

that the paupers were mere creatures in the hands of persons well able to find security, the order would not be improper. (18 W. R., p. 102.)

In the present case no special reasons are shown. The application is disallowed.

NOTE.—See I. L. R., 3 Bom., 241.

### NOTES.

#### [PAUPER APPEAL—SECURITY FOR COSTS—

(1) *May be demanded of a pauper*:—Security for costs against a pauper appellant must be given under very exceptional circumstances:—(1885) 7 All. 542; (1907) 17 M. L. J. 583.

(2) But application must be made with promptitude before bulk of the costs has been incurred:—(1907) 17 M. L. J. 583.]

### [68] APPELLATE CIVIL.

*The 26th July, 1880.*

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND  
MR. JUSTICE MUTTUSAMI AYYAR.

R. Ry. Mana Vikrama, Zamorin, Maharaja Bahadur of  
Calicut.....(Plaintiff) Petitioner

*versus*

Mallichery Kristnan Nambudari.....(Defendant) Counter-Petitioner.\*

*Civil Procedure Code, Sections 622 and 525, 526.*

When a Court has refused to file an award upon an application under Section 525, Civil Procedure Code, no appeal lies against such decision, which is an order and not a decree; but the High Court can interfere under Section 622.

An award made under Section 525<sup>†</sup> which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under Section 526 as to such portion as does not exceed those terms.

To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a devasam as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.

THIS was an application made under Section 525 of the *Civil Procedure Code* for the filing of an award.

\*C. M. P. 251 of 1880 for revision of the order of F. M. Kindersley, District Judge of Coimbatore, dated 30th January 1880.

†[Sec. 525:—When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court.

Filing award in matter referred to arbitration without intervention of Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

Application to be numbered and registered.

Notice to parties to arbitration,

The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.]

The plaintiff and defendant as co-trustees of a devasam, (Co-trustees of a temple) having had continuous disputes as to the management thereof, agreed during the pendency of Appeal Suit 482 of 1878 in the District Court of Calicut, to submit to any scheme which the Acting District Judge, Mr. Wigram, in consultation with others, might draw up. The agreement was drawn up by Mr. Wigram, and the objects of the scheme for the management of the devasam were stated to be "the conduct of suits, the granting of demises, the custody of property, the collection of rents, the appointment and removal of devasam servants, and the defrayment of current expenditure." Mr. Wigram made his award on 29th October 1878.

In paragraph 12 of the award there was a provision that, should any difference arise between plaintiff and defendant as to the [69] meaning of any clause in the award, or as to any matter not provided for in the award, it should be settled by arbitration.

In paragraph 13 a sum of Rupees 500, as liquidated damages, was fixed as a penalty for any wilful breach of the award by either plaintiff or defendant.

The District Judge held that both these provisions were beyond the scope of the submission, and refused to file the award, holding that it determined matters not referred to arbitration, and that he had no power either to correct it or to return it to the arbitrator, on the ground that Sections 518\* and 520† were made specially applicable to cases referred under Section 523‡ by Section 524, § but did not extend to cases falling under Section 525||.

\* [Sec. 518 :—The Court may, by order, modify or correct an award,

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or certain cases.

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.]

When award or matter referred to arbitration may be remitted. † [Sec. 520 :—The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit.

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration ;

(b) where the award is so indefinite as to be incapable of execution ;

(c) where an objection to the legality of the award is apparent upon the face of it.]

‡ [Sec. 523 :—When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

Agreement to refer to arbitration may be filed in Court. The application shall be numbered and registered. between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made, the Court shall direct notice thereof to be given to any of the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

Notice to show cause against filing it. If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon and may also nominate the arbitrator when he is not named therein and the parties cannot agree as to the nomination.]

§ [Sec. 524 :—The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under Section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.]

|| [Sec. 525 :—g. v. supra 3 Mad. 68.]

The suit was dismissed without costs.

The plaintiff thereupon put in a petition to the High Court under Section 622 of the *Civil Procedure Code*, praying for revision of the decision of the District Judge on the ground, *inter alia*, that the provisions which were beyond the scope of the submission ought to have been separated from the rest of the award, and the award thus corrected should have been filed.

Mr. *Shephard* and *Sankaran Nair* for Petitioner.

