

1900

KAMLAPAT  
v.  
BALDEO.

decree of the Subordinate Judge. No application has been made to bring his representative on the record. It has not been shown or even alleged that the deceased Kamlapat left no legal representative, or that the surviving appellant, Musammat Anandi, is such representative. It is most unlikely that she could be Kamlapat's legal representative. On this state of facts there are no materials on which I can find that the right to prosecute the appeal survived to Musammat Anandi alone. I must therefore hold that the appeal has abated. I accordingly dismiss it with costs.

*Appeal dismissed.*

1900  
February 8.

*Before Sir Arthur Strachey, Knight, Chief Justice and Mr. Justice Banerji.*

GOBARDHAN DAS (DEFENDANT) v. JAI KISHEN DAS (PLAINTIFF).<sup>\*</sup>  
*Act No. IX of 1872 (Indian Contract Act), sections 15, 16, 19—Contract—Undue influence—Coercion—Civil Procedure Code, sections 522, 528—Award—Validity of award—Award purporting to be a considered award of the arbitrators, but really an agreement between the parties to the submission.*

Under section 16 of the Indian Contract Act, 1872, as it stood before it was amended by Act No. VI of 1899, it is not sufficient, in order to render a contract voidable on account of undue influence, that the party claiming to avoid the contract should have been at the time he entered into it in a state of fear amounting to mental distress which enfeebled the mind: but there must further be action of some kind, the employment of pressure or influence by or on behalf of the other party to the contract. *Jones v. Merionethshire Building Society* (1), referred to.

Where an award which purported to be a considered award of the arbitrators framed after consideration of the statements of the parties and the evidence of witnesses was found in reality to be merely the adoption by the arbitrators of an agreement arrived at and signed by the parties to the reference, it was held that this would not prevent the award being a valid and binding award between the parties.

THE facts of this case are fully stated in the judgment of Strachey, C. J.

Babu Jogindro Nath Chaudhri and Munshi Jwala Prasad,  
for the appellant.

Pandit Sundar Lal, for the respondent.

<sup>\*</sup> First Appeal No. 76 of 1898 from a decree of Babu Nil Madhab Roy, Subordinate Judge of Benares, dated the 25th November 1897.

(1) L. R., 1892, 1 Ch., 173.

STRACHEY, C. J.—This is an appeal from a decree passed in accordance with an award which was ordered to be filed under section 526 of the Code of Civil Procedure. Having regard to the construction which has been placed upon the last paragraph of section 522, with which section 526 must be read, the only ground upon which such an appeal will lie is that there has been no award in law or in fact on which a decree could legally be passed. The only grounds upon which the award was contested in the Court below and in this Court are—(1) that by reason of coercion or undue influence exercised on the mind of the appellant there was no valid submission to arbitration; and (2) that there was no award in the sense of a judicial determination by the arbitrators of the matters submitted, but the arbitrators merely accepted a settlement of those matters by other persons, and mechanically signed an award which was put before them for their signature.

Now as regards the first point, no question of coercion properly so-called arises in this case. Coercion is defined in section 15 of the Indian Contract Act. It is clear that coercion as thus defined implies a committing or threatening to commit some act which is contrary to law. No such act is alleged to have been committed or threatened in the present case. Therefore coercion may be put out of the question altogether. The question of undue influence requires further consideration. We must apply the definition of undue influence contained in section 16 of the Contract Act, as it stood before its amendment by section 2 of Act No. VI of 1899. The only part of section 16 which has been suggested as applicable here is the second clause, which provides that undue influence is said to be employed “when a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.” If the appellant’s consent to the submission was caused by undue influence as thus defined, the contract was voidable at his option under section 19. Now the circumstances under which the submission was entered into were these. There had been certain dealings between the appellant Gobardhan Das and one Gopal Das, the son of the plaintiff-respondent Jai Kishen Das. Gopal Das was a young man of

1900

---

GOBARDHAN  
DAS  
v.  
JAI KISHEN  
DAS.

