Before Mr. Justice Wilson and Mr. Justice Macpherson.

ICHAMOYEE CHOWDHRANEE AND OTHERS (DEFENDANTS) *v.* PROSUNNO NATH CHOWDHRI AND OTHERS (PLAINTIFFS.)*

1883 *July 31st.*

Arbitration—Award—Application to have an award filed in Court—Private arbitration—Civil Procedure Code (Act X of 1877), ss. 525, 526.

Where an application is made under s. 525 of the Code of Civil Procedure to have an award filed in Court, and it appears to the Court, on cause shown why the award should not be filed, that there is a reasonable dispute between the parties on any of the grounds mentioned in ss. 520 or 521, the application should be dismissed.

Under s. 525 of the Code of Civil Procedure, sufficient cause may be shown by affidavit or verified petition.

Sree Ram Chowdhry v. *Denobundhoo Chowdhry* (1), and *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee* (2) referred to.

THIS was a rule to show cause why a decision of the Subordinate Judge of Pubna, in the matter of the filing of a private award under s. 525 of the Code of Civil Procedure, and dated the 30th of January 1882, should not be set aside by the High Court. The material portions of the Subordinate Judge's judgment are as follows :—

This is a suit or application under s. 525 of Act X of 1877 brought by the plaintiffs to enforce a private award made by the arbitrators Probat Chundra Sen and others, appointed under an agreement dated 25th September 1877, said to have been entered into between Ananda Nath Chowdhoree, the husband of the plaintiff No. 1 and the father of the plaintiff No. 2, and Sham Soonder Chowdhoree, the husband of the defendant Ichamoyee Chowdhranee. It was alleged that after the death of the said Sham Soonder Chowdhoree the present defendant gave her consent to the arbitration proceedings, and after the award was made by the arbitrators she acted upon it by receiving money due to her under the terms of the said award. Hence this suit. The written statement of the defendant is to the effect—(1), that the present suit is barred by limitation, inasmuch as the legal representatives of the deceased Ananda Nath Chowdhoree have not been joined as plaintiffs within the specified time; (2), that the present suit cannot proceed on an award stamped insufficiently; (3),

* Rule No. 463 of 1882 against the order of Baboo Jeebun Kristo Chatterjee, Subordinate Judge of Pubna and Bogra, dated the 30th January 1882.

(1) I. L. R., 7 Calc., 490.
(2) 8 B. L. R., 315.

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that the ekrar deed executed by Sham Soonder Chowdhoree is not binding upon his heirs, and also that the arbitrators had no authority to proceed upon the said ekrar after the death of Sham Soonder Chowdhoree; (4), that Ichamoyee Chowdhranee did not give her consent to the arbitration, and she had no power under the will of her husband to do so, and if she has given any consent that consent is not legally admissible in evidence; (5), that the award in question cannot be filed inasmuch as it had been made a long time after the ekrar deed, which does not mention any specified time; (6), that deceased Ananda Nath Chowdhoree acted in contravention of the ekrar deed before the arbitration began, therefore the award cannot be enforced against the defendant; (7), that the private award cannot be filed in this Court under the following grounds: [These grounds were twelve in number, and were to the effect that the arbitrators had partitioned lands which they ought not to have partitioned, and had not partitioned lands which they ought to have partitioned; that they had not carried out the provisions of the agreement in some respects, and had exceeded their powers in others; that they had examined witnesses in the absence of the defendant without giving notice; that they had been partial to the plaintiff and had given a decision against the weight of the evidence taken before them; and that the conduct of the other party in the arbitration had been fraudulent.] The Subordinate Judge then went on to say:—

The points to be determined in this case are: (1st), whether the plaintiffs are entitled to bring this suit without joining all the persons named in the will and without coming in as executor or executrix; (2nd), whether the present suit is barred by the provisions of s. 366 of Act X of 1877; (3rd), whether the ekrar deed executed by the deceased Sham Soonder will be binding against his heirs; 4th, whether the private award was made according to the provisions of s 520 and 521 and in equity; if so are the plaintiffs entitled to file it in the Court? [The Subordinate Judge then discussed the evidence and came to a finding on all the issues in favour of the plaintiff.] He then went on to say:—

Under these circumstances I come to the clear conclusion that the award in question is valid in law as well as in equity, and it was acted upon by receiving the property mentioned in it by both the parties, and it can be filed in the Court of Justice.

Mr. *Evans*, Baboo *Mohini Mohun Roy* and Baboo *Issen Chunder Chuckerbutty* for the petitioners.

Mr. *Bell* and Baboo *Grija Sunker Mozoomdar* opposed the application.

The following judgments were delivered by the Court (WILSON and MACPHERSON, JJ.)

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WILSON, J.—This was a rule granted under s. 622 of the Procedure Code, to shew cause why an order of the Subordinate Judge of Pubna, directing an award to be filed, should not be set aside. The rule was granted upon two grounds, the first and most important of which is, in my opinion, sufficient to dispose of the case, *viz.*, "that considering the cause shewn against the award the order ought not to have been made."

The question turns upon the construction of ss. 525 and 526 of the Procedure Code. Section 525 says: "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. 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. The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to shew cause within a time specified, why the award should not be filed."

Section 529 says: "If no ground, such as is mentioned or referred to in s. 520 or 521, be shewn 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."

