1879

KHETA M
v
CHUNI L.

payments from the sale of the defendant's goods only still further weakens his contention that he has a surviving right of action against his debtor.

I must here observe that a more extraordinary misreading of a plain law than that afforded by the recorded opinion of the Judge as to the application of s. 65 of the Contract Act to the facts of the present case I never met with. That section of the Contract Act is in the following terms: "When an agreement is discovered to be void, or where a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it." So that, according to the Judge, the payments made to the plaintiff in the present case is merely an advantage for which compensation may be made by being credited to the debtor as against his *hundis*. Now, there was here no void contract, no contract void in any sense, but the arbitration proceedings between Kheta Mal and his other creditors who are parties thereto, including Chuni Lal, the plaintiff, constituted, together with the award made by the arbitrators, a good and sufficient contract, valid and effectual, against the plaintiff and those other creditors in the same position, and all these persons are thereby concluded against any further remedy *ultra* the arbitrators' award.

The present appeal must therefore be allowed, the decrees of both the lower Courts reversed, and the suit dismissed with costs in all the Courts.

Appeal allowed.

FULL BENCH.

1879
March 1

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.

NAIAK CHAND AND ANOTHER (DEFENDANTS) *v.* RAM NARAYAN (PLAINTIFF).*

Act VIII of 1859 (*Civil Procedure Code*), *ss.* 323, 324—*Arbitration.*

The plaintiff in this suit sued the defendants to recover certain moneys presented to him on his marriage, which he alleged the defendants had received and appropriated to their own use. The defendants denied that they had received such

* Appeal under cl. 10, Letters Patent, No. 5 of 1877.

1879

NANAK CHAND v. RAM NARAYAN.

moneys, but admitted that such moneys had been credited by the plaintiff's father to the firm in which they, the plaintiff, and the plaintiff's father, were jointly interested, against a larger amount of moneys belonging to the firm which had been expended on the plaintiff's marriage. The parties agreed to refer the matter in dispute between them to arbitration, and to abide by the decision of the arbitrator. The arbitrator decided that the plaintiff could not recover the moneys he sued for, and which had been credited to the firm of which he was a partner, as a larger sum had been expended on his marriage out of the funds of the firm. The plaintiff obtained the opinionsof certain *pandits* to the effect that, under Hindu law, gifts on marriage are regarded as separate acquisitions, and prayed that the Munsif would remit the award with these opinions to the arbitrator. The Munsif remitted the award with the opinions, requesting the arbitrator to consider them, and to return his opinion in writing within a certain period. The arbitrator having refused to act further, the Munsif proceeded to determine the suit, and gave the plaintiff a decree on the ground that, in a joint Hindu family, presents received on marriage do not fall into the common fund. *Held* (PEARSON, J., dissenting) that, there being no illegality apparent on the face of the award the Munsif was not justified in remitting the award, or in setting the award aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award.

THIS was a suit instituted in the Court of the Munsif, in which the plaintiff claimed to recover Rs. 520, being the amount of the presents received at his marriage, which he alleged had been taken and appropriated by the defendants, his uncles. The defendants set up as a defence to the suit that a sum of Rs. 1,132-2-0 had been expended on the plaintiff's marriage out of the funds of a firm in which the plaintiff, his father, and they were partners, that they had not received the sum claimed, but that the plaintiff's father had received and expended a sum of Rs. 549 which had been presented to the plaintiff on his marriage, and that the plaintiff's father had entered the sum claimed in the books of the partnership to the credit of the firm, but that no sum on account of marriage presents had ever come into their hands. On the 17th June, 1875, the parties to the suit presented a petition to the Munsif appointing a certain person arbitrator, and agreeing to accept whatever such person should decide. The Munsif referred the suit to the arbitrator for the determination of the matters in dispute. On the 12th July, 1875, the arbitrator delivered his award in the following terms: "It is admitted by both parties that up to this time the plaintiff, his father, and the defendants, carry on business in partnership, and that they are the joint owners of the firm known as Ganga Bai Chain Sukh: it is admitted by the plaintiff that nearly Rs. 1,000 was ex-

1879

NANAK CHAND v. RAM NARAYAN.

hold that the Hindu law, if not by law expressly applicable to the case, was the law which equity, justice, and good conscience required to be applied to it. I would therefore dismiss the appeal with costs.

