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necessary record for the information of the court hearing an appeal, the one or the other has only himself to blame if the ordinary presumptions are made against him. It is ordinarily too late at the hearing of the appeal to suggest that the hearing should be interrupted and the case adjourned for the record to be sent for. I would dismiss the appeal with costs.

BY THE COURT:—The appeal is dismissed with costs.

REVISIONAL CIVIL.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Niamat-ullah.

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June, 11.

BHOLA NATH (DEFENDANT) *v.* RAGHUNATH DAS MITHAN LAL (PLAINTIFF) AND SHANKAR LAL AND ANOTHER (DEFENDANTS).*

Arbitration—Supersession before award—Revision—Civil Procedure Code, sections 115 *and* 151—*"Case decided"—Inherent power to supersede a reference to arbitration.—Interference not barred by possibility of relief subsequently under section* 105(1).

The word "case" in section 115 of the Civil Procedure Code does not necessarily mean a suit, but can mean a proceeding. If any proceeding in a suit has terminated, it is certainly a case decided within the meaning of section 115 although the suit itself has not been finally disposed of. Where, after a reference to arbitration, an application for supersession is made, the order superseding and terminating the reference amounts to an order deciding a case and is open to revision.

There is no express provision which empowers a court to supersede an arbitration on grounds other than those mentioned in schedule II of the Civil Procedure Code. But there is an inherent jurisdiction in a court to intervene and supersede the arbitration if the case falls under section 151 of the Code, viz., where such an order is urgently necessary for the

*Civil Revision No. 49 of 1928.

ends of justice and to prevent some irreparable injury to the party, or to prevent the abuse of the process of the court.

The mere fact that the aggrieved party might have a right to challenge the order of supersession under section 105(1) subsequently, in an appeal from the decree finally passed, does not debar interference at this stage so as to prevent an unnecessary waste of time and of expenses in recording evidence.

Where the court has superseded the reference merely on the ground that one of the parties thereto has an apprehension that he would not be fairly treated, but has not recorded any finding that in its own opinion there was apprehension that justice would not be done and that its immediate intervention was called for, the court has not applied its mind to the extent of its own jurisdiction and has acted, if not actually without jurisdiction, certainly with material irregularity in the exercise of its jurisdiction.

Buddhu Lal v. *Mewa Ram* (1) and *Ram Sarup* v. *Gaya Prasad* (2), referred to. *Chaturbhuj* v. *Raghubar Dayal* (3), followed.

Mr. *Hazari Lal Kapoor*, for the applicant.

Messrs. *Uma Shankar Bajpai*, *Girdhari Lal Agarwala* and *Kailas Nath Katju* for the opposite parties.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is an application in revision from an order superseding a reference to arbitration before the award was delivered. The defendants Nos. 1 and 2 applied to the court that the reference should be superseded on the ground that the umpire was related to the plaintiff and that the uncle of the umpire's son-in-law had sued the defendants at Kasganj and the defendants had an apprehension that that fact might influence the mind of the umpire in deciding the case. The learned Munsif after taking evidence came to the conclusion that it was not proved that the umpire was in any way related to the plaintiff, but considered that the defendants Nos. 1 and 2 might very well apprehend that the

(1) (1921) I. L. R., 43 All., 564. (2) (1925) I. L. R., 48 All., 175.
(3) (1914) I. L. R., 36 All., 354.

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umpire would not treat them fairly. He himself did not record any finding that in his own opinion there was an apprehension that justice would not be done and that his immediate intervention was called for. He superseded the reference and fixed a date for the disposal of the suit. The defendant No. 3 has applied in revision from this order and has impleaded the other parties as respondents.

A preliminary objection is taken on behalf of the defendants Nos. 1 and 2 that no revision lies and reliance is placed on the Full Bench case of *Buddhu Lal* v. *Mewa Ram* (1). In our opinion this objection is not well founded. In the Full Bench case the trial court had recorded its finding on one of the issues relating to the question of jurisdiction. Two learned Judges thought that the word "case" in section 115 was wide enough to include any particular question in issue between the parties to the suit, but two other learned Judges took the view that the expression "case decided" meant "suit decided" and that no revision could lie from an interlocutory order. The fifth Judge, viz. RYVES, J., confined his judgement to the question whether the decision on a single issue by a subordinate court while the suit was still pending in that court was a case decided within the meaning of section 115, and came to the conclusion that it was not. It therefore seems to us that the Full Bench case is an authority only for the proposition that no revision lies from a finding recorded by the trial court on one or more issues out of several that are before it for disposal. There was no majority in favour of the broad proposition that no revision lies from an interlocutory order. We may note that a revision from an order restoring a case has been held by another Full Bench to be open to revision : *Ram Sarup* v. *Gaya Prasad* (2).

