

he ever saw them in any compromising position. Admittedly there is no sitting room in the house and they could therefore sit only either in the bed-room or in the dining room. It is also admitted that Miss Ross and Lona used to be present at the time of these visits, but it is said that Miss Ross used to be sent out to the verandah to watch the tailor's work and Lona to the ante-room with the little baby. In the circumstances although it is not impossible that an act of adultery might have taken place at some of these visits yet I think that in view of the lack of privacy in the room and the presence of other inmates in the house the learned Sessions Judge was fully justified in giving the accused the benefit of doubt. I cannot therefore see my way to disagree with the finding of the learned Sessions Judge on this point.

The result therefore is that I allow the appeal, set aside the conviction and sentence of the accused under section 497 of the Indian Penal Code and direct that the bail bond of the appellant, who is on bail, be discharged.

Appeal allowed.

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice Ziaul Hasan*

JAGMOHAN (DEFENDANT-APPLICANT) *v.* SURAJ NARAIN
(PLAINTIFF OPPOSITE-PARTY)*

1935
August, 22

Civil Procedure Code (Act V of 1908), Schedule II, paragraph 1—Agreement to refer to arbitration recorded in Court proceedings and signed by parties, validity of—Arbitration—Award based on such reference, whether valid and binding.

The record of an agreement to refer to arbitration in the Court's proceedings and bearing the signature of the parties constitutes sufficient compliance with the requirements of paragraph 1 of the Second Schedule of the Code of Civil Procedure and the award given on such reference is valid and binding.

*Section 113, Application No. 17 of 1934, against the order of Babu Kali Charan Agarwal, Munsif of Partabgarh, dated the 21st of December, 1933.

1935
W. J.
PHILLIPS
v.
KING-
EMPEROR

*Srivastava,
J.*

1935

JAGMOHAN

v.
SURAJ
NARAIN

Gudipoodi Subbayya v. Kotapalli Seshayya (1), and *Wali Ullah v. Bhaggan* (2), referred to.

Mr. B. K. Dhaon, for the applicant.

Mr. H. D. Chandra, for the opposite party.

SRIVASTAVA and ZIAUL HASAN, JJ.:—This is an application in revision against a decree passed by the Munsif of Partabgarh in accordance with an arbitrator's award.

The contention urged in support of the application is that there was no proper reference to arbitration inasmuch as no written application was made as required by paragraph 1 of the Second Schedule of the Code of Civil Procedure and further because the matters in difference which the arbitrator was required to determine were not clearly set forth. We are of opinion that the contention has no substance. It appears that after issues had been framed in the case the parties and their pleaders agreed that the matters in dispute between them be referred to arbitration, and one Pandit Ganesh Prasad Advocate be appointed arbitrator. The Munsif made a record of this agreement in his proceedings of the 23rd of October, 1933, which were signed by both the parties and their respective pleaders. It may be noted that when the arbitrator started his proceedings no objection was raised on behalf of the applicant about the arbitrator having no jurisdiction to proceed with the matter. The applicant took his chance before the arbitrator, and the award having gone against him, has now raised this objection in this Court. It is therefore obvious that the objection has no merit. Paragraph 1 of the Second Schedule no doubt lays down that every application for reference shall be in writing. But it was held in *Gudipoodi Subbayya v. Kotapalli Seshayya* (1) that the provision of this paragraph that the application shall be in writing is directory only and not mandatory. One of the learned Judges of the late Court of the Judicial Commissioner of Oudh in *Wali Ullah v. Bhaggan* (2) also

(1) (1928) A.I.R., Mad., 43.

(2) (1924) 28 O.C., 74.

held that where without making a written application the Court at the request of the parties referred the matter in dispute between them to an arbitration and both parties appeared and conducted their case before the arbitrator, in such a case a written reference was not necessary, and the award could not be set aside on this ground. We are of opinion that the record of the agreement to refer to arbitration in the Court's proceedings and bearing the signature of the parties constitutes sufficient compliance with the requirements of paragraph 1 of the Second Schedule of the Code of Civil Procedure.

As regards the other objection about the reference being vague, the proceedings of the Munsif show that the parties had agreed that the arbitrator should "decide matters in dispute between the parties as set out in the pleadings". We think that this is sufficiently definite as regards the points of difference between the parties. We are therefore of opinion that the objections raised by the applicant have no force and must fail.

The other objections raised in the application, relating to the misconduct of the arbitrator, have rightly not been pressed. The application therefore fails and is dismissed with costs.

Application dismissed.

MISCELLANEOUS CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice Ziaul Hasan*

ASGHAR HUSAIN (APPLICANT) *v.* HAR PRASAD SAND,
ADVOCATE (OPPOSITE-PARTY)*

1935
August, 22

Oudh Civil Rules, rule 287—Pleader subsequently enrolled as Advocate under Bar Councils Act—Rule 287 of Oudh Civil Rules ceases to apply to him.

A pleader who is subsequently enrolled as an Advocate ceases to be a pleader and rule 287 of the Oudh Civil Rules has no

*Civil Miscellaneous Application No. 428. of 1935, for taking action under section 10 clause (2) of the Bar Councils Act.

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JAGMOHAN
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*Srivastava
and Ziaul
Hasan, JJ.*