

REVISIONAL CIVIL.1919
May 2.*Before Mr. Justice Broadway.***MUSSAMMAT KHODEJA AND FAZL KARIM**
(PLAINTIFFS)—*Petitioners,**versus***GHULAM NABI (DEFENDANT) — Respondent.**

Civil Revision No. 93 of 1919.

*Civil Procedure Code, Act V of 1908, schedule II, paragraph 20—
whether applicable where the award has been lost.*

Held, that when an award has been reduced to writing and has been lost, the special procedure provided by paragraph 20 of Schedule II of the Code of Civil Procedure cannot be resorted to and the parties should be referred to a regular suit.

Gopi Beddi v. Mahanandi Reddi (1) and *Gowardhan Das v. Kesho Ram* (2), referred to. *Hill v. Townsend* (3) and *Banerji's Law of Arbitration*, page 370 distinguished.

Revision from the order of Rai Sahib Lala Diwan Chand, District Judge, Jhelum, dated the 2nd December 1918.

JAI GOPAL Sethi, for Petitioners.

SHEO NARAIN, for Respondent.

The judgment of the learned Judge was as follows :—

BROADWAY, J.—The facts of the case giving rise to this petition for revision are briefly as follows :—On the 24th of March 1917, *Mussammat Nur Bhari* sold certain property to Ghulam Nabi for Rs. 1,500. Plaintiffs, *Mussammat Khodeja* and *Fazl Karim*, were desirous of bringing a suit for pre-emption. It appears, however, that the brotherhood intervened and it was decided that the matter should be referred to arbitration rather than be taken into Court.

(1) (1889) *J. L. R.* 12 *Mad.* 331.(2) 65 *P. R.* 1913.(3) (1810) 12 *R. R.* 595.

1919

MUSSAMMAT
KHODEJA

v.

GHULAM NABI.

Accordingly, on the 18th March 1918, an agreement was drawn up referring the matter to the arbitration of four persons, an umpire (Mohkam Din) being appointed. An award was duly drawn up and signed by the arbitrators as well as most of the parties on the 20th of March 1918. As, however, Ghulam Nabi appeared to be unwilling to act in accordance with the award, the plaintiffs filed an application under paragraph 20 of the second Schedule Civil Procedure Code, asking for an order directing the filing of the award in Court and the passing of a decree in accordance therewith. The matter was duly taken up when various objections were taken. The only one which requires determination here was that the original award not being forthcoming, no award could be filed and no secondary evidence of its contents could be given. This contention was upheld by the first Court and, on appeal, by the learned District Judge. The plaintiffs have therefore moved this Court on the revision side through Mr. Jai Gopal Sethi, and I have heard Mr. Sheo Narain for the respondent.

Whether the original award has been lost or is being deliberately withheld by some interested party is immaterial. The fact remains that no award has been filed in Court. Mr. Sethi contended that secondary evidence of the award was permissible and in support he referred me to Banerji's Law of Arbitration, page 370, and to the case of *Hill versus Townsend* referred to therein. Mr. Banerji, on the authority of *Hill versus Townsend* points out that in England, in the case of a lost award, the Court would permit judgment to be entered upon an affidavit of its contents. *Hill versus Townsend* (1) does not appear to support that assertion, for there the original draft of the award was annexed to the affidavit and the rule *nisi* was made absolute, no cause being shown. On the other hand, Mr. Sheo Narain has referred me to a number of rulings chiefly relating to the question whether when a document has been drawn up and not duly stamped, the penalty could be levied on a copy thereof. *Gopi Reddi v. Mahanandi Reddi* (2) however is a case which is directly in point. It was there held that when an award had been lost a Court acting under

(1) (1940) 12 B. R. 595.

(2) (1889) I. L. R. 12 Mad. 331.

section 255, Civil Procedure Code, 1882 (corresponding to paragraph 20 of the second Schedule of the present Act), cannot take secondary evidence of its provisions. It was held that as the award could not be produced and therefore could not be filed the persons seeking to have it filed must be referred to a regular suit to enforce the terms of the award. Mr. Sethi was unable to distinguish this decision, merely contenting himself by saying that he had been unable to discover that this decision had ever been subsequently considered. In this, however, he appears to be wrong in as much as this case was referred to in *Gowardhan Das v. Kesho Ram* (1) and there distinguished without however, in any way, being disapproved. Following this decision I hold that when an award has been reduced to writing, as in this case and has been lost, the special procedure provided by paragraph 20 of Schedule II, Civil Procedure Code, cannot be resorted to and that the parties should be referred to a regular suit to enforce the terms of the award.

I accordingly dismiss this petition with costs.

Revision dismissed.

(1) 66 P. R. 1913.

1919

MUSSAMMAT
KHODEJA
v.
GHULAM NABI.