1900

GOBARDHAN  
DAS  
v.  
JAI KISHEN  
DAS.

twenty-two. The appellant was his cousin. It appears that the appellant got Gopal Das to execute a deed of sale of Gopal Das' share in certain ancestral property. There were two deeds, one was taken in the name of Gobind Das, a relative of the appellant, and after that there was a further deed executed by Govind Das in the appellant's favour. On the 26th November, 1896, a complaint was filed before a Magistrate by Gopal Das against Gobardhan Das, in which he charged the appellants with offences of criminal breach of trust and cheating under the Indian Penal Code in connection with the execution of the deeds, and on the following day, the 27th, the Court directed that the case should be sent to the police for investigation. While it was still under investigation the submission now in question was executed on the 4th December, 1896. The submission is signed by Jai Kishen Das and the appellant Gobardhan Das. It recites a dispute between the executants; it states that "the parties are ready to have recourse to the Civil and Criminal Courts," and that therefore, at the request of some of the relatives of the parties, in order to settle the matter, they appoint certain persons as arbitrators, and declare that they will accept whatever award the arbitrators may honestly make with respect to the dispute relating to the sale deeds. On the next day, that is, the 5th December, the complainant Gopal Das presented an application to the Magistrate, in which, referring to his complaint, he stated that he could not adduce evidence in the case, and, as the police had not as yet taken any proceedings, he prayed that the case might be struck off and his original application returned without any further inquiry. The only order then made was that the application should be sent to the police. Matters remained in that position at the time when the award was made on the 24th December, 1896, and ultimately, on the 7th January, 1897, the Magistrate made an order to the effect that the complainant did not desire to proceed further with the case, and virtually shelving the complaint altogether. The award and the decree thereon were in the respondent's favour.

Now dealing first with the submission of the 4th December, we have to see whether there is sufficient evidence to justify the conclusion that the appellant's consent to it was obtained by undue

influence employed for the purpose. Returning to section 16, the question is—Does the evidence show that the appellant, while his mind was enfeebled by mental distress, was so treated as to make him consent to that to which but for such treatment he would not have consented? The appellant has given evidence himself as to the circumstances in which his consent was given. All he says on that point is this:—"I executed the arbitration agreement, having been influenced by the criminal case. If I had not affixed my signature, those persons would have got me punished. It was through this fear that I executed the deed of agreement." That is all he says. I have no doubt that the reason why he executed the submission was his fear of the criminal proceedings. A complaint was pending which had been made only a few days before. The submission itself refers to criminal proceedings. Having regard to these facts and to the further circumstances of Gopal Das' application practically abandoning the complaint on the very day after the execution of the submission, there can be no doubt that there was an implied agreement between the parties that if the appellant agreed to the submission the prosecution should be dropped, and that this, so far as the appellant was concerned, was the main object of the submission. As I have said, I have no doubt that at the time when he executed the submission he was to some extent, at all events, in fear of the criminal proceedings, but he does not say a word to suggest the conclusion that the plaintiff or anyone else took advantage of his state of mind to apply any pressure or exercise any influence to procure his consent. It cannot be held that a state of fear by itself constitutes undue influence. Assuming a state of fear amounting to mental distress which enfeebles the mind, there must further be action of some kind, the employment of pressure or influence by or on behalf of the other party to the agreement. In the case of *Jones v. Merionethshire Building Society* (1), Bowen, L. J., appeared inclined to the view that, given an agreement in consideration of a promise not to prosecute, it was a necessary or at least a reasonable inference of fact that undue influence or pressure must have been exercised and must have operated towards obtaining the agreement. See page 186 of the report. But the other

1900

---

 GOBARDHAN  
 DAS  
 v.  
 JAI KISHEN  
 DAS.

(1) L. R., 1892, 1 Ch., 178.

1900

GOBARDHAN  
DAS  
v.  
JAI KISHEN  
DAS.

Lords Justices concurred with Mr. Justice Vaughan Williams in the Court below in holding that there was practically no evidence of pressure or undue influence, although undoubtedly there was fear and undoubtedly an agreement not to prosecute. In India we must apply the definition of undue influence contained in the Contract Act, section 16, and taking the statements of the appellant as they stand, it appears to me that there is no sufficient evidence of the facts required by the second clause of that section. That disposes of the objection to the award so far as the submission is concerned.

Now with regard to the award itself, both the arbitrators have given their evidence and they describe what they did. Their procedure was certainly singular in one respect. One Gulab Das, the father-in-law of the appellant, appears to have interested himself in the matter and he told Ballabh Das, one of the arbitrators, that the arbitrators need not trouble themselves as he would bring the award and have it signed. He and other relatives of the parties seem to have come to a settlement of the matters in dispute. They drafted an award, and Gulab Das and others, including the appellant, took a fair copy of the award to the arbitrators for signature. The arbitrators signed the award, and at the end both parties signed it also, and stated that they accepted the award. The arbitrators further state that at the same time the award was read out and that the appellant heard it read. They say that they held no meetings and gave no consideration to the matter because they thought that the dispute had been amicably settled with the consent of the parties in accordance with the draft award, and that in substance they adopted the draft, and gave their award in accordance with the settlement agreed to by both parties. If the award really represented a settlement agreed to by the parties, I see no objection to the draft being adopted and the award being made by the arbitrators in accordance with the settlement, any more than I see any objection to a Court passing a decree in accordance with an agreement arrived at by the litigants. The only peculiarity here is that the award on the face of it professes to be, not the adoption of a settlement arrived at by the parties, but the result of a judicial consideration by the arbitrators themselves of the issues which they formulate, on the