SPANKIE, J.—The parties to the suit of their own free will appointed Lala Sham Lal, a pleader of the Court, their arbitrator, and agreed to accept whatever might be his decision in the case. An order dated the 17th June was sent to the arbitrator to decide the case and send in his award and the papers embodying the result of his inquiries, and that copies of the papers in the case be sent to him. On the 12th July the arbitrator submitted his award. He states that he had investigated the case, and had taken down the depositions of the witnesses and the statements of the parties. He had also taken into consideration the *custom of the brotherhood*, and perused the *passages in the Hindu law referred to by the parties and their pleaders*. It is admitted, he adds, by both parties that up to date the plaintiff, his father, and defendants carry on business in partnership, and that they are the joint owners of the firm known as Ganga Bai Chain Sukh: it is admitted by the plaintiff that nearly Rs. 1,000 were expended on his marriage from the joint firm: therefore the plaintiff cannot get back Rs. 520 which he got on marriage, and which were credited in the joint firm opposite to the debit side, no matter if he paid that amount to the defendant or to his father: this point was out of question, because the sum was credited in the account books of the joint firm: with reference to the circumstances of the case, it did not appear proper to award costs to defendants. The result of this award was to dismiss the claim, both parties bearing their own costs. No exception was taken to this award, which, indeed, the referring Court pronounced to be "admirable and excellent." But on the 22nd July the plaintiff objected to the arbitrator's law, and on the 9th August he presented to the Munsif an exposition of the law by some Hindu *pandits* at Benares. The Court, stating that the exposition of the law differed from the view of the Hindu law relied upon by the arbitrator, ordered that the award should be returned to the arbitrator in order that he might consider the law as expounded by the *pandits*, and submit his opinion in writing about it. The arbitrator stated his inability to determine the case, and declined to act any further in it.

1879

NANAK CHAND v. RAM NARAYAN

The Munsif took up the case and decreed the plaintiff's claim, and the lower appellate Court affirmed the decree. It is contended by defendant that the Munsif had misapprehended s. 323 of Act VIII of 1859, and should not have referred the award back to the arbitrator: no award can be set aside except as provided by s. 324 of Act VIII of 1859.

I would accept the pleas in appeal. The award had not left undetermined any of the matters referred to arbitration, nor had it determined matters not referred to arbitration. It was not so indefinite as to be incapable of execution. Looking at the terms of s. 323, the only other ground on which an award could be remitted is that an objection to its legality was apparent on the face of the award. No exception to the award was taken under s. 324. But on the 22nd July the plaintiff objected that the *Shastras* were in his favour, and it was brought to the Court's notice, and nearly a month after the delivery of the award, that a *pandit* at Benares expounded the law differently from the arbitrator. Now the parties had agreed to abide by the decision of the arbitrator. His view of the law might be right or wrong, but there is no illegality apparent on the face of the award which justified the remission of the award to the arbitrator. It was as if the plaintiff had asked for a review of judgment, and produced fresh evidence in his own favour. Where parties agree to abide by the decision of an arbitrator, both are supposed to concede something, and they are, I think, bound to abide by the decision, though, perhaps, a Court might have determined the point differently. I would decree the appeal and reverse the decision of both Courts and enforce the award.

The defendants appealed to the Full Court under cl. 10 of the Letters Patent against the judgment of Pearson, J., again contending that the award could not be set aside.

Mir *Akbar Husain*, for the appellants.

The respondent did not appear.

The following judgments were delivered by the Full Bench :

STUART, C J.—The proceedure before the Munsif in this case appears to me to have been most irregular. Under s. 323 of Act VIII of 1859 the Munsif could only remit the award for reconsi-

1879

NANAK CHAND v. RAM NARAYAN.

deration if an objection to its legality is apparent *on the face of it.* But instead of considering the matter in this simple light the Munsif, on the 9th August, 1875, made the following extraordinary and anomalous order: "Apparently it appears that the principles of Hindu law relied upon were decided against the petitioner in the arbitration award: therefore it is ordered that the award may be sent to the arbitrator to consider the *bywasthas* attached to this petition, and submit his opinion in writing to the Court." Or as if he said in other words, "It appears that the principles of Hindu law *were* applied by the arbitrator, but something more is wanted, and 'therefore' the award must go back to him for reconsideration." If such is not the meaning of the order, the *therefore* should have led to the very different conclusion of the award being accepted and applied by the Munsif, especially as he had admitted in his judgment not only that "the inquiry and award made by the arbitrator are admirable and excellent," but that the award was "in conformity with the evidence on the record."

