

1934

ASA RAM
v.
MUSAMMAT
GENDA

Srivastava,
A. C. J. and
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supported by evidence. We, therefore, see no ground to go against it in revision.

The result, therefore, is that we allow the application with costs, set aside the order of the lower court and grant the application for permission to sue as a pauper. The application shall now be numbered and registered as a suit.

Application allowed.

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Acting Chief Judge and Mr. Justice G. H. Thomas

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MESSRS. RAM CHANDRA AND BROTHERS, THROUGH MR. RAM CHANDRA (APPLICANT) v. THE CONTINENTAL STORES AND AGENCY CO., LTD. (OPPOSITE-PARTY)*

Arbitration Act (IX of 1899), section 8(2) and 6 and schedule I—Intention of parties that submission should be to more than one arbitrator—First provision of schedule I does not apply—Court cannot appoint an arbitrator under section 8(2).

Where the intention of the parties is that the submission should be to more than one arbitrator and not to a single arbitrator the first provision of the first schedule of the Arbitration Act has no application and the court has no jurisdiction to appoint an arbitrator under section 8, clause 2 of the Act.

Mr. S. N. Roy, for the applicant.

Mr. Anant Prasad Nigam, for the opposite party.

SRIVASTAVA, A. C. J., and THOMAS, J.:—This is an application for revision of an order dated the 15th of March, 1932, of the learned District Judge of Unao dismissing the applicants' application for appointment of an arbitrator under section 8 clause (2) of the Indian Arbitration Act (IX of 1899).

The facts of the case are that in July, 1930, the parties entered into an agreement whereby the applicants were appointed as the sole selling agents for cigarettes manufactured by the opposite party for a period of three

*Section 115 Application No. 97 of 1932, against the order of Mr. H. Collister, I.C.S., District Judge of Lucknow, dated the 15th of March, 1932.

years within certain districts specified in the agreement. The opposite party terminated the agency in October, 1930. The applicants' complaint is that the agency has been terminated without any justification and that the applicants are entitled to recover from the opposite party damages suffered by them on that account.

On 30th June, 1931, the applicants served the opposite party with a notice to agree to refer the matter in dispute between the parties to arbitration. The opposite party made no reply to this notice. Thereupon the applicants made an application to the District Judge of Lucknow requesting him to appoint an arbitrator in accordance with the provision of section 8 clause (2) of the Arbitration Act. The learned District Judge held that the provision relating to reference to arbitration contained in paragraph 18 of the agreement which was executed between the parties on 1st August, 1930 was uncertain and ambiguous. He accordingly dismissed the application.

Section 8 of the Arbitration Act (IX of 1899) deals with cases of appointment of a single arbitrator or of an umpire or third arbitrator. It is agreed by the learned Counsel for the applicants that the present case is not one of the appointment of an umpire or third arbitrator. We are therefore confined to the consideration of the question whether the agreement in question is one providing for reference to a single arbitrator. We think that the use of the word "arbitrators" in the plural in paragraph 18 of the agreement leaves no doubt that the case is not one of a submission which provides that the reference shall be to a single arbitrator. It has however been argued that the case is governed by the first provision contained in the first schedule of the Act. It is provided therein that if no other mode of reference is provided the reference shall be to a single arbitrator. The argument overlooks the provision of section 6 of the Act which provides that a submission shall be deemed to include the provisions set forth in the first schedule

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“unless a different intention is expressed therein”. The use of the word “arbitrators” in plural in paragraph 18 of the agreement shows very clearly that the intention of the parties was that the submission should be to more than one arbitrator and not to a single arbitrator. In this view of the matter the above mentioned provision of the first schedule has no application to the case and the learned District Judge had no jurisdiction to appoint an arbitrator under section 8 clause (2) of the Arbitration Act.

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We are therefore of opinion, though for reasons somewhat different from those given by the learned District Judge, that his order dismissing the application was correct. The application therefore fails and is dismissed with costs.

Application dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Acting Chief Judge and Mr. Justice G. H. Thomas

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MUSAMMAT RANI KUAR (DEFENDANT-APPELLANT) v. AJODHIA AND 2 OTHERS, PLAINTIFFS, AND OTHERS, DEFENDANTS (RESPONDENTS)*

Civil Procedure Code (Act V of 1908), order VI, rule 17—Case should be decided on facts as they stand on the date of institution of suit—Amendment of pleadings—New cause of action arising out of facts subsequently coming into existence—Amendment introducing new cause of action should be allowed only if no injustice done to opposite party.

A Court may take into consideration facts which come in existence during the pendency of the litigation in order to prevent multiplicity of suits, but according to the general rule the decision of a case ought to be based upon the state of facts as they existed at the time of institution of the suit and the plaintiff, if he seeks to introduce a new cause of action, must do so by means of an amendment of the pleadings in which case the

*Second Civil Appeal No. 203 of 1932, against the decree of Pandit Bishambhar Nath Misra, District Judge of Unao, dated the 2nd of May, 1932, upholding the decree of Pandit Krishna Nand Pandey, Additional Subordinate Judge of Unao, dated the 16th of January, 1931.