

APPELLATE CIVIL.

1902
 March 18.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

JAMNA KUNWAR (PLAINTIFF) v. NASIB ALI AND OTHERS

(DEFENDANTS).*

Civil Procedure Code, sections 510, 514—Arbitration—Delegation of their duties by the arbitrators—Award not submitted by the arbitrators within the time limited by the Court.

The parties to a suit for winding up a partnership agreed to refer the suit to arbitration, and two arbitrators were appointed by the Court. The parties subsequently agreed that the matters in dispute should be settled by one Saif Ali, who was within a certain time to send in his opinion to the arbitrators in order that they might submit to the Court an award in accordance therewith. Saif Ali sent in his opinion to the arbitrators some days before the time fixed by the Court for the submission of the award; but the arbitrators did not submit their award within time. *Held* that the agreement of the parties to let the matters in dispute be settled actually by Saif Ali could not possibly have the effect of superseding the appointment of arbitrators by the Court. Before the Court could proceed to hear the suit it was necessary that it should itself make, under either section 510 or section 514, an order superseding the reference to arbitration.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath* (for whom *Munshi Gulzari Lal*), for the appellant.

Pandit *Moti Lal Nehru*, for the respondents.

STANLEY, C.J. and BURKITT, J.—The decree of the learned Subordinate Judge in this case cannot be upheld. The suit was instituted by the plaintiff for dissolution of partnership and taking of the partnership accounts. Thereupon an agreement was entered into between the parties to refer the matters in dispute to arbitration, and an order was made by the Court under the provisions of the Code of Civil Procedure, referring the suit to arbitration on the 27th of June, 1898. The arbitrators appointed were one Debi Prasad and one Maulvi Ahsan-ullah, who were respective pleaders for the parties in the suit. A number of proceedings were recorded by these arbitrators, and amongst others a proceeding of the 7th of August, 1898, in which it was stated that “the parties would accept and admit the decision of

* First Appeal, No. 65 of 1899, from a decree of Rai Kishan Lal, B.A., Subordinate Judge of Cawnpore, dated the 18th January 1899.

the case as made jointly by Pandit Mangli Prasad, the plaintiff and Shaikh Nasib Ali, the defendant." Nothing appears to have been done by these parties so named; but on the 8th of August a further proceeding is recorded by the arbitrators, in which it is stated that "all the parties have agreed to accept what would be decided in this case by Sheikh Saif Ali." Upon this the arbitrators allowed time up to the 18th of August 1898 to Sheikh Saif Ali to deliver his decision in writing to them within the said period. Sheikh Saif Ali delivered his decision to the arbitrators on the 20th of August. It appears that the arbitrators, Debi Prasad and Ahsan-ullah, had applied to the Court on several occasions and got extensions of time for filing their award up to the 29th of August, 1898. The time was extended by three orders, dated the 28th of July, the 19th of August and 26th of August. We further find that these arbitrators on the 23rd of August directed that the case should be brought forward for final disposal before them on the 24th of August, giving as their reason that the time for filing in Court their award was approaching very near. This was three days before the date to which time for filing their award had been extended by the Court. It is perfectly clear from this that the arbitrators who had been appointed by the Court did not consider that they had been superseded as arbitrators; on the contrary, what we gather from the record of proceeding, which they kept is that they considered themselves to be the arbitrators whose duty it was to determine the matters in dispute, but that they had delegated, by consent no doubt of the parties, to Sheikh Saif Ali the determination of these matters. The time for filing an award by the arbitrators expired without an award being filed, although Saif Ali had sent in his decision in writing to the arbitrators on the 20th of August, 1898.

Upon these facts the learned Subordinate Judge held that the parties by the so-called agreement of the 8th of August, 1898, referred the matters in dispute to the arbitration of Sheikh Saif Ali without the intervention of the Court, and that this agreement had the effect of taking away the jurisdiction of the arbitrators who had been appointed by the Court, and that this agreement was a bar to the suit of plaintiff under section 21 of

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the Specific Relief Act. We are wholly unable to see how this alleged consent could have any such effect. The arbitrators had been appointed by the Court under the provisions of the Code of Civil Procedure. It was therefore not open to them to delegate their authority to a third party, nor was it within the power of the parties to render nugatory the order of the Court appointing arbitrators or withdraw the suit from the cognizance of the Court unless under an order of the Court itself. Section 510 provides that if the arbitrators fail for any of the reasons therein mentioned to act, the Court may either appoint new arbitrators or else make an order superseding the arbitration. Now the arbitrators in the present case neglected to file their award, and therefore, as it seems to us, it was the duty of the Court before any other steps were taken to supersede the arbitration under the provisions of this section. It is argued that the Court did supersede the arbitration, but we do not think that this was the case. An application was made to the Court for an order calling upon the arbitrators to file in Court all the papers relating to the arbitration proceedings, and upon this application the Court, on the 5th of September, 1898, directed that the papers be called back, and the case be put up for hearing the argument. This did not amount to a supersession of the arbitration. Under these circumstances we hold that the view taken by the learned Subordinate Judge was entirely mistaken, and that the reference to arbitration is still in force, and that before the suit can be entertained or heard, there must be an order for supersession under section 510 or section 514. Accordingly we must set aside the decree and remand the suit with instructions to the learned Subordinate Judge that he should, if he thinks fit, supersede the arbitration and proceed with the suit. The costs of this appeal will abide the event.

Appeal decreed and cause remanded.