It will be seen that, instead of showing that the award is illegal "on the face of it," the Munsif expresses his order in terms that ought to have led him to the opposite conclusion, but nevertheless he at the same time, and ss. 323 and 324 of Act VIII of 1859 notwithstanding, entertains the complaint that the findings in the award were opposed to the authorities in Hindu law relied upon by the plaintiff, and for this reason, and for this reason alone, he orders that the award may be sent back to the arbitrator for reconsideration, but admitting notwithstanding, so far as the language of his order is concerned, that the principles of the Hindu law had evidently been considered in making the award, in other words, that the arbitrator had done his duty. Such procedure not only cannot be allowed to stand for one moment, but in my opinion is deserving of the severest censure. Nor does the arbitrator, finding himself placed in the position assigned him by this foolish order, appear to have been a whit more intelligent in the matter than the Munsif, for he submitted himself uncomplainingly to it, and only noticed it by a petition, dated the 28th of August, in which he referred to the bad state of his health and the difficulties of the case, among others, certain Sanskrit texts which he had been unable

to understand or to get satisfactorily translated for him. In this petition, however, the arbitrator goes chiefly upon his bad health and his consequent inability to proceed with the case. He therefore declines to act any further, and he begs the Court either to decide the case itself or to appoint another arbitrator in his stead. The Munsif adopted the former course, proceeded with the case, and decreed the plaintiff's claim, which decree was affirmed by the lower appellate Court.

All this procedure was utterly mistaken. I have carefully perused the award, and in my judgment it shows no illegality on the face of it. It recites the reference to the arbitrator for his decision, and then it states as follows : "I have investigated the case to my satisfaction, and have taken down the depositions of witnesses and the statements of the parties. I have also taken into consideration the custom of the brotherhood to which the parties belong, *and perused the passages in the Hindu law referred to by the parties and their pleaders.*" Now in the face of such a statement the Munsif had no right to assume that the arbitrator had not correctly applied the Hindu law. Any error of the kind must appear on the face of the award itself, which, however, on the contrary states "he had perused the passages of the Hindu law referred to by the parties and their pleaders." This I consider was a sufficient compliance with his duty as an arbitrator under the Code of Procedure, Act VIII of 1859, and if the Munsif differed from him, and believed that he had not correctly applied the principles of the Hindu law, the award was not thereby rendered invalid, and ought not to have been remitted for reconsideration, for on the face of it it was right, and it is distinctly provided by s. 324 of Act VIII of 1859 that "no award shall be liable to be set aside except on the grounds of corruption or misconduct of the arbitrater or umpire." In fact, in accepting him as their arbitrator, the parties accepted his judgment and opinion, and his understanding of the Hindu law applicable to the case, and were bound by his judgment and opinion and his law, no matter how mistaken he may have been in these respects. And the Munsif who, as I have shown, admits in his judgment that the award was excellent and admirable and unimpeachable on the evidence, was bound by it too, and he ought to have given judgment

1879

NANAK CHAND v. RAM NARAYAN.

according to it, his judgment being final and not open to appeal to the Judge or Subordinate Judge.

Holding this opinion, and I must add holding it very clearly, I would, concurring with Mr. Justice Spankie, allow this appeal, and reverse the judgement of the Division Bench, and I would set aside the whole procedure before the Munsif subsequent to the filing of the arbitrator's award, and order a decree by this Court according to the award, and dismiss the suit, with costs, in all the Courts.

