

JALA-
SUTRAM
LAKSHMI-
NARAYAN
v.
BOMMA-
DEVARA
VENKATA
NABASIMHA
NAIDU,

reason assigned for it, to substitute something else quite different in order to make it seem right so as to enable one of the parties thereto to found a plea of *res judicata* thereon.

The contention fails and the appeal is dismissed with costs.

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and
Mr. Justice Sankaran Nair.*

SUBRAYA PRABHU (PLAINTIFF), APPELLANT,

v.

MANJUNATH BHAKTA (DEFENDANT), RESPONDENT.*

1905
August 23.

Arbitration—Award to be filed in Court having jurisdiction over the matter submitted—Award not invalidated by want of notice nor by the arbitrators accepting a fee—Jurisdiction.

The omission to give notice of the meeting of the arbitrators to a party who had, prior to such meeting, notified to the arbitrators his withdrawal from the submission, does not invalidate an award; nor does the fact that the arbitrators, at the suggestion and with the consent of all parties accepted remuneration for their trouble, make the award illegal.

The Court having jurisdiction to file the award is determined by the value of the matter to which the arbitration related, and not by the amount actually allowed under the award.

Narsingh Das v. Adjodhya Prosd Sukul, (I.L.R., 31 Calc., 203), referred to.

PETITION under section 525 of the Code of Civil Procedure to file an award made on a submission to arbitration by plaintiff and defendant.

The defendant objected to the award being filed, alleging *inter alia*, that the arbitrators had been guilty of misconduct in having accepted remuneration for their services, and that no notice of some of the meetings of the arbitrators had been given to him.

The District Judge refused to allow the award to be filed.

The plaintiff preferred this appeal.

C. Ramachandra Rau Sahib and *K. P. Madhava Rau* for appellant.

C. V. Ananthakrishna Ayyar for *P. R. Sundara Ayyar* for respondent.

*Appeal No. 82 of 1903, presented against the decree of R.A. Graham, Esq., District Judge of South Canara, in Original Suit No. 57 of 1902,

JUDGMENT.—The application for filing the award was, in our opinion, rightly presented to the District Court, as the matter to which the arbitration related, involved a claim exceeding in value Rs. 2500 [see *Narsingh Das v. Ajothya Prosad Suku*(1)] though the amount allowed under the award was less.

SUDHANA
PRABHU
C.
MANJUNATH
BHARTA.

The next point for determination is whether the District Judge is right in holding that the award is invalid on the ground that notice of the meetings of the 21st and 23rd July was not given to the respondent. The facts bearing upon the question are these. There was a meeting on the 15th at which both the parties were present. Further enquiry was then adjourned to the 20th. On the 16th the respondent sent exhibit V to the arbitrators purporting to revoke the submission. The last paragraph of the notice runs thus: "I have cancelled the Muchilika in this respect (in the matter of the submission) and withdrawn it from arbitration. There is no need that you should proceed with the enquiry any longer. I shall file a separate suit to obtain relief. Take note of this." The notice reached the hands of the arbitrators on the 19th. No meeting was held on the 20th owing to the absence of one of the arbitrators; on the 21st and 23rd the arbitrators proceeded with the case *ex parte*, the respondent not appearing on either date, and eventually gave the award. The observations in *Harcourt v. Ramsbotome*(2) and *Scott v. Vansandam*(3) relied on by Mr. Ramachandra Rau Sahib on behalf of the appellant are clear authorities in support of the view that in cases like the present, omission to give notice to the respondent in no way invalidates the award.

Passing to the remaining contention on behalf of the respondent, we are unable to agree that in the circumstances of the case the acceptance by the arbitrators of the offer of a fee for their services involves any misconduct. The evidence shows beyond doubt that the offer proceeded from the parties themselves, and was made at a meeting of the arbitrators at which both the parties were present, and that it was accepted formally, record thereof being made in the proceedings of the arbitrators. We must therefore reverse the decree of the District Judge and direct that the award be filed.

The respondent will pay the appellant's costs throughout

(1) I.L.R., 31 Cal., 203.

(2) 1 J. & W., 507 at pp. 511, 512.

(3) 6 Q.B., 237 at pp. 247, 248.