

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bajpai*

TULSHI RAM (DEFENDANT) v. BRINDABAN DAS
(PLAINTIFF)*

1936
March. 4

*Civil Procedure Code, section 115—"Case decided"—Order
setting aside an award in a pending suit.*

Held, in accordance with the principle of *stare decisis*, that no revision lies from an order setting aside an arbitration award while the suit still remains pending, inasmuch as no case has yet been decided, within the meaning of section 115 of the Civil Procedure Code.

Dr. S. N. Sen and Mr. Krishna Murari Lal, for the applicant.

Messrs. S. N. Gupta and V. D. Bhargava, for the opposite parties.

SULAIMAN, C.J., and BAJPAI, J.:—This is an application in revision on behalf of the defendant minor from an order setting aside an award and directing that the suit should proceed. A preliminary objection is taken on behalf of the plaintiff that no revision lies. The plaintiff had brought a suit for a declaration that he was the sole heir of his deceased father Brij Mohan Lal and was exclusively entitled to certain Government securities left by him, because his two brothers and a nephew were separate from the deceased father. He impleaded his brothers and nephew. The two brothers did not file any written statement and did not appear to contest the claim. The claim was resisted exclusively by the applicant, Tulshi Ram, not on the ground that the family was joint and the other two brothers Badri and Nathi Lal were entitled to a share, but that although Brij Mohan Lal was the sole owner of these properties he had left the entire estate to Tulshi Ram under a will. Both the plaintiff and the contesting defendant's guardian agreed to refer the matter to arbitration and left out the two absent defendants. The arbitrator delivered an award in favour of defendant

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No. 3. The plaintiff thereupon raised a rather belated objection that he and the contesting defendant had left out two necessary parties who ought to have joined in the reference. The court below has set aside the award on the sole ground that these two brothers, whose title neither the plaintiff nor the defendant had admitted, were necessary parties and therefore the award was invalid. We are not concerned with the merits of the case at this stage.

The first question to decide is whether a revision at all lies. Assuming in favour of the applicant that the order of the court below was irregular or even illegal, we have no jurisdiction to interfere under section 115 of the Civil Procedure Code unless a case has been decided. Now there are a very large number of cases of this Court, not to speak of the other High Courts, on the question whether revisions should be entertained from interlocutory orders or not. It is not possible to try to reconcile all the cases and lay down a hard and fast rule which would be applicable to all such cases. The only appropriate course is to accept the well known principle of *stare decisis* and follow the rulings of this Court which are directly in point. It is no use trying to bring in principles which might point to a contrary conclusion when there is a series of direct rulings of this Court upholding the other view. It has to be conceded by the learned advocate for the applicant that there are no less than four reported cases of this Court in which it has been distinctly laid down that no revision lies from an order setting aside an arbitration award while the case still remains pending in the court below. Under the old Code there was the case of *Chattar Singh v. Lekhraj Singh* (1). This case was followed in *Shah Muhammad Fakhruddin v. Rahimullah Shah* (2). The same view was accepted in *Rudra Prasad Pande v. Mathura Prasad Pande* (3), and again in *Risal Singh v.*

(1) (1883) I.L.R., 5 All., 263.

(2) (1924) I.L.R., 47 All., 121.

(3) (1925) I.L.R., 47 All., 916

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Faqira Singh (1). In all these four cases this High Court held that no revision lay from the order setting aside an award while the case had not been fully decided.

The learned advocate for the applicant relies on the case of *Kanhaiya Lal v. Jagannath Prasad Hanuman Prasad* (2). That was a case where the main question was as to whether the court below had erred in superseding a reference to arbitration. The award had no doubt been delivered and the case was still pending in the court below. WALSH, J., came to the conclusion that a revision lay. PIGGOTT, J., was somewhat doubtful, and indeed at page 310 observed: "Possibly, if I were certain that my own individual view in this matter would prevail, not only at this stage but throughout this particular litigation, I might be disposed to hold that the proper course for the defendant was to wait for the final decree of the trial court and to challenge the order setting aside the award in his memorandum of appeal, in the event of the suit ending in a decree against him." In view of certain rulings showing a considerable conflict of judicial opinion that were placed before him, he concurred in the order proposed by WALSH, J., but made a reservation that he did not stand committed to the view that an order like the one complained of could not be challenged in appeal later. In the case of *Gopal Das v. Baij Nath* (3) the court below had dismissed the objections to the award and upholding the award had passed a decree in terms of it. The suit was, therefore, completely disposed of and no case remained pending in the court below. That case, therefore, is not in point. In the case of *Bhola Nath v. Raghunath Das Mithan Lal* (4) a revision was sought against an order superseding the reference itself which had been made by the court to arbitration, before the arbitration proceedings had concluded and any award

(1) (1931) I.L.R., 53 All., 1006.

(3) (1925) I.L.R., 48 All., 239.

(2) (1920) I.L.R., 43 All., 305.

(4) (1929) I.L.R., 51 All., 1010.

could be delivered. The Bench in that case took the view that the application filed for the recalling of the arbitration proceedings after the reference had been made started a new proceeding outside the scope of the suit, and its termination was in itself a case decided. As the facts of that case are different from those of the case before us, we do not consider that that case is in point. This case was distinguished on this very ground in *Risal Singh v. Faqira Singh* (1).

The case of *Ganga Singh v. Kr. Jitwar Singh* (2) was no doubt a case where a revision was entertained from an order setting aside an award, but no objection was taken in that case on behalf of the respondent that no revision lay, and the point was, therefore, neither argued nor considered from that aspect. That case, therefore, cannot be regarded as an authority for the proposition that a revision really lies, particularly as the earlier Division Bench cases were not placed before the Judge.

Following the long series of rulings of this Court holding that no revision lies in such a case, inasmuch as no case has been yet decided, we dismiss the application with costs.

FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Thom and Mr. Justice Rachhpal Singh

RAM SWARUP AND OTHERS (PLAINTIFFS-APPLICANTS) v.
ANANDI LAL AND OTHERS (OPPOSITE-PARTIES)*

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Civil Procedure Code, order XL, rule 1(2)—Receiver—Appointment of receiver of mortgaged property, pending decision of appeal from preliminary decree for sale on simple mortgage—Jurisdiction—Civil Procedure Code, section 94(d)—Interpretation of statutes—Words—Same words used in different places of the same section should have the same meaning.

*Application in First Appeal No. 164 of 1935.

(1) (1931) I.L.R., 53 All., 1006.

(2) A.I.R., 1935 All., 1014.