

REVISIONAL CIVIL.

*Before Mr. Justice Gokaran Nath Misra and Mr. Justice
Muhammad Raza.*

YUSUF KHAN (PLAINTIFF-APPLICANT) *v.* RIYASAT ALI
(DEFENDANT-OPPOSITE PARTY).*

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January, 7.

Civil Procedure Code, section 115, and schedule II, paragraphs 10 and 15—Award—“Misconduct”, meaning of—Non-filing of important evidence by arbitrator, effect of—Concealment of the fact that arbitrator was personally interested in the litigation, effect of.

Held, that the word “misconduct” as used in paragraph 15 of schedule II of the Code of Civil Procedure does not necessarily imply moral turpitude but it includes neglect of the duties and responsibilities of the arbitrators and what courts of Justice expect from them before allowing finality to their awards.

Where an arbitrator did not file the original depositions of witnesses recorded by him but filed fair copies of them and there was nothing to show that they were accurate copies and he did not file in court, the documentary evidence produced before him, *held*, that he was guilty of what may be termed “judicial misconduct” and that the award delivered by him was invalid in law.

Where it was found that the arbitrator was himself interested in the subject matter of the suit with the plaintiff and that the defendant would never have consented to his arbitration had this matter been brought to his knowledge, *held*, that the plaintiff having failed to disclose this fact when the arbitrator was going to be appointed he can be considered guilty of fraudulent misconduct and paragraph 15(b) of schedule II of the Code of Civil Procedure applies to the case.

MISRA and RAZA, JJ. :—This is an application for revision of an order of the Assistant Collector of

* Civil Revision No. 198 of 1925 against the order of Kanhaiya Lal, Honorary Assistant Collector, First Class, Unao, dated the 14th of November, 1925.

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Unao, dated the 14th of November, 1925, setting aside an award of an arbitrator. The facts of the case are as follows: A suit for rendition of accounts had been filed by the plaintiff, Yusuf Khan, in the court of the Assistant Collector of Unao, under section 108, clause 5 of the Oudh Rent Act (Act XXII of 1886). During the course of the trial the parties put in an application, dated the 28th of August, 1925, praying that the matter be referred to the arbitration of one Inayat Ali, the brother of the plaintiff. The arbitrator was required to file his award by the 2nd of September, 1925. On that date an application was made by the arbitrator praying for extension of time, and the next date fixed for filing the award was the 4th of September, 1925. On that date the arbitrator filed his award along with certain papers purporting to be depositions of witnesses recorded by him during the course of the inquiry. No documentary evidence which was filed by the parties or the witnesses before him during the course of the inquiry was filed by him along with his award in court. On the 11th of September, 1925, the defendant, Riyasat Ali, put in lengthy objections alleging various grounds for setting aside the award. The learned Assistant Collector inquired into those objections and came to the conclusion that the award was invalid inasmuch as the arbitrator had not filed along with his award either the original depositions recorded by him or the documentary evidence filed by the parties or the witnesses examined by him during the course of his inquiry, as required by paragraph 10 of schedule II of the Code of Civil Procedure (Act V of 1908). The learned Assistant Collector, therefore, set aside the award observing that the proceedings taken by the arbitrator were improper and that the award was liable to be set aside (*Qabil mansukhi*).

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The plaintiff-applicant has now come up in revision against this order and it is contended by the learned Counsel on his behalf that the learned Assistant Collector acted without jurisdiction in setting aside the award. His contention was that the only ground upon which the award could be set aside under the provision laid down in paragraph 15 of schedule II was corruption or misconduct of the arbitrator, and since no corruption or misconduct had been established in the case, the Assistant Collector had no jurisdiction to take action under the abovementioned paragraph.

We have examined the whole record with care and have heard the parties at great length. It appears to us clear from the evidence of the arbitrator himself who was examined in that case that at first when he went to make an enquiry in the village he took down pencil notes of the depositions made by the witnesses who were examined before him and that subsequently at Unao he faired them out and the papers which he had filed along with the award were those faired out copies of the depositions. The fair copies do not bear the signatures of the parties or of the witnesses whose depositions they purported to be and there was nothing to show that those were really accurate fair copies of the depositions, the notes of which he had taken *in pencil* during the course of the inquiry. It is also clear that the documentary evidence which was filed before him was not filed by him in court. His statement was to the effect that those papers had been returned by him to the parties in court. We do not find any record of this anywhere either in the proceedings recorded by the arbitrator or from any notes kept by him of the fact; nor was any such record of the return of the papers kept by the court