*T. Rama Rau* for Counter-Petitioner.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

**Judgment:**—It is objected that an application cannot lie under Section 622, *Civil Procedure Code*, as the order of the Judge refusing to file the award was open to appeal. Although the Judge has treated the application as a suit, it is in fact not a suit and it is determined not by a decree, but by an order refusing the prayer of the application. No appeal is given by the Act from such an order. It is therefore competent to this Court to admit the application. We have next to consider whether the Court below was justified in refusing to file the award.

Under the provisions of Section 526,\* *Civil Procedure Code*, the Court is at liberty to order an award to be filed only if no ground, such as is mentioned in Section 520 or 521†, be shown against the award. Among the grounds mentioned in Section 520 is the ground that the award determines matter not referred to arbitration. Although an award may perhaps be held enforceable in this country if the invalid portion can be separated from, [70] and is independent of, the valid portions of the award, it cannot be enforced by summary proceedings under Section 526 of the Code. It is not without reason that in such a case the Legislature should think it inexpedient to give the party seeking to enforce the award a summary remedy, and it may have advisedly left him to obtain from the Court the relief to which he may be entitled by regular proceedings.

The language of the present Code, Act X of 1877, is even more explicit on this point than was the language of Act VIII of 1859. Yet under that Code the *Bombay* High Court came to a similar conclusion in *Allarakhia v. Jehanqir Hormasji* (10 Bo. H. C. R., 391).

The question then arises whether the award has in this case gone beyond the submission. It may be open to argument that the mere declaration of penalties for a breach of the directions it was competent to the arbitrator to give, was not in excess of the submission, as it was auxiliary to the directions he was required to give, though we are hardly prepared to hold it so where the award prescribes

\* [Sec. 526 :— If no ground such as is mentioned or referred to in Section 520 or 521 be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.]

† [Sec. 521:— An award remitted under Section 520 becomes void on the refusal of the Grounds for setting arbitrators or umpire to reconsider it. But no award shall be set aside award. aside except on one of the following grounds (namely)—

- (a) corruption or misconduct of the arbitrator or umpire ;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit ;

and no award shall be valid unless made within the period allowed by the Court.]

a limit to the amount of the penalty recoverable, which may be quite incommensurate with the damage actually suffered; but it is clear that in providing for the reference of any question arising on the construction of the award, or of any questions left undecided by the award, to a tribunal created by the award, the arbitrator determined a matter not referred to arbitration. It deprived the parties of their ordinary right to resort to the Courts, and indeed of any voice in the selection of the tribunal which was to adjudicate the questions which might arise between them hereafter of the nature mentioned in the clause of the award we are now considering.

Regarding the award as open to objection on this ground, we hold the Judge acted in accordance with law in refusing to file the award.

The application is disallowed with costs.

**NOTES.**

**[I. PRIVATE AWARD—FILING OF, UNDER SEC. 525 C. P. C.—**

This case was *overruled* in (1903) 27 Mad. 255=14 M. L. J. 356 *on the point* that the order refusing to file an award under Sec. 525 C. P. C. (1882) is a *decree* and not an *order* as was held here.

So 22 Mad. 299 holding a similar view is also no longer law, and also (1889) 7 Bom. 316; 341 in the light of the Privy Council decision in 29 I. A. 51 *on the point*. See also (1905) 2 C. L. J. 30.

**II. COURT'S POWERS TO AMEND OR REMIT IT—**

Court has no power to amend or remit the award filed for consideration :—(1905) 27 All. 526.]

**[71] APPELLATE CIVIL.**

*The 10th August, 1880.*

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE KINDERSLEY.

Kolluri Nagabhashanum.....(Plaintiff) Appellant

*versus*

Ammanna.....(Defendant Respondent.\*

*Decree—Registration Acts of 1871—1877, Section 50.*

Decrees being excluded from the operation of Section 50, Act VIII of 1871, and Section 50, Act III of 1877, the omission to register does not make them ineffectual as against subsequent registered assignments or decrees.

In this case the plaintiff, in execution of a decree in Suit 173 of 1872 in the Munsif's Court, dated 22nd July 1872, directing the property in dispute to be sold on failure of payment of the amount decreed, caused the land in dispute to be sold, became auction-purchaser, and was put into possession by the Court in November 1875. The decree was not registered.

*Atchuta Ramayya*, the defendant in that suit, thereupon brought a suit (13 of 1876) to set aside the auction sale in the Subordinate Court, and got a

\* Second Appeal, No. 205 of 1880, from the decree of the Subordinate Judge of Cocanada, reversing the decree of the District Munsif of Cocanada, dated 18th October 1879.