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302 of the Indian Penal Code. We accordingly sentence Ratan Chamar for an offence under section 302 of the Indian Penal Code to transportation for life.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

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January, 25.

BALDEO SAHAL AND ANOTHER (PLAINTIFFS-APPLICANTS)
v. ABDUR RAHIM AND ANOTHER (DEFENDANTS-OPPOSITE PARTY).*

Civil Procedure Code (Act V of 1908), schedule II, paragraphs 15 and 16 and section 115—Arbitration—Award—Reference to arbitration by court with consent of parties—Decree passed in terms of award—Objection that court's permission for reference to arbitration on behalf of a minor plaintiff was not obtained—Objection overruled—Decree, if subject to appeal or revision—Revision—High Court's power to interfere in revision.

The intention of paragraph 16 of the 2nd schedule of the Code of Civil Procedure (Act V of 1908) clearly is to give finality to a decree passed in accordance with the decision of the arbitrator. According to clause (c) of paragraph 15 even in the case of an invalid award, if the party concerned fails to impeach it before the court making the reference or if his objection on the ground of the invalidity of the award is disallowed and a decree is passed in accordance therewith, the award becomes final and the decree passed upon it is not open to appeal.

Where, therefore, after the framing of issues the plaintiff agreed for himself and guardian of his minor son to refer the case to arbitration and the court made an order of reference and after the filing of the award decided the suit in terms of it and an objection to the validity of the award on the ground that one of the plaintiffs was a minor and leave of the court had not been taken by the next friend for referring the suit to arbitration was dismissed, *held*, that the decree passed in terms of the award was final and was not open to appeal or revision. *Ghulam Jilani v. Muhammad Hussan.*

*Section 115 Application No. 68 of 1931, against the order of Babu Mahesh Prasad Asthana, Munsif Sadar, Sultanpur, dated the 24th of July, 1931.

(1), *Adams v. Great North of Scotland Railway Co.* (2), and *Balkishan v. Sohan Singh* (3), referred to and relied on. *Hardeo Sahai v. Gauri Shankar* (4), and *Lutawan v. Lachya* (5),[†] referred to.

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Interference with decisions of lower courts by the High Court in the exercise of revisional jurisdiction under section 115 of the Code of Civil Procedure is a matter of discretion, and even if a revision were competent the High Court should be loath to interfere with a decree of the lower court which is eminently just and where a party seeks to go behind it on the basis of a technical plea.

Messrs. *Radha Krishna* and *A. C. Mukerji*, for the applicants.

Mr. *Akhtar Husain*, for the opposite party.

RAZA and SRIVASTAVA, JJ. :—The plaintiff No. 1, Baldeo Sahai and his minor son, Ram Dularey, plaintiff No. 2, constituted a firm known as Baldeo Sahai Ram Dularey which carried on money lending and other business. The defendants were the partners of another firm called Abdur Rahim Muhammad Halim.

The plaintiffs instituted a suit in the Court of the Munsif of Sultanpur claiming Rs. 1,062 principal with interest on the basis of certain *hundis*. After the issues had been framed, the plaintiff No. 1, for himself and as guardian of his minor son plaintiff No. 2, and the defendants agreed to refer the case to the arbitration of a pleader. Accordingly the Munsif made an order of reference and on the 8th of July, 1931, the arbitrator filed an award recommending that the suit be dismissed. Thereupon the plaintiffs filed certain objections against the award, only one of which need be mentioned. It was to the effect that the award was invalid because the plaintiff No. 2, was a minor and no leave of the court was taken by his next friend for referring the suit to arbitration.

(1) (1901) L.R., 29 I.A., 51.

(2) (1890) A.C., 31.

(3) (1929) I.L.R., 10 Lah., 871.

(4) (1905) I.L.R., 28 All., 35.

(5) (1913) I.L.R., 36 All., 69.

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The learned Munsif relying on *Hardeo Sahai v. Gauri Shankar* (1) and *Lutawan v. Lachya* (2) held that Order XXXII, rule 7 of the Code of Civil Procedure did not apply to the case and no leave of the court was necessary. He also rejected the other objections and having accepted the award passed a decree in accordance therewith. This order of the learned Munsif forms the subject of the revision before us.

The only contention urged in support of the application was that the next friend not having obtained the leave of the court to enter into an agreement for reference to arbitration, the order of reference was invalid and the court below acted illegally in accepting the award and passing a decree in terms thereof.

