FULL BENCH.

1907
April 5.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Sir George Knox and Mr. Justice Richards.

BIHARI LAL (DEFENDANT) *v.* CHUNNI LAL (PLAINTIFF).*

Civil Procedure Code, sections 521, 522—*Arbitration—Award—Decree on judgment in accordance with the award—Appeal.*

The matters in dispute between the parties to a suit pending in the Court of a Munsif were referred to arbitration. An award was delivered by the arbitrator to which objections were filed to the effect that the arbitrator had been guilty of misconduct. Those objections were, however, overruled and decree was passed which was in accordance with, and not in excess of, the terms of the award.

Held that no appeal from such a decree would lie, the sole ground being that the arbitrator had been guilty of misconduct. *Sham Lal* v. *Misri Kunwar* (1) distinguished. *Ghulam Khan* v. *Muhammad Hassan* (2) followed.

THIS appeal was referred to a Full Bench upon the recommendation of Knox and Richards, JJ., and for the reasons stated in the referring orders, which were as follows. The facts of the case appear from the referring order delivered by Knox, J.

KNOX, J.—This appeal is brought from an order passed under section 562 of the Code of Civil Procedure. The matter in dispute between the parties had been at their request referred to arbitration by the Court which was trying the suit. The arbitrator appointed by the Court returned an award, and to the award so returned objection was taken by the plaintiff in the suit under section 521 of the Code of Civil Procedure. He set out in his objection certain facts, and upon those facts charged the arbitrator with misconduct. The learned Munsif, before whom the award was, considered the award and the objection and came to this conclusion :—"No misconduct has been shown, and the objection is only frivolous and vexatious." The plaintiff then went in appeal, and the appeal was heard by the Additional District Judge of Aligarh. He considered afresh the alleged misconduct and found that the circumstances of the case sufficiently warranted misconduct on the part of the arbitrator as

* First Appeal No. 75 of 1906 from an order of BABU KHETTRA MOHAN GHOSH, Second Additional Judge of Aligarh, dated the 8th of June 1906.

(1) Supra, p. 426. (2) (1901) I. L. R., 29 Calc., 167.

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explained in the case of *Ganga Sahai* v. *Lekhraj Singh* (1). He held that the award was in his opinion bad in law; set aside the decree which had been given upon the award, and remanded the case under section 562 of the Code of Civil Procedure. It has nowhere been suggested, and indeed it cannot be suggested, that the decree which the Munsif gave was in excess of, or not in accordance with, the award.

Before us it is contended that the lower appellate Court has no jurisdiction to hear the appeal which was presented to it, and, but for a decision to which I shall presently refer, I should have held that both by Statute and by a Full Bench ruling of this Court the matter was concluded and that no appeal did lie. It is contended for the respondent that the provisions of section 522 are not exhaustive and that under section 540 an appeal does lie from the decree. Now section 540 runs as follows:—"Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exorcising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts." It seems to me, especially bearing in mind that the right of appeal is a right created by Statute and does not lie where the Statute does not make provision for it, that section 522 is one of the exceptions to which section 540 refers when it says that "unless when otherwise expressly provided by this Code, etc." There is further a Full Bench Ruling of this Court—*Ibrahim Ali* v. *Mohsin Ali* (2), and there is the Privy Council judgment in *Ghulam Khan* v. *Muhammad Hassan* (3). In this last named case the same contention that section 522 was not exhaustive was raised, and in spite of it their Lordships of the Privy Council held that they "would be doing violence to the plain language and the obvious intention of the Code, if they were to hold that an appeal lies from a decree pronounced under section 522, except in so far as the decree may be in excess of or not in accordance with the award. The principle of finality which finds expression in the Code is quite in accordance with the tendency of modern decision

(1) (1887) I. L. R., 9 All., 253. (2) (1896) I. L. R., 18 All., 422.
(3) (1901) I. L. R., 29 Calc., 167.

in this country. The time has long gone by since the Courts of this country showed any disposition to sit as a Court of Appeal on awards in respect of matters of fact." See *Adams* v. *Great North of Scotland Railway Company* (1).

The learned vakil for the respondent, however, called our attention to a very recent case—*Sham Lal* v. *Misri Kunwar*, F. A. No. 98 of 1905. The decision is one entitled to our most careful consideration, but, with the utmost respect to the learned Judges who decided it, I find it impossible to distinguish that case from the present, and, in view of the circumstances already set out, to follow it. So far as I can see the ruling of their Lordships of the Privy Council reported in I. L. R., 29 Calc., 167, was not cited. In *Sham Lal* v. *Misri Kunwar* the objection of misconduct was taken in the Court to which the award was returned, and the Court overruled it in the following words:—"I hold that the arbitrator did hold meetings and make inquiry and did make the award." This was a finding by the Court in spite of the arbitrator himself having said that the award submitted by him was a bogus award. As so much stress is laid upon this case, I think it better to refer this case to a Full Bench in order that the point that arises, *viz.*, whether, when an objection of misconduct to an award has been heard and decided by the Court to which an award was returned, and the objection has been overruled, and the decree which followed upon the award is not in excess of and is in accordance with the award, an appeal still lies upon any point, or whether that decree is not as regards appeal absolute and final.