In the present case differences having arisen between two brothers Ananda Nath Chowdhoree and Sham Soonder Chowdhree, they entered into an agreement of reference by which they submitted thirteen specified matters to arbitration. This was on the 25th September 1877.

On the 3rd of October 1878, Sham Soonder died, leaving the present applicant his widow and executrix, and five infant sons, and she obtained probate of the will.

After Sham Soonder's death the arbitrators proceeded with the reference; and on the 30th of May 1880 they made their award. Ananda Nath applied to the Subordinate Judge to file the award under s. 525 and then died. His widow, as next friend of his minor sons, and his major son were substituted for him in the proceedings.

The present applicant presented a written statement in which

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she contended that the award was bad on the ground that the agreement of submission did not bind the representatives of Sham Soonder; and also on grounds that, if true, showed that the award had left undecided certain of the matters referred, and had dealt with matters not referred, and was bad on the face of it, objections within the scope of s. 520. The Subordinate Judge overruled all the objections, and ordered the award to be filed. We have to say whether that order should be set aside or not.

If the words in s. 526, "no ground, such as is mentioned or referred to in s. 520 or 521, be shewn against the award," mean, 'be established to the satisfaction of the Court,' then so far as such objections are concerned, we cannot say that the Subordinate Judge was wrong in filing the award; but I think the terms of the section are complied with, and grounds are shewn, when it is shewn by written statement or affidavit or other verified statement, that the award is impugned as invalid for any of the reasons contained in ss. 520 and 521, and that the Court is then bound to hold its hand, and leave the parties to their remedy by suit. This appears to me the more natural construction of the section, and it is certainly the one most in accordance with justice and convenience. I am not at all inclined to strain the language of the Statute when the effect would be to deprive the parties of their ordinary right to have their controversies (other than those which they have agreed to refer) tried by suit with a right of appeal, and compel them to submit to a summary decision without appeal.

This question has not, so far as I am aware, been actually decided; but it has on several occasions been considered by Division Benches of this Court, and the opinions expressed have been in accordance with the views I have expressed. In *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee* (1), Norman, J., at page 324, Loch, J., at page 328, and Paul, J., at page 332 clearly express this view. In the recent case of *Sree Ram Chowdhry* v. *Deno Bundhoo Chowdhry* (2), Pontifex, J., at p. 492, distinctly states the law in the same way.

(1) 8 B. L. R., 315.
(2) I. L. R., 7 Calc., 490.

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It was pointed out in argument before us that this conclusion might introduce a different rule in the case of awards made wholly out of Court from that which must apply in the case of arbitration arising out of suits or in which the submission has been filed. It may be so; but the language used in dealing with the two cases is entirely different.

There is an additional objection to the present order, because the applicant, when before the Subordinate Judge, denied altogether that the submission was binding upon her, and s. 525 seems to me to have no application to a case in which the submission or its binding effect is in dispute.

The order of the Subordinate Judge will therefore be set aside.

MACPHERSON, J.—I concur in holding that the order of the Subordinate Judge should be set aside. One of the material contentions before the Subordinate Judge was that the award was not binding on Ichamoyee, the applicant before us, as she was no party to the agreement of submission to arbitration executed by her husband as one of the contracting parties, and there was nothing in the agreement to bind his representatives. Further, it was contended that she had never given any such consent to the arbitration, which commenced after her husband's death, as to make the award binding on her. The Subordinate Judge, after taking evidence, held that she had consented, and that the award was binding on her, and then after disposing of many other objections to the proceedings of the arbitrators he passed an order that the award should be filed under the provisions of s. 526. The agreement related to many matters which were to be the subject of arbitration, and included the taking of accounts and determination thereon whether any balance remained due from one party to the other. Though the agreement was executed nearly a year prior to the death of her husband, no action appears to have been taken by the arbitrators till about nine months after his death. Whether there were or were not sufficient grounds to justify the Subordinate Judge in holding that the agreement was binding on her by consent or otherwise, is a matter which we need not consider, as I think he had no power to determine the question, and in doing so exceeded the jurisdiction which he could exercise under

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ss. 525 and 526. The power of a Court acting under these sections seems to be very limited.

They neither contemplate nor authorize a decision on disputed matters outside the award itself and the action of the arbitration as bearing on it. The construction put by this Court on the corresponding section of Act VIII of 1859, was in effect that if the Court decided disputed questions bearing on the authority of arbitrators to make an award, the decision was one from which an appeal would lie. In other words, the Court had decided a question which it was not intended it should decide finally. Act X of 1877 took away the right of appeal, and s. 526 indicated more clearly than the corresponding section of Act VIII of 1859, the grounds which might possibly be the subject of inquiry, and narrowed rather than extended the power of the Court. On this ground I would set aside the order of the Subordinate Judge. I also concur in holding that when a Court, in dealing with an application under s. 525, finds there is a *bonâ fide* and a reasonable dispute on any of the grounds mentioned in ss. 520, 521, it ought to hold its hand, and would be justified by the words of the section in doing so; but I hesitate to say that when such grounds of objections are set forth in a verified petition or affidavit, the Court is to make no inquiry, or that if it does decide on evidence that no grounds exist, the decision is one with which we could interfere under s. 622.

Order set aside.