(1) (1921) I. L. R., 43 All., 564. (2) (1925) I. L. R., 48 All., 175

It seems to us that the word "case" does not necessarily mean "suit," but can mean a proceeding. If any proceeding in a suit has terminated, it is certainly a case decided within the meaning of section 115 although the suit itself has not been finally disposed of. In the present case there was a reference to arbitration, then there was an application for supersession which has been finally disposed of and the reference has come to an end. That proceeding has terminated and the case is now restored on its original number and is ordered to be disposed of by the court. The order superseding the reference to arbitration, in our opinion, amounts to an order deciding a case, and as no appeal lies from it, it is open to revision.

This was the view taken by a Bench of this Court in the case of *Chatarbhuj* v. *Raghubar Dayal* (1) in which a revision from an order superseding an arbitration was actually entertained and allowed. We therefore think that there is no force in the preliminary objection.

On the merits we would have no jurisdiction to interfere under section 115 unless the court below acted without jurisdiction or acted with material irregularity in the exercise of its jurisdiction. Schedule II of the Civil Procedure Code provides for several contingencies in which a reference to arbitration may be superseded by the court. We may refer to paragraphs 5, 8 and 15 of that schedule. There is no express provision which empowers a court to supersede an arbitration on grounds other than those mentioned in it. It may, however, be said in favour of the respondents that there is an inherent jurisdiction in a court to intervene and supersede the arbitration if the case falls under section 151 of the Code, viz. where such an order is necessary for the ends of justice or to prevent the abuse of the

(1) (1914) I. L. R., 36 All. 354.

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process of the court. That such an inherent jurisdiction exists has been laid down by the Bombay High Court and by a single Judge of the Patna High Court, and has also been assumed by the learned Judges in the case of *Chatarbhuj* v. *Raghubar Dayal* (1). But, as pointed out in the latter case, this inherent jurisdiction of the court, if it can be called into play, should be cautiously and sparingly exercised and only when it is obvious that the ends of justice would not be met by requiring the dissatisfied party to wait and see what the award might be and then to assail it on the ground of corruption or misconduct; and the court should be satisfied that the applicant would suffer some irreparable injury if prompt action is not taken (p. 360). The court has not an absolute power and discretion to supersede all references to arbitration. It can intervene only if it is satisfied that the ends of justice urgently require its intervention or that without such intervention there would be an abuse of the process of the court. Beyond that narrow scope the court has no general power of setting aside arbitrations.

The mere fact that the aggrieved party might have a right to challenge this order under section 105, subclause (1), subsequently in an appeal from the decree finally passed, does not debar us from interfering at this stage so as to prevent an unnecessary waste of time of the court in recording evidence and the additional expenses to which the parties would be subjected.

If the court has not applied its mind to the extent of its own jurisdiction and has not recorded any finding that the ends of justice require its intervention or that the process of the court is likely to be abused, but has merely superseded the reference on the

(1) (1914) I. L. R., 36 All., 354.

ground that one of the parties thereto has an apprehension that he would not be fairly treated, the court, if it has not actually acted without jurisdiction, has certainly acted with material irregularity in the exercise of its jurisdiction. The case of *Chatarbhuj* was also very similar to the present case, where the trial court had superseded the reference on the ground that the applicant had lost confidence in the fairness and impartiality of the arbitrator.

If any fraud has been practised on the defendant and knowledge was deliberately concealed from him, or any bias or prejudice is established after the award is delivered, that may be a ground for setting aside the award when objection is taken to it. It is too early to presume that the umpire would act with a prejudice against the defendants merely because an uncle of his son-in-law has sued the defendants.

We accordingly allow this revision, set aside the order of the court below dated the 31st of January, 1928, which superseded the arbitration and send the case back to that court with directions to refer the matter again to the arbitrators in pursuance of the agreement entered into by the parties. The applicant should have the costs of this proceeding from the defendants Nos. 1 and 2.