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under those circumstances to raise this technical question. The Bhartpur State then having appealed, and having succeeded in the appeal, under section 544 of the Civil Procedure Code, the judgment which we shall pass will be for the benefit of all the other defendants. Our order accordingly is, that we allow the appeal, set aside the judgment and decree of the lower Court, and direct that the suit stand dismissed with all costs.

Appeal decreed.

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November 27.

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

BRIJ MOHAN LAL (PLAINTIFF) v. SHIAM SINGH (DEFENDANT).*

Arbitration—Award—Suit for specific enforcement of award—Case in which compensation in money considered impossible to assess.

The defendant leased a village to the plaintiff for a term of five years. In the second year of the lease disputes arose between the parties, which they agreed to submit to arbitration. On the questions submitted to him, the arbitrator delivered an award, which was to the effect—(1) that the lessee should surrender possession at a fixed time within the term of the lease, (2) that the lessee should pay the sum of Rs. 800 to the lessor, and (3) that as to arrears of rent due from the tenants, the lessee should obtain decrees and execute a conveyance of them to the lessor, who was to pay to the lessee the aggregate amount of the decrees.

The other terms of the award having been performed, the lessee sued for specific performance of the remainder. He filed with his plaint a number of decrees obtained by him against the tenants together with a sale-deed conveying those decrees to the defendant, and prayed that the defendant might be ordered to accept the conveyance and pay the amounts of the decrees.

Held that even if the award were bad, the defendant having acted on it and accepted the benefits it gave him, had precluded himself from impeaching it; also that the case was not one in which it was possible to assess compensation in money for the breach of the particular condition in the award, and that the plaintiff was entitled to specific performance of the award, and this was directed in terms of the order made in the case of *Bell* v. *Denver* (1).

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Moti Lal*, for the appellant.

Pandit *Sundar Lal*, for the respondent.

STANLEY, C. J., and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Moradabad dismissing the plaintiff's suit.

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* First Appeal No. 113 of 1901, from a decree of Babu Mata Prasad, Subordinate Judge of Moradabad, dated the 13th April 1901.

(1) (1886) 54 Law Times Reports, 729.

The facts of the case are clear and practically undisputed. The only difficulty we feel is as to the form of the order we ought to pass.

The facts are as follows :—

On July 1st, 1897, the defendant-respondent, who is zamindar of Mauza Pipalsana, granted a lease of that village for a term of five years—1305—1309 F. (1897—1902 A. D.)—to the plaintiff, Brij Mohan, and one Mangal Sen, at an annual rental of Rs. 3,200. Mangal Sen appears to have surrendered his interest in the lease to Brij Mohan. We have no concern with him in this case.

In the year 1898, in consequence of the new settlement, disputes arose between the plaintiff and the defendant about the rental (*jama*) payable by the latter. The parties agreed to refer these disputes to the arbitration of one Pandit Murari Lal of Sherkot, and accordingly on January 31st, 1899, they executed and registered a formal submission to arbitration.

Pandit Murari Lal prepared an award on April 7th, 1899. This award he published on the same day by registering it, and he had it handed to the defendant-respondent, Shiam Singh.

Turning now to the submission to arbitration agreement of January 31st, 1899, let us see what were the matters referred to the arbitrator to decide.

They were four in number, namely—(1) what rental (*jama*) was to be paid by the appellant, the lessee, to the respondent, the lessor, for the years 1306—1309 F. (1898—1902) ? (2) the duration of the lease, *i. e.*, was the lessee to continue to hold for the unexpired portion of the lease ? (3) in case the arbitrator should direct the lease to terminate within the term, then who was to be liable to pay the rents due from tenants to the lessee ? and (4) in the same event, which party was to bear the expenses incurred in breaking up waste land ?

In his award the arbitrator, inverting the order of the questions, decided (1) that the lease was to terminate with the kharif of 1306 F., and that the lessee should surrender possession to the lessor from the commencement of the rabi of that year. As regards the arrears of rent in cash and in kind due to the lessee from the tenants, the award directed that the lessee should

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sue and obtain decrees against the tenants for the arrears due from them, and that on his executing a sale-deed of those decrees to the respondent, the latter should pay to the appellant the amount entered in the decrees.

In this manner the arbitrator disposed of the second and third of the four matters mentioned above. As to the first and fourth, he found that a lump sum of Rs. 800 was due to the lessor, Shiam Singh, and directed that the lessee appellant should pay him that amount. Thus the award directed (1) that the appellant should surrender possession at a fixed time within the term, and (2) should pay Rs. 800 to the respondent. It further directed (3) that the lessor, the respondent here, on receiving a conveyance of decrees for arrears of rent, to be obtained by the lessee against the tenantry, should pay the amounts of those decrees to the appellant, the lessee. As to the acts which were to be done by the appellant under the award, it is admitted that he surrendered possession to the respondent, as directed. As to the payment of Rs. 800, the respondent, in June 1899, sued the appellant in the Rent Court to recover that sum with interest. In his plaint he recited the submission to arbitration and the award, and claimed the Rs. 800 as being due to him by virtue of the award. The lessee (defendant in the Rent Court) pleaded to the jurisdiction of the Rent Court and also alleged part payment. Both these pleas were overruled, and the Assistant Collector, on September 28th, 1899, gave a decree for the Rs. 800 with interest and costs.

By the present suit the appellant lessee seeks to compel the respondent lessor to do that which the award directs him to do. The suit was dismissed in the Court below for reasons to which we shall presently allude. But before going further, we desire to refer to some intermediate proceedings taken in the matter of this award.