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itself. Under those circumstances we do not know whether all the papers were returned by the arbitrator or only a few of them. In any case it is clear that the arbitrator did not comply with the provisions of paragraph 10 of schedule II. We do not wish to lay down that the mere fact that an arbitrator has omitted to file along with his award the depositions of the witnesses examined by him or the documentary evidence filed before him would justify a court in holding that the award is on that ground invalid, but there may be a case like the present which we have before us in which the procedure adopted by the arbitrator in not filing that evidence before the court may lead one to the conclusion that the arbitrator did not act in accordance with law, and that he was, therefore, guilty of misconduct as stated in paragraph 15. It was held in *Ganga Sahai v. Lekhraj Singh* (1), that the word "misconduct" should be interpreted in the sense in which it is used in English law with reference to arbitration proceedings. It does not necessarily imply moral turpitude, but it includes neglect of the duties and responsibilities of the arbitrators, and of what courts of justice expect from them before allowing finality to their awards. It appears to us to be clear in this case that the arbitrator who was appointed by the court below neglected his duties and ignored the responsibilities laid on him by law. It was not proper for him to convert his pencil notes into ink written depositions without having taken some steps to ensure that they were accurately transcribed. He should have on such transcriptions taken signatures of the parties or taken other steps to ensure their accuracy. He also did not file those pencil notes along with his award which could have enabled the court to see that

(1) I.L.R., 9 All., p. 254.

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the record of the evidence which was filed by him was an accurate transcript. We also find that his action as alleged by him that the documentary evidence filed before him was returned to the parties in court was not proper. We find that a portion of this documentary evidence consisted of receipts filed by tenants before him during the course of the inquiry. The arbitrator had no business to return these receipts to the parties. That action on his part shows an utter want of realization of the responsibilities laid upon him by law. It, therefore, appears to us that the arbitrator was in this case guilty of what may be termed as "judicial misconduct". The award delivered by him was, therefore, invalid in law and was rightly set aside by the learned Assistant Collector.

We should also like to add that the arbitrator when examined in court admitted that he would get a share out of the money which was to be decreed to the plaintiff on the strength of his award. This clearly shows that he was himself directly interested in the subject matter of the litigation, and it is stated on behalf of the defendant that he would never have consented to submit to his arbitration had this matter been brought to his knowledge before. The case, therefore, also comes within part (b) of paragraph 15 inasmuch as this was a matter which ought to have been disclosed by the plaintiff in the court when the case was going to be referred to the arbitration of his own brother. No such disclosure having been made by the plaintiff, he ought to be considered to be guilty of fraudulent misconduct under the said clause.

We also wish to observe that interference by a High Court under the provisions of section 115 of the Code of Civil Procedure is only discretionary and that such interference is, to a large extent, influenced

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by the justice of the case. In this case we are satisfied that the order passed by the learned Assistant Collector fully met the justice of the case, and that we would not be justified in interfering with that order in our revisional jurisdiction.

The application, therefore, fails and is rejected with costs.

Application rejected.

APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan and Mr. Justice
Mohammad Raza.*

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January, 11.

PARBHU (PLAINTIFF-APPELLANT) v. PUTTU AND OTHERS
(DEFENDANTS-RESPONDENTS).*

*Contract Act (IX of 72) section 16—Unconscionable bargains
—Undue influence—Inference as to influence exercised
being “undue”—Benefit received under the transaction
—Compensation, liability for.*

The plaintiff, who was an ignorant, illiterate poor young man of about 20 or 21 years in age, became entitled to a half share in the inheritance of his uncle amounting to Rs. 16,000 or more. The defendant taking advantage of his position offered their help to recover this inheritance for the plaintiff and got a sale-deed of a 10 annas share of his entire interest in the inheritance while he was not even aware of the extent of that inheritance. The defendants had started proceedings section 145 of the Code of Criminal Procedure to which the plaintiff and his vendees were parties. Those proceedings were terminated by a compromise and the plaintiff was held entitled to Rs. 4,000 in lieu of his share in the inheritance. The plaintiff then brought the present suit against the vendees.

Held, that in view of the provisions of section 16 of the Indian Contract Act the terms of the transactions being unconscionable and wholly on the side of the influencer it follows as a corollary that the influence exercised by the

* First Civil Appeal No. 74 of 1924, against the decree of Damodar Rao Kelkar, Additional Subordinate Judge of Sitapur, dated the 6th of August, 1924.