statements of the parties and on the depositions of certain witnesses ; whereas it is clear that they took no evidence and did not hold any sittings at all. But they signed the award, and the conclusion which they thus signed was accepted by the parties, who of course knew perfectly well how the settlement had been arrived at, and the award drawn up.

But it is said that in that agreement for the settlement again undue influence was exercised, so that even if there was no objection to the submission, still there was no valid agreement upon which the arbitrators could make their award, and that the arbitrators therefore could not make their award in accordance with the so-called settlement, but ought to have decided the dispute irrespective of it altogether. Having read the evidence the conclusion at which I have arrived is that there is no satisfactory proof of the exercise of undue influence in obtaining the signature of the appellant to the award. It is clear that the appellant told the arbitrators at the time that he accepted the award. He himself asked the arbitrators to sign the award after hearing it read. His statement that he signed a blank paper is clearly untrue. No doubt he states in his evidence :—“ People said to me that they would get the criminal case struck off if I affixed my signature to the arbitration award. It was for this reason that I affixed my signature to it. By the word ‘ people ’ I mean the following persons :—Har Kishen Das and Barjiwan Das.” That is all the evidence by which he seeks to establish his plea of undue influence in the obtaining of his signature to the award. Harkishen Das is a relative of his own, related to him quite as closely as to the respondent Jai Kishen. There is nothing to show that Barjiwan Das had any special connection with Jai Kishen rather than with the appellant. I think that there is nothing to show the exercise of undue influence in the settlement upon which the award was made or in the signing of the award, and, that being so, the arbitrators were competent to give the award in the way they did give it with the knowledge and consent of the parties. The award was valid, and consequently no appeal from the decree founded on it can be maintained.

I think it desirable to state that I might have taken a very different view of the submission and the award if the objection

1900

---

 GOBARDHAN  
 DAS  
 v.  
 JAI KISHEN  
 DAS.

1900

GOBARDHAN  
DAS  
v.  
JAI KISHEN  
DAS.

had been taken in either the Court below or in this Court that the submission was void as being in part for an unlawful consideration, or for an object opposed to public policy within the meaning of section 23 of the Contract Act. It might very well have been contended that the submission had for its object the stifling of a prosecution for offences not compoundable under the provisions of the Code of Criminal Procedure, and if any such objection had been made, the judgments of the Court of Appeal in *Jones v. Merionetshire Building Society* (1), of Mr. Justice Stirling in *Lound v. Grinwode* (2), and of the Madras High Court in *Srirangachariar v. Ramasami Ayyangar* (3), would have required serious consideration. No such defence or issue has, however, been raised, and I do not think we should go out of our way to raise it for the appellant, when neither this Court nor the Court below has been asked to do so.

I think this appeal should be dismissed with costs.

BANERJI, J.—I also would dismiss the appeal. It was not the appellants' case in the Court below, nor is it his case in this Court, that the agreement of submission to arbitration is void on the ground that the object or the consideration of the agreement is unlawful, that object or consideration being the stifling of a criminal prosecution. No issue was joined on that point in the Court below, and no plea has been urged in the memorandum of appeal to this Court to that effect. It is not necessary, therefore, to consider that question in this appeal.

The only ground upon which the validity of the submission was questioned was that of coercion, or undue influence. It is clear that there was no coercion, and on the evidence it cannot be held that there was undue influence within the meaning of section 16 of the Contract Act. On this point I agree with the observations of the learned Chief Justice and have nothing to add.

As regards the award itself; the evidence shows that it embodies the result of a settlement come to by the parties to which both of them consented. They signed the award as indicating their acceptance of it, and it has not been proved that the appellant's consent to the settlement was procured by undue influence.

*Appeal dismissed.*

(1) L. R., 1892, 1 Ch., 173.

(2) ( ) L. R., 89 Ch. D. 605.

(3) (1894) I. L. R., 18 Mad., 189.