Some time early in 1900 (the date does not appear) the appellant lessee applied to the Court to have the award filed in Court under the provisions of section 525 of the Code of Civil Procedure. That application was opposed by Shiam Singh on the allegation (among other objections) that the arbitrator had exceeded his power in directing the sale to Shiam Singh, of

decrees to be obtained by the plaintiff, Brij Mohan. His objections were overruled, and an order was made on April 2nd, 1900, directing the award to be filed in Court. The Court held that the direction as to the sale of the decrees was a good and sensible decision, and, as to the rents, observed that the "question of rent for any particular year was not referred to the arbitrator, but the general question of arrears of rent was referred to him."

Appended to his plaint in the suit now before us, the plaintiff-appellant produced in Court a large number of decrees for arrears of rent against tenants for sums aggregating (with interest) Rs. 6,750, and also a deed of sale executed by him, purporting to transfer those decrees to the respondent, and he prayed the Court to cause those documents to be handed over to the defendant-respondent, and to direct the latter to pay to him (plaintiff-appellant) the aggregate amount of those decrees with interest.

The defendant's reply chiefly consists of an allegation that the arbitrator acted in excess of his powers as to the tenant's rents, as he was empowered only to dispose of the rents accruing due in the years 1306—1309 F., and not those of the year 1305 F.

This contention has been accepted by the Subordinate Judge, who holds broadly that the arbitrator had power only to dispose of the question of rents "beginning from 1306 F." In this the lower Court is clearly wrong. In the submission to arbitration the words used are "who will be liable to pay the rents due by the tenants to the lessee, second party?" These words are perfectly general. There is no restriction whatever in them to the rents due for the kharif of 1306 F. We see no reason why we should import any such restriction. Evidently the lower Court has made the mistake of confusing the earlier portion of the agreement with the later. They refer to two quite distinct matters. The earlier portion empowers the arbitrator to decide what rental (*jama*) is to be paid to the lessor by the lessee for the years 1306 to 1309 F. only, and necessarily so, for the first year (1305 F.) of the term had passed, and the parties came to this agreement in 1306 F., the first of the years as to which there was a dispute.

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But a decision as to the rental payable by the lessee under his lease is quite a different matter from a decision as to arrears of rent due by tenants to the lessee.

It was further urged for the respondent that this is a case in which adequate money relief could be allowed to the plaintiff, and that therefore specific performance should not be allowed. To this it is sufficient to reply that we know of no standard or measure of damages by which in this case we could estimate what compensation should be awarded to the appellant. The learned vakil who appears for the respondent was unable to assist us in this matter. It was also contended that the appellant could himself enforce in execution the rent decrees he has got. To this there is the evident reply that appellant, by the arbitration submission, contracted to abide by terms of the award, which direct him to sell the decrees to the respondent. And as to the allegations in the 6th paragraph of the defendant's written statement we need say no more than they are nothing more than mere surmises. We are unable to agree with any of the remarks of the Subordinate Judge as to the position of an assignee of a decree of a Rent Court, when asking a Rent Court to execute a decree. We have no doubt that he would find no more difficulty in a Rent Court than in a Civil Court.

We have thought it right thus to discuss *seriatim* the various points raised for the respondent in the judgment of the lower Court, in his written statement, and in the argument of his learned vakil. But we are unhesitatingly of opinion that it was not open to the respondent to take any of those pleas. Admittedly, he willingly entered into the agreement of the 31st January, 1899. As far as the award was favourable to him he accepted it and acted on it. He accepted the surrender of the lease when 3½ years of the term were still unexpired. He got the Rs. 800, or at least got a decree for it, on the strength of the award. Appellant has done all that the award directed him to do, even going to the expense of suing the tenants and getting decrees. Under such circumstances we hold that even if the award were bad by reason of the arbitrator having exceeded his powers (which we hold is not the case), the respondent is precluded by his own conduct from impeaching it. He has chosen

to accept and act on it as if it were a good and binding award; he has taken all the advantages it gave him, and we cannot now allow him to say that he is not bound by it.

In our opinion the decision of the lower Court on the merits of the case is wholly wrong and must be set aside. We therefore allow this appeal, and we set aside the judgment and decree of the lower Court with costs in both Courts.

We have had some difficulty in settling the form of the order we should pass in directing specific performance in favour of the appellant. We have been unable to find any case exactly in point in the Indian Law Reports. We have, however, been referred to the case of *Bell* v. *Denver* (1) which is on all fours with the present case. Adopting the form of order made by North, J., in the case just cited, we declare that the plaintiff-appellant is entitled to specific performance on the part of the defendant-respondent of the award of April 7th, 1899, so far as the same remains unperformed, and it appearing that the plaintiff-appellant, in pursuance of the said award, has obtained decrees against tenants for arrears of rent agregating Rs. 6,354-15-0 and has executed a valid sale-deed of the said decrees in favour of the defendant-respondent, and has deposited the same in this Court for delivery to the defendant-respondent, and has, through the learned vakil who appeared for him in this appeal, undertaken to render to the defendant-respondent such assistance on his part as may be necessary (if any) for obtaining execution by the defendant-respondent of the abovementioned decrees, we direct that the said sale-deed be delivered from Court to the defendant-respondent or to his vakil, and we give a decree in favour of the plaintiff-appellant for the sum of Rs. 6,354-15-0 to be paid to him by the defendant-respondent.

Appeal decreed.

(1) (1886) 54 Law Times Reports, 729.