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which we have taken of the question of limitation it is unnecessary for us to commit ourselves definitely in the present case to the proposition that section 151 has no application to such cases. We accordingly agree with the lower court's opinion that the appellant's application was barred by limitation and dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice H. G. Smith

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May, 8

LALA GIRDHARI LAL (PLAINTIFF-APPELLANT) v. LALA GOBARDHAN DASS (DEFENDANT-RESPONDENT)*

Civil Procedure Code (Act V of 1908), Schedule II, paragraph 17(4)—“Sufficient cause”, meaning of—Agreement to refer to arbitration—Circumstances show that arbitrators cannot command confidence of one party—Party, if should be compelled to submit to their arbitration.

The words “sufficient cause” occurring in paragraph 17(4) of the Second Schedule of the Code of Civil Procedure cover all the grounds of justice, equity and good conscience on which a court thinks an agreement should not be ordered to be filed and are not to be confined to grounds such as are mentioned in paragraph 14 of the same schedule.

Where the circumstances of the case show that even if the arbitrators mentioned in the agreement to refer to arbitration be not partial to the plaintiff, they cannot command the confidence of the defendant, it would be wholly inequitable to compel the defendant to submit himself to their arbitration. *Makhan Lal Lachmi Narain v. Abhai Ram Chuni Lal (1)*, and *Ghulam Mohamed Khan v. Gopaldas Lalsingh (2)*, referred to.

Messrs. *K. N. Katju, Bhagwati Nath Srivastava* and *Nazir Uddin*, for the appellant.

*Miscellaneous Appeal No. 64 of 1935, against the decree of Babu Sheo Gopal Mathur, 1st Additional Judge, Small Cause Court, Lucknow, acting as Civil Judge of Lucknow, dated the 3rd of October, 1935.

(1) (1935) A.L.J., 998.

(2) (1932) 143 I.C., 635.

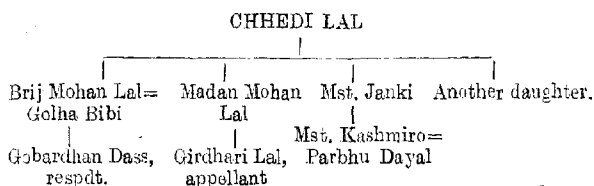
Messrs. *M. Wasim* and *Karta Krishna*, for the respondent.

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ZIAUL HASAN and SMITH, JJ.:—This is an appeal against an order of the 1st Additional Judge, Small Cause Court, Lucknow, exercising the powers of a Civil Judge, dismissing the appellant's application under paragraph 17 of the second schedule to the Code of Civil Procedure.

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The following pedigree will elucidate the facts of the case—



It appears that Gobardhan Das, respondent, was $2\frac{1}{2}$ years of age when his father, Brij Mohan Lal, died, and his mother, Golha Bibi, was appointed guardian of his person, and Girdhari Lal, his cousin, was appointed guardian of his property, by the District Court's order dated the 12th of February, 1913. Golha Bibi died in August, 1914, but Girdhari Lal continued to manage the minor's property. Gobardhan Das came of age on the 8th of July, 1931.

The appellant's case in his application under paragraph 17, schedule II of the Code of Civil Procedure was that on the 27th of March, 1932, both the defendant and he agreed to refer the disputes between them to the arbitration of three persons, namely, Parbhu Dayal (husband of Musammam Kashmiro), Basant Lal, *alias* Panna Lal, and Lachhman Das, that the arbitrators started proceedings on that very day but that the defendant subsequently resiled from the reference, and ceased to attend the sittings of the *panches*, though notices were issued to him by the arbitrators several times. The record of the arbitrators' proceedings was called for by the Civil Judge on an application under

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section 41 of the Guardian and Wards Act having been filed by the defendant, Gobardhan Das. Subsequently a regular suit for accounts was filed by the defendant against the plaintiff-appellant.

The appellant contended that the agreement for reference to arbitration was voluntarily executed by both the parties, and was binding on them. He therefore prayed that the agreement, which was said to be contained in a document (exhibit 1), in which the arbitrators commenced recording their proceedings, be filed in court, and the arbitrators ordered to deliver their award.

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The respondent denied that he ever agreed to refer the dispute to arbitration, and also raised various technical pleas with regard to exhibit 1. He further pleaded that fraud and undue influence were brought to bear on him by the plaintiff, and that the alleged agreement should not be ordered to be filed.

The learned Civil Judge decided the issue of fraud and undue influence against the defendant, but held that the alleged agreement was not a valid agreement under paragraph 17 of the second schedule of the Code of Civil Procedure, and that it was vague and indefinite. As a result of his findings he refused to order the agreement to be filed, and dismissed the plaintiff's application.

The learned counsel for the parties have addressed lengthy arguments to us on the questions whether the agreement in question comes within the purview of paragraph 17, schedule II of the Code of Civil Procedure, and whether it is vague and indefinite or clear and fit to be acted upon. We do not propose to deal with these points, though we do not agree with much of what the Civil Judge has written about them, as in the present case it appears to us that there is sufficient cause, within the meaning of paragraph 17(4) of the second schedule of the Code of Civil Procedure, why

the alleged agreement should not be filed. That sub-paragraph runs as follows:

“Where no sufficient cause (why the agreement should not be filed) is shown, the court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the court may appoint an arbitrator.”

