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BENGAL AND NORTH-WESTERN RAILWAY v. MUL CHAND.

and Kumaun Railway at Bareilly City on the 6th of June, 1918, the claim appears to be an attempt to obtain money from the Railway by a statement either wilfully untrue or made recklessly without any belief in its truth.

The appeal must be allowed and the suit dismissed with costs here and below.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Piggott and Mr. Justice Kanhaiya Lal.

SUKHNATH RAI AND ANOTHER (APPLICANTS) *v.* NIHAL CHAND AND ANOTHER (OPPOSITE PARTIES).*

1920
May, 22.

Civil Procedure Code (1908), *schedule II, paragraphs* 17 *and* 18—*Arbitration—Failure of arbitrators to make an award—Suit as to part of the matters referred Direction by Court to proceed with the arbitration accepted by the parties.*

Certain persons agreed to refer matters in dispute between them to arbitration and two arbitrators and an umpire were appointed. But, owing to further disputes arising, the arbitration was not proceeded with, and one of the parties sent a notice to the umpire purporting to revoke his authority as umpire. Thereafter one of the parties to the submission filed a suit in a Munsif's Court as to part of the matters referred to arbitration (the whole of such matters being beyond the pecuniary jurisdiction of the Munsif). The Munsif at first dismissed the suit; but, the matter having been remanded to him on appeal, then passed an order staying the suit under paragraph 18 of the Code of Civil Procedure and further went on to issue a precept to the arbitrators and the umpire to continue the arbitration. No exception, however, being taken by any one concerned to this order, the arbitration proceeded, the parties argued their respective cases fully before the arbitrators and an award was made. An application to have this award made a rule of court was accepted by the Subordinate Judge and an appeal against this order was dismissed by the District Judge.

Held that in the circumstances there was no ground for holding that the arbitrators had no jurisdiction to proceed with the case and deliver an award. *Appavu Rowther* v. *Seeni Rowther* (1) and *Sheo Babu* v. *Udit Narain* (2) referred to

THE facts of the case were briefly as follows :—

The parties entered into an agreement by which they referred all their disputes to arbitration. Owing to certain criminal proceedings which were going on between the parties, the arbitration could not make any headway. Subsequently

* Civil Revision No. 84 of 1919.

(1) (1917) I. L. R., 41 Mad., 115. (2) (1914) 12 A. L. J., 757.

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one of the parties, the applicant, sent a notice to the umpire purporting to revoke his authority as umpire He replied that as the applicant was not willing to go on with the arbitration nothing was done and that the parties might get their disputes settled through court. Subsequently the applicant instituted a suit in the court of the Munsif asking for relief against the defendants, opposite parties, relating to certain matters which were included in the submission. The defendnts raised, among other pleas, that in view of a subsisting agreement to refer to arbitration the plaintiff's suit was not maintainable. This plea found favour with the court and the suit was dismissed. The applicant went up in appeal and the appellate court held that the suit ought not to have been dismissed and the court of first instance outght to have taken action under paragraph 18 of the second schedule to the Code of Civil Procedure and given the defendant an opportunity of obtaining the award of the arbitrators. The case was remanded and accordingly the Munsif stayed the suit and gave the defendant an opportunity of proceeding with the arbitration. The Munsif somewhat irregularly addressed a precept to the umpire to expedite the arbitration proceedings and to return the award to the court by a certain date. The arbitrators after hearing the parties eventually delivered their award and it was brought to the notice of the Munsif after an application had been made by the opposite party under paragraph 20 of schedule II of the Code. On this the Munsif postponed the hearing of the suit in his court pending the result of the aforesaid application. The Subordinate Judge in spite of the objections raised by the applicants made an order filing the award. The applicants preferred an appeal against the order filing the award which was dismissed. They came up in revision to the High Court.

Mr. *M. L. Agarwala*, for the applicants, submitted that paragraphs 17 and 18 of the second schedule to the Code of Civil Procedure had been taken from the English Act. After the institution of the suit in the Munsif's court the arbitrators become *functus officio*; *Appavu Rowther* v. *Seeni Rowther* (1). Furthermore, the fact that one of the parties, the applicants, had

(1) (1917) I. L. R., 41 Mad., 115.

served a notice upon the umpire revoking his authority to act in the arbitration was sufficient to put an end to the arbitration proceedings, and all proceedings subsequent to the service of the notice became null and void. The courts below had no jurisdiction to make an order filing the award.

Mr. *S. Agha Haidar*, for the opposite party, cited *Sheo Babu* v. *Udit Narain* (1).