PEARSON, J.—The question to be determined by the Full Bench is, I presume, whether the judgment which is the subject of the present appeal rightly or wrongly disposed of the special appeal heard by the Division Bench. If reference be made to the grounds of the special appeal, it will appear that two substantial questions are raised by it, first, was the Munsif justified in remitting the award for consideration; second was he justified in setting it aside when the arbitrator refused to reconsider it. The first of these questions will include the applicability of the Hindu law to the matter in dispute. The plaintiff claimed to recover from his uncles a sum which he had received from his father-in-law as a marriage present, and which, he alleged, they had appropriated to their own use. Their defence was that they had not taken it but that it had been expended on this marriage by his father. The matter being referred to arbitration, the arbitrator disallowed the claim, because the sum claimed had been entered in the accounts of the family firm, as a set-off against the plaintiff's marriage expenses. The award is obviously unsatisfactory, but on the plaintiff objecting that it was opposed to Hindu law, and filing *bywasthas* in support of the objection, it appeared to the Munsif that it was bad in law. This being so, I conceive that he was not only justified in remitting it for reconsideration, but was bound to remit it. Both the lower Courts have now decided that the plaintiff's claim is valid under the Hindu law. It was not pleaded in the special appeal, and it is not pleaded in the present appeal, that the lower Court's exposition of Hindu law is erroneous. What was pleaded in the special appeal was that the Courts were not bound to apply the Hindu law to the case. I ruled that the Hindu law, if not by statute law expressly applic-

1879

NANAK CHAND v. RAM NARAYA

able, was the law which equity, justice, and good conscience required to be applied to the case. It is now pleaded that my ruling is incorrect. I entertain no doubt of its correctness myself, and I shall be surprised if the plea should find its acceptance.

On the other question whether, on the refusal of the arbitrator to reconsider his award, the Munsif was justified in setting it aside and proceeding to try the case himself, I do not perceive that my honorable colleague on the Division Bench in the judgment delivered by him on the 28th June, 1877, expressed an opinion different from that expressed by me. It is obvious to remark that, if the Munsif was precluded from setting aside the award in this case by the provisions of s. 324 of Act VIII of 1859, he would be precluded from so doing in a case in which an arbitrator refused to reconsider an award which left undetermined some of the matters referred to arbitration, and was so indefinite as to be incapable of execution; and such a contention could not probably be maintained.

In my judgment the pleas in appeal are without weight, and the appeal should be dismissed with costs.

TURNER, J.—(After stating the facts leading up to the arbitration and award, continued): The plaintiff's pleader obtained the opinions of some *pandits* who averred as is not disputed that gifts at marriage are regarded as separate acquisitions, and petitioned the Munsif to remit the award, with these opinions, to the arbitrator. The Munsif without declaring that an objection to the legality was apparent on the face of the award remitted the award with the opinions, and requested the arbitrator to consider them, and to return his opinion in writing in a week.

In special appeal the honorable Judges of the Division Bench differed as to whether or not an objection to the legality of the award was apparent on the face of it. The Senior Judge held such an objection was apparent, and that the Munsif was therefore justified in remitting the award for the consideration of the point of law. It is to be observed that the plaintiff did not come into Court alleging that he and the defendants were members of a family. Nor did he allege that the defendants claimed to retain the money as falling into and forming part of the common stock. They were charged with having appropriated the money to their own use, and they denied

1879

NANAK CHAND v. RAM NARAYAN.

that they had received it, but admitted it had been credited inthe books of the firm in which they, the plaintiff, and his father, were jointly interested against a larger sum expended on his marriage. It is to be noticed that, if there had been a question as to whether the moneys received on the plaintiff's marriage formed part of a common stock, or even of the partnership funds, the plaintiff's father should have been made a party to the suit. On the proceedings I do not see that there was an objection to the legality of the award apparent on the face of it. If one partner sues another for moneys recoverable on his account, it would surely be an answer that the moneys so received had been credited against a debt due by him to the firm.

I therefore am of opinion that the Munsif was not justified in remitting the award to the arbitrator. At the same time having perused the evidence it is apparent to me that the questions really in issue were not properly raised by the pleadings ; and, moreover, that they are not disposed of by the judgment of the Court below. The parties are members of a family who, while retaining undivided the firm which has descended to them from their common ancestor, have also separate dealings, and I have no doubt that the dispute arises out of the question as to whether or not expenses relating to the plaintiff's marriage ought to be met by the separate property of his father or out of the joint firm. The questions which called for determination in this suit appear to me to be the following : Did the sums received on the occasion of the plaintiff's marriage come to the hands of the defendants : If they did have they been appropriated by the defendants to their own use : for if they have been so appropriated, the defendants are liable, and it is unnecessary to go further: but if the moneys have not been appropriated by the defendants to their own use, but have been carried into the firm, then the question arises whether the defendants were at liberty to set them off against expenses incurred by the firm on the plaintiff's marriage, and before determing this issue, the plaintiff's father should have been made a party to the suit. All proper parties being before the Court, it should then have been inquired whether the joint fund or the separate estate of each of the partners should have been charged with the marriage expenses of the members of the family. Had the parties been members of a Hindu family living altogether

