

## REVISIONAL CIVIL.

*Before Mr. Justice Bisheshwar Nath Srivastava.*

1931  
April, 23.

BADRI NATH (PLAINTIFF-APPLICANT) v. RAM PADARATH  
(DEFENDANT-OPPOSITE PARTY).\*

*Civil Procedure Code (Act V of 1908), section 104 (1) (f) and schedule II, rule 21—Arbitration without intervention of court—Application to have the award filed and made a rule of court—Order directing award to be filed, if appealable.*

*Held*, that section 104 (1) (f) allows an appeal from an order filing or refusing to file an award without the intervention of the court. Rule 21 of schedule II of the Code of Civil Procedure shows that when an application is made to file an award made in a private arbitration carried out without the intervention of the court, the law contemplates two distinct steps, one being an order filing or refusing to file the award and the other a judgment followed by a decree according to the award, in cases in which the award is ordered to be filed. The law allows one appeal against orders filing or refusing to file the award but no further appeal against the order passed by the appellate court. An appeal is also allowed against the decree but the scope of such appeals is limited to the ground either of the decree being in excess of or not in accordance with the award. The fact that as a result of the court's order directing the award to be filed a decree has subsequently been passed in accordance with the award, does not take away the right of appeal against the order directing the award to be filed, given by section 104 (1) (f) of the Code of Civil Procedure.

Where, therefore, an application is made to have an award filed and made a rule of court and the court disallowed the objections raised against the award and made an order under schedule II, rule 21 of the Code of Civil Procedure directing the award to be filed and pronounced judgment according to the award, *held*, that the order directing the award to be filed was appealable.

Mr. Ghulam Imam, for the applicant.

Mr. M. Ayub, for the opposite party.

\* Section 115 Application No. 23 of 1931, against the order of M. Mahmud Hasan Khan, Subordinate Judge of Gonda, dated the 22nd of December, 1930, reversing the decree of Pandit Girja Shankar Misra, Munsif, [Paraganj], Gonda, dated the 22nd of July, 1930.

**SRIVASTAVA, J.** :—The parties to this application entered into an agreement for reference of their disputes with regard to certain movable and immovable properties, to arbitration by five persons. An award, exhibit 1, purporting to be made and signed by only four out of the five arbitrators and dated the 13th of August, 1929 was presented for registration on the 16th and registered the same day. An application was made to have the award made a rule of court. Various objections were raised against the application. In the course of the inquiry relating to this application another award, exhibit 3, was produced purporting to be signed by all the five arbitrators and bearing the date 10th August, 1929. The learned Munsif of Tarabganj disallowed the objections raised against the award and made an order under rule XXI of schedule II of the Code of Civil Procedure directing the award to be filed and pronounced judgment according to the award. The judgment was followed by a decree in terms of the award. The defendant appealed against the order of the Munsif to the court of the Subordinate Judge. The learned Subordinate Judge was of opinion that the award, exhibit 3, was a subsequent concoction and that the real and genuine award was the one, dated the 13th of August, which was presented for registration on 16th August. He further held that this award, as it had not been made by all the arbitrators, was a nullity. He accordingly allowed the appeal and set aside the order of the lower court. This order of the learned Subordinate Judge forms the subject of revision before me.

1931

BADRI NATH  
v.  
RAM  
PADARATH.

The only contention urged on behalf of the applicant is that under rule XXI, schedule II of the Code of Civil Procedure, no appeal lies from the decree except in so far as it is in excess of or not in accordance with the award and therefore the appeal before the learned Subordinate Judge was not

1931

BADRI NATH

v.

RAM

FADAKAR II.

Srivastava,

J

maintainable. In my opinion this contention has no substance. The memorandum of appeal distinctly says that it was a miscellaneous appeal under section 104 of the Code of Civil Procedure. Section 104 (1) (f) allows an appeal from an order filing or refusing to file an award in an arbitration without the intervention of the court. The bare reading of rule XXI of schedule II of the Code of Civil Procedure will show that when an application is made to file an award made in a private arbitration carried out without the intervention of the court, the law contemplates two distinct steps, one being an order filing or refusing to file the award and the other a judgment followed by a decree according to the award, in cases in which the award is ordered to be filed. The law allows one appeal against orders filing or refusing to file the award but no further appeal against the order passed by the appellate court. An appeal is also allowed against the decree but the scope of such appeals is limited to the ground either of the decree being in excess of or not in accordance with the award. The fact that as a result of the court's order directing the award to be filed a decree has subsequently been passed in accordance with the award, does not take away the right of appeal against the order directing the award to be filed, given by section 104 (1)(f) of the Code of Civil Procedure. I am satisfied that the appeal made to the learned Subordinate Judge was an appeal against the order directing the award to be filed and not against the decree. I must therefore overrule the contention.

The application fails and is dismissed with costs.

*Application dismissed.*