

REVISIONAL CIVIL.

Before Mr. Justice A. G. P. Pullan.

BUDH SEN AND OTHERS (DEFENDANTS-APPLICANTS).

NANAK CHAND AND ANOTHER (PLAINTIFFS-OPPOSITE PARTY).*

1930
September, 18.

Civil Procedure Code (Act V of 1908), schedule II, paragraph 5—Reference to arbitration—Arbitrator refusing to act—Court's power to act suo moto and supersede the arbitration.

Where a suit is referred to arbitration but the arbitrator refuses to act, the case falls under paragraph 5, clause (1)(a) of the second schedule of the Code of Civil Procedure and the court has no power to supersede the arbitration except on an application and after the opposite party has been given an opportunity of being heard. Accordingly when the arbitrator refuses to act an order of the court acting *suo moto* and superseding the arbitration is contrary to law and all the subsequent proceedings are void. *Sadiq Husain v. Nazir Begam* (1), relied on.

Mr. *Ram Bharose Lal*, for the applicants.

Mr. *Bishambhar Nath Khanna*, for the opposite party.

PULLAN, J. :—This is an application in revision of an order of the Judge of the Small Cause Court, Kheri. The suit was referred by the parties to arbitration by a certain arbitrator on the 27th of January, 1930. The court fixed the 19th of February, 1930, for the return of the arbitrator's award and the parties were directed to attend the court on that date. In the meantime the arbitrator refused to act and on the 19th of February, 1930, the date fixed for the receipt of the award, the court acting *suo moto* superseded the reference to arbitration and fixed the 24th of March for final disposal. On that date the defendants did not appear and the suit was decreed

*Section 25, Application No. 42 of 1930, against the order of Pandit Parduman Kishen Kaul, Subordinate Judge (as Judge, Small Cause Court) Kheri, dated the 24th of March, 1930.

1936

BUDH SEN
 v.
 NABAIN.
 CHAND.

Pullan, J.

ex parte on the evidence of the plaintiffs. This was a case which falls under paragraph 5, clause (1)(a) of the second schedule of the Code of Civil Procedure, that is to say, it was a case where the person appointed refused to accept the office of the arbitrator. In such a case any party may serve the other party with a written notice to appoint an arbitrator, and clause (2) of the same paragraph shows what the court may do. The court may, if no arbitrator is appointed within seven days after the notice has been served or such further time as the court may have granted on an application by the party who gave the notice and after giving the other party an opportunity of being heard, appoint an arbitrator or make an order superseding the arbitration. The paragraph gives the court no power to supersede the arbitration except on an application and after the opposite party has been given an opportunity of being heard. Paragraph 3, clause (2) of the same schedule enacts that where a matter is referred to arbitration the court shall not, save in the manner and to the extent provided in the schedule, deal with such matter in the same suit. It is only in paragraph 8 that the court can make an order superseding the arbitration *suo moto*, and that is in a special case where the arbitrators cannot complete the award within the date specified. In my opinion unless the case falls under paragraph 8 the court's powers are limited by paragraph 3 and paragraph 5 in the manner which I have indicated, and this view is in accordance with the principles laid down by their Lordships of the Judicial Committee in *Sadiq Husain v. Nazir Begam* (1). Their Lordships said: "Parties who agree to set up a tribunal of arbitration are not bound to submit the case referred to to another tribunal such as a District or other Judge." Once the case has been referred by the parties to arbitration it is removed from the jurisdiction of the court except where the second schedule of

(1) (1911) I.L.R., 33 All., 743 (752). (P.C.).

the Code of Civil Procedure brings that jurisdiction again into force. In this case it appears to me that nothing has occurred which enabled the court to act *suo moto* and supersede the arbitration. Accordingly the order of the court superseding the arbitration must be held to be contrary to law and all the subsequent proceedings are void. I need not consider the further objection raised in the grounds of revision. It is sufficient to say that I am satisfied that the defendants applicants have an answer which must be considered to be the case set up by the plaintiffs, and I cannot, therefore, dismiss this application on the ground that no substantial injustice has been inflicted on the parties. I am unable to say whether the decision was just or unjust, but as in my opinion the procedure was contrary to law I allow this application with costs, and set aside all the proceedings of the lower court commencing with the order superseding the arbitration passed on the 19th of February, 1930. The court will take up the case again from that point and dispose of it according to law.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice A. G. P. Pullan.

NIL KANTHA AND ANOTHER (DEFENDANTS-APPELLANTS) v.
SURAJ PRASAD (PLAINTIFF-RESPONDENT).*

Oudh Rent Act (XXII of 1886), sections 108, clause (16) and 129 and 132—“Arrears of revenue” in section 132, Oudh Rent Act, meaning of—Suit by pattidar for arrears of revenue under section 108, clause (16) against his co-sharer—Limitation, applicable to suit for arrears of revenue by one co-sharer against another co-sharer.

Held, that “arrear of revenue” in section 132 of the Oudh Rent Act means an arrear not from the point of view of the Government but from the point of view of the person who ought to have paid it.

* Second Rent Appeal No. 38 of 1930, against the decree of Pandit Raghubar Dayal, District Judge of Rae Bareilly, dated the 19th of May, 1930, confirming the decree of Pandit Mahabir Prasad Parasari, Assistant Collector, First Class of Rae Bareilly, dated the 26th of September, 1929.

1930

BUDH SEN
v.
NANAK
CHAND.

Pullan, J.