The learned counsel for the defendants disputed the correctness of this contention and also objected *in limine* that the decree passed by the learned Munsif was final and not open to question in revision. We are of opinion that the objection raised on behalf of the defendant is correct and must succeed. Paragraph 16 of the second schedule of the Code of Civil Procedure (Act IX of 1908) which corresponds to section 522 of the old Code of Civil Procedure (Act XIV of 1882) provides as follows:—

(1) Where the court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the court has refused such application, the court shall after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

(1) (1905) I.L.R., 28 AL., 35.

(2) (1913) I.L. R., 36 AL., 69.

The decree in the present case is admittedly in accordance with the award and not in excess of it nor at variance with it. The intention of the provisions quoted above clearly is to give finality to a decree passed in accordance with the decision of the arbitrator. In *Ghulam Jilani v. Muhammad Hussan* (1) a reference was made to arbitration through court. The award made by the arbitrators was accepted by the Subordinate Judge who passed a decree in accordance therewith. On an appeal against the decree of the Subordinate Judge, one of the objections raised was that the award was bad having reference to section 462 of the Code of Civil Procedure (which corresponds to the present Order XXXII, rule 7) inasmuch as a minor defendant's guardian had agreed without leave of the court to refer the case to arbitration. A Full Bench of the Punjab Chief Court decided that the appeal did not lie but suggested that an application might be made in revision. Accordingly an application in revision was filed and a Division Bench of that court varied the decree in some respects. There was an appeal to their Lordships of the Judicial Committee against the decision of the Full Bench as well as against the decision of the Division Bench. Their Lordships discussed the scheme of the provisions contained in the Code of Civil Procedure (Act XIV of 1882) relating to arbitration and making reference to the provisions of section 522 which are substantially the same as those of paragraph 16 of Schedule II quoted above, observed as follows:—

“Those words appear to be perfectly clear. Their Lordships would be doing violence to the plain language and the obvious intention of the Code if they were to hold that an appeal lies from a decree pronounced under section 522 except in so far as the decree may be in excess of or not in accordance with the award. The principle of

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finality which finds expression in the Code is quite in accordance with the tendency of modern decisions in this country. The time has long gone by since the courts of this country showed any disposition to sit as a court of appeal on awards in respect of matters of fact or in respect of matters of law: see *Adams v. Great North of Scotland Railway Co.* (1).”

Referring to the application in revision which was heard by the Division Bench, they made the following remarks:—

“Their Lordships are inclined to agree with the view of CLARK, J., that in the case of an award a revision would be more objectionable than an appeal. If an application in revision were admissible in a case like the present, the finality of any award would be open to question. Their Lordships, however, are of opinion that such an application is incompetent.”

These remarks seem to us to be fully apposite to the present case. In fact it seems to us that, if anything, the remarks apply with greater force in view of the change made by the Legislature in paragraph 15 of the second schedule which corresponds to section 521 of the old Code. Before the enactment of the present Code of Civil Procedure, there existed a conflict in the decisions of the various High Courts in this country as to whether or not an appeal could lie from a decree passed in accordance with an award which was invalid and illegal. At the end of clause (c) of paragraph 15, the Legislature have now added the words “or being otherwise invalid,” which did not find place in the old section 521. The result of this amendment is that even in the case of an invalid award, if the party concerned fails to impeach it before the court making the reference or if his objection on the ground of the in-

validity of the award is disallowed and a decree is passed in accordance therewith, the award becomes final and the decree passed upon it is not open to appeal. Thus the amendment gives further effect to the principle of finality enunciated by their Lordships in the passage quoted above. We are supported in this opinion by a decision of the Lahore High Court in *Balkishan v. Sohan Singh* (1), in which a number of other decisions in support of the same view have been cited. It might be pointed out that one of the objections raised against the validity of the reference of the award in the case of *Ghulam Jilani v. Muhammad Hussan* (2) was identically the same as the one raised before us. If, as held by their Lordships of the Judicial Committee, revision in that case was incompetent, it would be much more so under the present Code in which the scope of paragraph 15 has been enlarged as pointed out above.

We should also add that interference with decisions of the lower court in the exercise of revisional jurisdiction under section 115 of the Code of Civil Procedure is a matter of discretion. Even if the revision were competent we would be loath to interfere with the decree of the lower court which is eminently just. As stated before the plaintiff No. 1 made the reference, took his chance before the arbitrator and now that the award has gone against him, seeks to go behind it under the cover of his minor son on the basis of a technical plea.

The application must therefore fail and is dismissed with costs.

Application dismissed.

(1) (1929) I.L.R., 10 Lah., 871.

(2) (1901) L.R., 29 I.A., 51.

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