PIGGOTT and KANHAIYA LAL, JJ.:—This is an application in revision by two persons, Sukhnath Rai and Chandu Lal, who may hereafter be conveniently spoken of as the applicants. They were parties to a properly drawn up submission to arbitration, dated the 3rd of November, 1915, under which certain matters in dispute between them and the opposite party were referred for decision to two named arbitrators and a named umpire. It seems that violent disputes broke out between the parties shortly afterwards and that a considerable period of time elapsed during which no action was taken by the arbitrators. The question who is to blame, or who is most to blame, for this state of things is not really before us. The applicants finally addressed a letter to the arbitrator and received from him a reply which they have sought to interpret as a withdrawal on his part from the arbitration, or to put it more strictly, a refusal to act any longer as umpire under the submission. Following upon this the applicants instituted a suit in the court of the Munsif. It is one of the minor complications in the case that this suit related to a portion only of the matters covered by the submission, so that the suit itself was within the pecuniary jurisdiction of a Munsif, whereas the submission related to subject matters of greater value, in respect of which a suit, if instituted, would have had to be brought in the court of a Subordinate Judge. In reply to this suit the opposite party pleaded the submission to arbitration. It then became the duty of the court to proceed under paragraph 18 of the second schedule to the Code of Civil Procedure. It was incumbent upon it to inquire whether the parties were still bound by the submission, and it was within its discretion to consider further whether, in the circumstances, it would elect to proceed with the trial of the suit in spite of

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the submission to arbitration. How far the learned Munsif went into these questions is really not a matter which we are called upon to consider at this stage. He undoubtedly fell into one mistake. He overlooked the provisions of paragraph 22 of the second schedule to the Code of Civil Procedure and, having come to the conclusion that the parties were still bound by the terms of the submission, held that under section 21 of the Specific Relief Act he had no option but to dismiss the suit. Against this decree the present applicants very properly appealed and the appeal was heard by the Additional Subordinate Judge. That court contented itself with pointing out the error into which the Munsif had fallen. It set aside the decree dismissing the suit and remanded the case to the court of the Munsif, with directions that he should take proper action according to law under paragraph 18 aforesaid. On this the learned Munsif passed an order staying the suit This he undoubtedly had jurisdiction to do, and, the matter not having been contested any further in appeal, his order to this extent is undoubtedly binding on the parties, with all that is implied in the passing of such an order. The Munsif went on to take a step the propriety of which is perhaps more doubtful. He formally referred the matter to the arbitrators and the umpire, requesting them to proceed with the arbitration. The difficulty about this order is that the submission to arbitration related to other matters besides that in issue in the court of the Munsif and, as already pointed out, the subject matter of the submission would have been beyond the jurisdiction of the Munsif's court in the event of a regular suit having been brought in respect of the same. However, the arbitrators and the umpire proceeded to take action in accordance with the Munsif's direction. The applicants behaved as if they were prepared to acquiesce in the decision of the Munsif, which they certainly made no attempt to contest before any higher court. They appeared before the arbitrators, litigated their case before this tribunal which had been chosen by the parties themselves and took their chance of a favourable decision. Being now dissatisfied with the award, they have by means of the application now before us disclosed the fact that they were all the time keeping in reserve an objection to

the jurisdiction of the arbitration tribunal to deal with the matter at all. Apart from any question of law the equities of the case are clearly against allowing such a course of procedure to prevail.

We may at once note that an application to have the award made a decree of court was subsequently allowed by the proper tribunal, namely, by that of the Subordinate Judge, and that an appeal against the order of the Subordinate Judge has been dismissed by the proper appellate court, the court of the District Judge. The application in revision before us is against the order of the District Judge refusing to reverse the order of the Subordinate Judge by which the award was directed to be filed.

Two different points have been made before us in support of the application. It is suggested that, in consequence of the correspondence which took place betwee the applicants and the umpire and the letter written by the umpire, the jurisdiction of the arbitration tribunal had come to an end because the umpire had in effect refused to continue to act. We doubt whether there is much to be said in support of this contention on the terms of the correspondence, but we have really not felt called upon to go into the matter. Directly the present applicants filed their suit in the Munsif court it became a matter for judicial inquiry, in the tribunal chosen by these applicants themselves, whether or not parties were still bound by the submission to arbitration. It may or may not be the case that in dealing with this matter the learned Munsif in the first instance, the Subordinate Judge in appeal and the learned Munsif when the case came back to him, failed adequately to appreciate the nature of the objection or to deal with it in a complete and satisfactory manner. In substance, however, the point was determined against these applicants when the Munsif passed his order staying the suit. An order of stay under paragraph 18 of the second schedule to the Code of Civil Procedure suspends the trial of the suit, pending proper action by the arbitration tribunal. It involves, if it does not directly proceed upon, a finding that there is in existence a submission to arbitration still binding the parties. This point has in our

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opinion been judicially determined against the applicants and that decision is not now open to our interference in revision.

