R. 53 Calc. 166. (2) (1929) 34 C. W. N. 268, 271.

and executrix to make over to Bhawanicharan Chakrabarti, the father and natural guardian of Rabindranath Chakrabarti, who was then a minor, or such other guardian as might be appointed for him by the court, the properties in schedule *ga* attached to the award together with all accounts from the date of the testator's death until the date when the accounts are rendered, and also the documents and papers relating to the said properties, subject to certain reservations. Similar directions were also given in that paragraph with regard to the life policy. There are directions in that paragraph as well as in paragraph 10 of the award as to how the accounts were to be adjusted and the liabilities of the executors were to be ascertained. In paragraph 6, it was further provided that Bhawanicharan Chakrabarti or any other guardian, whom the court might appoint, would make over the properties with proper accounts to Rabindranath Chakrabarti on the latter attaining majority. The directions, therefore, were substantially for delivery of the said properties and accounts to Rabindranath Chakrabarti and such delivery was to be taken on his behalf, because of his minority, by his father and natural guardian Bhawanicharan Chakrabarti or by the person, if any, who might be appointed as his guardian by the Court. We do not see why, on attaining majority, Rabindranath Chakrabarti should not be entitled to have what the award directed for his benefit, provided of course that the directions have not been already carried out. As regards the provision contained in clause 5 of the terms of settlement mentioned above that the properties in schedule *ga* as directed in paragraph 6 of the award were to be made over to Bhawanicharan Chakrabarti, the father and natural guardian of Rabindranath Chakrabarti, on his giving security for Rs. 12,000, we do not see how this agreement can stand in the way of the decree-holder, if, in point of fact, the properties have not been so made over.

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The result is that, in our opinion, the view taken by the court below is not correct. We, accordingly, allow the appeal, and, setting aside the order appealed from, direct that the execution petition be entertained as an application for execution of the award and that the proceedings be allowed to be carried on and be dealt with on their merits. The appellant will be entitled to his costs in the appeal, hearing-fee being assessed at 5 gold mohurs.

Appeal allowed.

G. S.