Sub-paragraphs 3 and 4 clearly show that the court has discretion to order the agreement to be filed or not as the circumstances may require. The learned counsel for the appellant contended that “sufficient cause within the meaning of sub-paragraph 4, means grounds such as are mentioned in paragraph 14, namely, the award having left undetermined any of the matters referred to arbitration, or determining any matter not so referred, the award being indefinite and incapable of execution, and there being an objection to the legality of the award apparent on the face of it. We see no reason whatever to put such a restricted meaning on the words “sufficient cause” occurring in sub-paragraph 4, and we are of opinion that these words cover all the grounds of justice, equity and good conscience on which a court thinks an agreement should not be ordered to be filed. In *Makhan Lal Lachmi Narain v. Abhai Ram Chunni Lal* (1) it was held that the court can order an agreement to refer to arbitration to be filed under paragraph 17(4), schedule II of the Code of Civil Procedure only where no sufficient cause is shown to the contrary, and in *Ghulam Mohammed Khan v. Gopaldas Lalsingh* (2) the Court of the Judicial Commissioner of Sind held that the words “sufficient cause” are not to be confined within the narrow compass of fraud, coercion and undue influence, and that there are other causes besides these which may be sufficient for the reversal of an order under schedule II, paragraph 17 of the Code of Civil Procedure.

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Now, in the present case, it has been proved that all the three arbitrators are connected with the appellant in one way or other. Lachhman Das is a person to whose nephew the plaintiff's daughter was betrothed, and we understand, has been married by this time. Moreover, Lachhman Das, as P. W. 3, admits that the plaintiff and the three arbitrators, including himself, are trustees of a trust called the Mulchand Trust. So far as Panna Lal, arbitrator, is concerned, the evidence of P. W. 4, Kirpa Ram, shows that he too is a friend of Girdhari Lal with whom he sits almost every day for "chit chat". Babu Parbhu Dayal who is an advocate, is no doubt related to both the parties, but he seems to be a most unfit person to act as an arbitrator between the parties. He is under an obligation to the plaintiff, as it was in the plaintiff's house that he had his office for several years in the beginning of his legal practice, and as he is proved to have clearly admitted before respectable witnesses that he holds the plaintiff in awe. The defendant's witness Radhe Shiam has stated how on one occasion Babu Parbhu Dayal, upon being asked by Babu Makund Behari Lal, an advocate of this Court, to settle the disputes between the present parties, replied that he did not want to interfere as it was possible that if he should decide the dispute against L. Girdhari Lal, he might cause injury to him. This evidence is corroborated by that of Babu Makund Behari Lal, advocate, who is also a witness for the defendant, and says that on the occasion referred to by Radhe Shiam witness, his own impression of the talk he had with Babu Parbhu Dayal was that he (Babu Parbhu Dayal) felt somewhat awkward in intervening in Lala Girdhari Lal's affairs, and that Babu Parbhu Dayal was under some obligation to Lala Girdhari Lal.

It may also be noted that the evidence of Radhe Shiam, D. W. 1, further shows that when the plaintiff asked him to settle the dispute between him and Gobardhan Das with the help of one or two persons of the

community, the plaintiff himself suggested the name of Babu Parbhu Dayal as the person whose help might be taken by the witness in the matter. Further, the evidence on oath of the defendant shows that Babu Parbhu Dayal asked him to accept a sum of Rs.11,000 in full settlement of his claims against Girdhari Lal, and also told him that he could not afford to fight with Girdhari Lal.

All the above circumstances show that even if the arbitrators mentioned in exhibit I be not partial to the plaintiff, they cannot command the confidence of the defendant, and it would in our opinion be wholly inequitable to compel the defendant to submit himself to their arbitration.—

We therefore agree with the learned Civil Judge in holding that the agreement in question should not be ordered to be filed, and we accordingly dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

QAZI NIZAMUDDIN AHMAD (PLAINTIFF-APPELLANT) *v.*
ZAKI HASAN AND OTHERS (DEFENDANTS-RESPONDENTS)*

1937
May, 8

Oudh Sub-Settlement Act (XXVI of 1866), section 1 and schedule, rule 7(3)—Rules contained in the schedule, whether have force of law—Malikana payable by under-proprietors—United Provinces Local Rates Act (I of 1914), section 8(1)(a)—United Provinces Local and Rural Police Rates Act (II of 1906), section 14—Under-proprietors' liability to pay rural police rates.

By section 1 of the Oudh Sub-Settlement Act of 1866 the rules contained in the schedule attached to that Act have the

*Second Rent Appeal No. 10 of 1935, against the decree of R. F. S. Baylis, Esq., I.C.S., District Judge of Bara Banki, dated the 22nd December, 1934, modifying the decree of Shankar Prasad, Esq., I.C.S., Sub-Divisional Officer of Nawabganj at Bara Banki, dated the 27th of November, 1933.

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