RICHARDS, J.—This is an appeal from a decree made on an award. It is not alleged that the decree is in excess of or not in accordance with the award. The defendant contends that under the provisions of section 522 of the Code of Civil Procedure no appeal lay to the lower appellate Court. Section 506 of the Code provides that the parties may refer any matter in difference between them in suit to arbitration. Due care is taken that the matters shall only be referred to arbitration when the parties make the application in person or through their pleaders, who must be specially authorized in writing to do so. Parties are not

(1) L. R., 1891, A. C., 31.

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bound to refer their differences to arbitration. They do so entirely of their own motion and of their own accord. Section 521 provides that no award made after matters have been referred shall be set aside except on certain grounds which are specified in the section. Section 522 provides that if no application is made to set aside the award, or if the Court after hearing an application to set aside the award has refused to do so, the Court shall proceed to give judgment according to the award. The section then continues:—"Upon the judgment so given a decree shall follow . . . . No appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award." It seems to me very clear that the Legislature intended that where parties of their own free will submit their differences to arbitration, they should have the opportunity of attacking the award provided by section 521 and no other opportunity. Parties who submit their differences to arbitration must be taken to have notice of the provisions of the Code. They cannot complain if in occasional cases a decree follows a doubtful or even a bad award. This seems to me to be the view that was taken of the section by the Privy Council in the case referred to by my learned colleague. The attention of the Court when deciding the First Appeal No. 98 of 1905 does not appear to have been called to the case of *Ghulam Khan* v. *Muhammad Hassan* (1).

On this the appeal was directed to be laid before a Bench consisting of the Chief Justice and Knox and Richards, JJ.

Munshi *Gulzari Lal*, for the appellant, submitted that the Court of first instance having overruled the objections taken to the award and made a decree in accordance therewith, the lower appellate Court had no jurisdiction to touch that decree even if the award were void—*Ghulam Khan* v. *Muhammad Hassan* (1). But here the award was not void: it was impeached only on the ground of misconduct, and the decision of the first Court upon this question was final—*Ibrahim Ali* v. *Mohsin Ali* (2).

Dr. *Satish Chandra Banerji*, for the respondent, submitted that an appeal would lie from a decree purporting to be passed in accordance with a so-called award where there was no award

(1) (1901) I. L. R., 29 Calc., 167. (2) (1896) I. L. R., 18 All., 422.

in law. Section 522 of the Code of Civil Procedure presupposes a valid and legal award. This was the established doctrine of all the Indian Courts before the Privy Council judgment in *Ghulam Khan's* case was pronounced, and that had not in any way altered the law. Here the award was bad in law for "the refusal to receive proof where proof is necessary is fatal to the award"—Russell on Arbitration, 9th ed., p. 143. The case of *Sham Lal* v. *Misri Kunwar* (1) was in point, for there the objection taken to the award was one purely of misconduct, and it was treated and adjudicated upon as such in the Court below; and in the High Court it was held that there was "no legal award" by reason of the grave misconduct of the arbitrator.

The appellant was not called on to reply.

STANLEY, C.J.—I am clearly of opinion that no appeal lies in this case. Section 522 of the Code of Civil Procedure provides that where a decree has been passed in accordance with an award "no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award." All that is alleged in this case is that the arbitrator was guilty of misconduct. It is admitted that the decree is in accordance with, and not in excess of, the award. This being so, it appears to me that the Legislature in very clear terms has prohibited the institution of an appeal. There appears to have been some misapprehension of a judgment delivered by a Bench of this Court of which I was a member in F. A. No. 98 of 1905 (*Lala Sham Lal and another* v. *Musammat Misri Kunwar*). In that case I and my colleague set aside a decree passed upon a so-called award, on the ground as clearly appears from the judgment that there was no award in fact or in law. The arbitrator who is said in that case to have made the award, was examined and he deposed that he did not make any award in the presence of the parties; that the award then before the Court was in his bag, but that he did not intend to make it; that it was "only to threaten the parties that he kept in his bag the award and also another of an entirely contrary nature." The suggestion in that case made by the learned counsel for the appellant was that somebody had abstracted this so-called award from the bag and filed it in Court.

(1) *Supra*, p. 426.

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We were not disposed to entertain that suggestion, but both my colleague and myself came to the conclusion that the paper which was filed was not intended by the arbitrator to be his award or to be the basis of a decree, and therefore it was we set aside the decree. That is not the case here. The case here is that of an award actually prepared by the arbitrator and filed in Court by him—an award which he intended should be acted upon and should form the basis of a decree. It is alleged that he was guilty of misconduct in not hearing the evidence of certain witnesses. If he was guilty of misconduct, the course open to the parties was to proceed under section 521. It appears to me that the question before us is concluded by the decision of their Lordships of the Privy Council in the case of *Ghulam Khan* v. *Muhammad Hassan* (1). I would, therefore, allow the appeal.

KNOX, J.—I am also of opinion that in this case there was an award, and all that was alleged against the award was misconduct on the part of the arbitrator. The alleged misconduct was inquired into and the Court finding no misconduct proved, overruled the objection and passed a decree which was in accordance with and not in excess of the terms of the award. The result was that no appeal lay to the District Judge, and the order of remand passed by him must be set aside.

The learned Chief Justice has distinguished the case which was relied on by the learned advocate for the respondent and shown that it has no application to the case before us.

RICHARDS, J.—I also allow the appeal. My reasons are given in the order of reference delivered on the 15th of March 1907.

BY THE COURT.—The order of the Court is that the appeal be allowed and the order of remand of the lower appellate Court be set aside and the decree of the Munsif of Kasganj be restored with costs in all Courts.

Appeal decreed.

(1) (1901) I. L. R., 29 Calc., 167.