

Before Mr. Justice Walsh and Mr. Justice Rives.

SITA RAM NATH MAL (DEFENDANT) v. SUSHIL CHANDRA DAS AND Co., (PLAINTIFF)*.

*Act No. IX of 1890 (Indian Arbitration Act), section 19—Arbitration—
Effect of order staying suit—“Court”.*

1921
March, 30.

Held, on a construction of section 19 of the Indian Arbitration Act, 1890, that “the Court” therein mentioned is not necessarily the Court of the District Judge, but the court before which the suit or other legal proceeding which it is sought to refer to arbitration is instituted.

Held also, that a stay order passed under section 19 is not a mere temporary injunction, but a final order which disposes of the suit.

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

Dr. Kailas Nath Katju, for the appellant.

Babu Lalit Mohan Banerji, for the respondent.

WALSH and RIVES, JJ.:—The question raised in this appeal is something more than academic, because the learned Judge, although granting a stay, has clearly indicated by his judgment that he retains seisin and control over the suit, and it is impossible not to read his order of stay as being no more than a temporary stay, namely, an adjournment of the suit for further orders of some kind. The appellant has come here and objects that this order is wrong in substance and in form, and that the learned Judge ought to have stayed the action absolutely under section 19 of the Arbitration Act, inasmuch as the parties had referred their disputes to arbitration. We agree with that view. We agree further with the court below, firstly, that either party interested in getting this matter disposed of by arbitration, should move the District Judge under section 8 (f) of the Arbitration Act to appoint an umpire. The learned Judge rather suggests by the language which he used, that he was ordering the defendant forthwith to move the District Judge, but the plaintiff is at liberty to do so if he pleases, and if he is serious in his claim, he is obviously the person interested in getting the matter disposed of, and the most hopeful arrangement is to get an umpire appointed by the court as quickly as possible, so that he would be bound under the provisions of the Act of 1899 to go on with the arbitration and make an award.

*First Appeal No. 76 of 1919 from an order of Kshirod Gopal Banerji, Subordinate Judge of Cawnpore, dated the 28th of April, 1919.

1921

SITA RAM
NATH MAL
v.
SUSHIL
CHANDRADAS
AND Co.

Secondly, we agree with the learned Judge that the action should be stayed, but where we disagree with him is where he says that he himself had no power to stay the action under section 19 of the Arbitration Act. Section 19 is a mere repetition of section 4 of the English Arbitration Act, and it is in our view idle to contend, looking at the language of the section itself, *a fortiori* looking at the long course of decisions in the English Courts under the corresponding section, that the court spoken of in that section is not the court before whom the legal proceedings or other attempt to bring a suit are in fact instituted. The definition in section 4 (a) of the Act only applies where there is nothing repugnant to it in the context. The context of section 19 is repugnant to the interpretation of the word "court" therein being confined to the District Court. It was unnecessary for the learned Judge in this case to invoke the aid of section 151 of the Code of Civil Procedure. Indeed, as the court pointed out in the case of *Strauss and Co. v. Raghunath Dayal Durga Prasad* (1), the less the courts attempt to confuse their duty under the Code with their duty under the Arbitration Act, the less difficulty is likely to be created. All the court had to do was to stay the suit under section 19 of the Arbitration Act, and, as we pointed out in the authority just referred to, a stay order under that section is sufficiently final to dispose of the suit, the record of which may be consigned to the record room. We think the appeal must be allowed and the order modified by directing the suit to be stayed in the following terms:—"Stay the suit under section 19 of the Arbitration Act, 1899, and send the record to the record room." Under the circumstances we think the appellants should pay their own costs.

Appeal allowed and order modified.

(1) (1920) 19 A. L. J., 19.