

1884

RAJA RUP
SINGHv.
RANI BAIJANI.

to reverse the decrees of both the lower Courts, and to order and decree that the plaintiff do recover possession of the estate called Raj Bhara, together with his costs in both the lower Courts.

The respondents must pay the costs of this appeal.

Solicitors for the Appellant: Messrs. *W. and A. Ranken Ford.*

Solicitor for the Respondent, the Collector of Etawah: Mr. *H.*

Treasure.

Solicitor for the Respondent, the Rani Baisni: Mr. *T. L. Wilson.*

APPELLATE CIVIL.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

SHUBHCHARAN (PLAINTIFF) v. RATIRAM (DEFENDANT) *

Arbitration—Refusal of arbitrators to act—Civil Procedure Code, s. 510.

It is an essential principle of the law of arbitration that the adjudication of disputes by arbitration should be the result of the free consent of the arbitrators to act; and the finality of the award is based entirely upon the principle that the arbitrators are judges chosen by the parties themselves, and that such judges are willing to settle the disputes referred to them.

Where certain matters were referred to arbitrators who refused to act, and the Court of first instance passed an order directing them to proceed and to make an award, and they, on the passing of such order, made an award,—*held* that all proceedings taken by the arbitrators in obedience to the order of the Court directing them to arbitrate against their will were null and void.

THE matters in difference in this suit were referred to three arbitrators. The arbitrators refused to act, and returned the papers which had been sent to them. The Court of first instance (Subordinate Judge) thereupon sent the papers back, directing the arbitrators to proceed and make an award within ten days. Two of the arbitrators made an award, dismissing the plaintiff's suit. The third arbitrator did not make an award. The plaintiff objected to the validity of the award upon the ground, among others, that when the arbitrators refused to act, the case should not have been returned to them, but should have been decided by the Court. This objection the Court of first instance disallowed; and gave judgment in accordance with the award. On appeal by

* Second Appeal No. 6 of 1884, from a decree of H. A. Harrison, Esq., District Judge of Meerut, dated the 25th September, 1883, affirming a decree of Rai Bakhtawar Singh, Subordinate Judge of Meerut, dated the 10th August, 1883.

1884

July 17.

1884

SHIBCHARAN
v.
BATHIRAM.

the plaintiff, the lower appellate Court (District Judge) affirmed the decree of the first Court. With reference to the objection set forth above, the Court observed that, as the agreement to refer the dispute to arbitration was uncanceled, the Subordinate Judge was well within his powers in again referring the matter to the arbitrators.

The plaintiff appealed to the High Court, on the ground (1) that the Subordinate Judge was not competent to order arbitrators to act who had refused to do so; and (2) that the award was not made within the time fixed by the Court, and no application for enlarging the period was made within time.

Mr. *J. D. Gordon* and Pandit *Ajudhia Nath*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Munshi *Sukh Ram*, for the respondent.

The Court (STRAIGHT, Offg. C. J., and MAHMOOD, J.) delivered the following judgment :—

MAHMOOD, J.—We are of opinion that this appeal must prevail on the first ground urged before us, if not also on the second ground. It appears that after the order of reference had reached the arbitrators, they all filed a joint application stating that they did not consent to arbitrate in the case, and, with this refusal to act, they returned the papers which had been sent to them by the Court. The Subordinate Judge, instead of accepting the refusal, passed an order directing that “the record be sent back to them, and they should arbitrate and send the award within ten days from the date of the order; their refusal cannot be admitted; when the arbitrators first took this record and agreed to hold arbitration, so much so that they even obtained time from the Court, their refusal now is not free from suspicion.” Upon this order being passed, the arbitrators proceeded to make the award, the legality of which is now in question, as the judgments of both the lower Courts have upheld it.

Expression has recently been given by this Court to the view, that one of the most essential principles of the law of arbitration is, that the adjudication of disputes by arbitration should be the result of the free consent of the arbitrator to undertake the duties

1884

HIBCHARAN
v.
RATIRAM.

of arbitrating between the contending parties who have agreed to repose confidence in his judgment. Indeed, the finality of such award is based entirely upon the principle that the arbitrators are judges chosen by the parties themselves, and that such judges are willing to settle the disputes referred to them. This essential characteristic of the effect of such adjudications is necessarily vitiated if compulsion is employed by the Court. "Though the arbitrator has taken on himself the burden of the reference, and held several meetings, but not closed the case, he may decline to go on any further with the arbitration, and the Courts have no jurisdiction over him to compel him to proceed; nor can they order him to make his award according to a particular principle."—(Russell on Arbitration, 196). It seems that, under the Civil Law, an arbitrator might be compelled to make an award. But "it was decided in equity, by Lord Chancellor Eldon, that if arbitrators refused to proceed with a suit referred to them, the suit might be prosecuted as if no reference had been made; and, in giving judgment, Lord Eldon put it on the same footing as a case where one of the arbitrators had died."—(Russell on Arbitration, 156). This principle, and not the rule of the Civil Law, appears to have been adopted by s. 510 of our Civil Procedure Code, and therefore the learned District Judge was wrong in holding that "as the agreement to refer the dispute to arbitration was uncanceled, the Court was well within its powers in again referring the matter to arbitrators." Such is not our law; and we hold that all proceedings taken by the arbitrators in obedience to the order of the Subordinate Judge, directing the arbitrators to arbitrate against their will, were null and void. This view renders it unnecessary to consider the second ground of appeal before us. We therefore set aside the decrees of both the lower Courts and remand the case under s. 562, Civil Procedure Code. Costs in all the Courts to abide the result.

Appeal allowed.