in commensality, I admit that the plaintiff would have been entitled to claim his marriage presents as a separate acquisition, and that the Courts would be justified in applying Hindu law, and I hold further that, in determining whether the joint or separate estate should bear the expenses of the plaintiff's marriage, the Courts are justified in applying Hindu law controlled as it may be by the agreement binding on the members as to the purposes to which the property remaining undivided should be applied. In my judgment the appeal should prevail and be decreed, the claim being dismissed on the ground that the award was a good award, and that a decree should have passed in accordance with it, but if it be held that the award was open to the objection urged, and that the plaintiff was justified in trying the suit on the merits, it is in my judgment necessary for the purposes of justice that such of the issues suggested by me as are undisposed of by the judgment of the Subordinate Judge should be tried, and I would remit them for that purpose.

SPANKIE, J.—I adhere to my opinion. With regard to the nature of the claim, the statements of the parties, the reference to arbitration, and the award itself, I see no illegality apparent on the face of the award, and therefore it was not one with which the Munsif could interfere under s. 323 of Act VIII of 1859. It may be erroneous in law, but, if so, that error is not apparent on the face of the award, and therefore it cannot be set aside merely because it is erroneous in law.

OLDFIELD, J.—I am of the same opinion in this case as Mr. Justice Spankie. The award was improperly remitted to the reconsideration of the arbitrator, as there was no ground under s. 323 which justified the Munsif to remit it. There was no objection to the legality of the award apparent on the face of the award; the decision was made upon facts in connection with the partnership relations of the parties, and the Munsif in remitting the award does not point out the particular illegality apparent upon the face of the award, nor does he appear to have come to any conclusion that there was an apparent legal defect; he merely remitted it that the arbitrator should consider some objections which the plaintiff alleged against a supposed view of the Hindu law taken by the arbitrator.

1879

ANAK
HAND
v.
RAM
RAYAN.

There were no objections taken under s. 324, and under the circumstances the Court should have given judgment according to the award.

Appeal allowed.

1879
rch 11.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.

FAZAL MUHAMMAD (PLAINTIFF) *v.* PHUL KUAR (DEFENDANT).*

Appeal under cl. 10 of the Letters Patent—Computation of Limitation.

In computing the period of limitation prescribed for an appeal under cl. 10 of the Letters Patent, the time requisite for obtaining a copy of the judgment appealed from cannot be deducted, such copy not being required, under the rules of the Court, to be presented with the memorandum of appeal.

THIS was an appeal to the Full Court, under cl. 10 of the Letters Patent, which had been preferred two days after the period of limitation (1) had expired.

On behalf of the appellant it was contended that the time requisite for obtaining a copy of the judgment appealed from should be deducted, in computing the period of limitation. On behalf of the respondent it was contended that, inasmuch as under the Rules of Practice adopted by the High Court on the 21st May, 1873, regarding the admission of appeals under cl. 10 of the Letters Patent, a copy of the judgment appealed from was not required to be presented with the memorandum of appeal (2), the time for obtaining a copy could not be deducted.

The *Senior Government Pleader* (Lala *Juala Prasad*), Munshi *Hanuman Prasad*, and Maulvi *Mehndi Hasan*, for the appellant.

Mr. *Colvin*, for the respondent.

The Full Bench delivered the following

JUDGMENT.—The Full Bench is of opinion that the appeal is beyond time and not entitled to be admitted. It is therefore dismissed with costs.

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* Appeal under cl. 10, Letters Patent No. 4 of 1878.

(1) Under the Rules of Practice adopted by the High Court on the 21st May, 1873, regarding the admission of appeals under cl. 10 of the Letters Patent, such appeals must be preferred within ninety days, "unless the Court, in its discretion, on good cause shown, shall grant further time."

(2) Rule iii.—The appellant shall not be required, as in ordinary appeals, to file, with such petition of appeal, a copy of the judgment appealed from.