The other point taken is based upon the wording of paragraphs 17 and 18 of the second schedule to the Code of Civil Procedure and purports to rest upon a decision of the Madras High Court in the case of *Appavu Rowther* v. *Seeni Rowther* (1), which decision again is founded upon an English case therein referred to and upon a decision of this Court in *Sheo Babu* v. *Udit Narain* (2). The objection may fairly be stated as follows:—For the sake of simplicity let us suppose that *A* and *B* are parties to a submission to arbitration. After a certain interval of time *B* has become dissatisfied with the submission and believes, rightly or wrongly, that he is no longer bound by its terms, or at any rate desires that the matter should be taken out of the hands of the arbitration tribunal and litigated in the ordinary course. On the other hand, *A* desires that the arbitration should proceed in accordance with the submission. Paragraphs 17 and 18 of the second schedule to the Code of Civil Procedure provide alternative remedies to meet the case of *A* and that of *B*. It is open to *A* to come before any competent court with an application under paragraph 17 to obtain an adjudication from that court whether or not, in the interests of justice, the submission to arbitration should now be enforced. On the other hand, it is open to *B* to bring the same question to an issue by instituting a suit in respect of the whole or any part of the matter covered by the submission to arbitration. On the institution of a suit by *B*, and on objection being taken by *A*, the court is required to satisfy itself that there is no sufficient reason why the matter should not be referred in accordance with the submission. The English case referred to by the learned Judges of the Madras High Court is based upon a provision of the English Statute substantially similar to that of paragraph 18 aforesaid. It is authority for the following proposition of law, as applied to the case we have been stating. From the moment *B*'s suit has been instituted it is not competenent to the arbitrators to proceed to a decision under the terms of the submission. They are bound to wait until the court in which the

(1) (1917) I. L. R., 41 Mad., 115. (2) (1914) 12 A. L. J., 757.

suit has been instituted determines whether it will proceed with the suit itself or will stay its proceedings and refer the parties to their own chosen tribunal, namely, the arbitrators. In an earlier part of this judgment we have assumed that it would be within the discretion of the court, judicially exercised for adequate reasons, to hold that the interests of justice would be better served by its proceeding with the trial of the suit and superseding the arbitration: so far as the second schedule to the Code of Civil Procedure goes, this point is perhaps arguable and we ought not to be regarded as being committed to a final decision on this point. It is conceivable, however, that there may be cases in which, by reason of long delay, particularly if that delay is found by the court to be clearly attributable to the conduct of the party which now desires to enforce the submission, the court might elect to proceed with the trial of the suit simply on this ground. Ordinarily at any rate, the question for determination will simply be whether or not the parties are still bound by the terms of their own submission. The point sought to be raised before us is as to the procedure which ought to be followed when the court has come to the conclusion that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the submission and has made an order staying the suit for the purpose of allowing the arbitration to proceed. The contention before us is that, in spite of such an order, the arbitration will not be proceeded with unless and until the party desiring it to proceed makes a further application to a competent court under paragraph 17. Now one thing is perfectly clear to us, that neither the Madras case nor the cases upon which that decision is founded can be quoted as authority for any such proposition. As a matter of fact there is an *obiter dictum* of the Madras Judges which is absolutely against the applicants' contention. The learned Judges assumed that in any given case, if the court decides that the trial should be stayed, it may ask the arbitrator or arbitrators to proceed to a decision themselves, which is what the learned Munsif did in the present case. If it were not for the difficulties raised about the jurisdiction of the Munsif to deal with the entire subject matter of the submission, we should not be disposed to say

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anything more about the question. It seems to us, however, that, in any case, whatever difficulty may be raised about the jurisdiction of the Munsif is completely removed by the conduct of the present applicants in accepting the Munsif's decision and submitting themselves to the decision of the arbitration court. The question whether the parties were still bound by the submission had been in substance decided against these applicants. The very utmost they could say would be that this decision had been given by a court not competent to deal with the entire subject matter of the award. If that was their only difficulty it could have been met in more ways than one. It may be that they could have brought the matter to an issue by filing another suit in the court of the Subordinate Judge in respect of the entire subject matter of the submission. At any rate, when there is a dispute between the parties to a submission as to whether or not the terms of that submission are still binding on them that dispute can be decided, like all other disputes, in one of the two ways, by the verdict of a competent court or by agreement between the parties, that is to say, by the party which has raised the objection determining not to press the same. In this case the Munsif had given a certain decision. If he was wrong the matter could have been carried before a higher tribunal. These applicants accepted that decision and went before the arbitrators. We think there is no authority whatever for the proposition that in these circumstances the arbitrators had no jurisdiction to proceed with the matter. On this view of the case we dismiss this application with costs.

Application dismissed.

APPELLATE CIVIL.

1920

May, 28.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

MENDYA (PLAINTIFF) *v.* JHURYA (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 22—*Occupancy holding—Holding owned by a joint Hindu family Death of one member gives rise to no interest in his widow.*

When the tenant of an occupancy holding is a joint Hindu family and one member thereof dies, his widow takes no share in the holding. *Mahabir Singh* v. *Bhagwanti* (1) followed.

*Appeal No. 30 of 1919, under section 10 of the Letters Patent.

(1) (1916) I. L. R., 38 All., 325.