

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Eforde.

ANANT RAM-MANGAT RAI (DEFENDANTS)

Appellants

versus

GURDITTA MAL-RAM PARTAP (PLAINTIFFS)

Respondents.

1926

Feb. 24.

Civil Appeal No. 260 of 1922

Civil Procedure Code, Act V of 1908, section 104 (1) (c) and Schedule II, para. 14—Appeal from an order modifying an award—Power of Court to remit the award to make it clear and of arbitrators to make the necessary amendment.

The defendant-appellant and plaintiff-respondent having brought cross suits against each other for amounts due on foot of certain dealings, submitted the suits for arbitration to two arbitrators who, in their original award, decided that the plaintiff should be given a decree for Rs. 1,924-5-0, with proportionate costs, and the defendant's suit should be dismissed with costs. One of the arbitrators who had charge of the award, before filing it in Court, interpolated the words that the rest of plaintiff's claim should be dismissed with costs. The Court finding the award vague and indefinite in regard to the costs remitted it to the arbitrators to make this clear. The arbitrators then amended their award and left each party to pay his own costs in the plaintiff's suit. The Court, however, came to the decision that the interpolation and subsequent amendment of the award were incompetent and passed a decree in accordance with the award as it stood originally.

Held, that under section 104 (1) (c) of the Code of Civil Procedure the order of the lower Court modifying and correcting the final award was open to appeal.

Held also, that the lower Court had power under Schedule II, para. 14, to remit the award and the arbitrators were empowered in compliance with the order of the Court to make the alteration as to costs which they actually made. The amended award thus become *the* award in the case and a decree should have been passed in accordance therewith.

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RAM PARTAP.

First appeal from the decree of Lala Devi Dayal Dhawan, Senior Subordinate Judge, Ludhiana, dated the 10th August 1921, directing the defendants to pay to the plaintiffs the sum of Rs. 1,924-5-0, etc.

MANOHAR LAL, for Appellants.

KANSHI RAM AND NAWAL KISHORE, for Respondents.

JUDGMENT.

BROADWAY J.

BROADWAY J.—The firm of Gurditta Mal-Ram Partap instituted a suit against the firm of Anant Ram-Mangat Rai for the recovery of Rs. 10,000, due on account of certain dealings. Anant Ram-Mangat Rai contested the suit and instituted a separate suit against Gurditta Mal-Ram Partap claiming a sum of Rs. 812-2-0 as due to them on account of the same dealings. The two suits were tried by the Senior Subordinate Judge and were referred to arbitration at the instance of the parties, the arbitrators being *Lala Puran Chand*, Pleader, and *Lala Kahan Chand*, shop-keeper, both of Ludhiana. These two persons made an award on the 23rd of June 1921. It appears that this award when signed by the arbitrators gave Gurditta Mal-Ram Partap a decree for Rs. 1,924-5-0 with proportionate costs and dismissed the suit of Anant Ram-Mangat Rai with costs.

The award had been signed in the Bar Room and was taken across to Court, for the purpose of being filed, by *Lala Puran Chand*. While *Lala Puran Chand* was taking it across he interpolated a sentence to the effect that the rest of the claim of Gurditta Mal-Ram Partap should be dismissed with costs. This sentence formed a part of the award when it was filed in Court. The learned Senior Subordinate Judge found that the decision of the arbitrators relating to costs in the suit in which Gurditta Mal-Ram Partap

were plaintiffs was vague and indefinite and, acting under paragraph 14 of the second schedule to the Civil Procedure Code, remitted the award to the arbitrators in order that the question of costs might be made clear. The arbitrators thereupon at once made corrections in the award by which the parties were left to pay their own costs in the suit. This revised award was then filed. Objections were taken to it by both sides, alleging misconduct on the part of the arbitrators and, so far as Gurditta Mal-Ram Partap were concerned, objecting to the manner in which the arbitrators had altered the first award on the question of costs. The learned Senior Subordinate Judge dismissed the objections of the parties and held that *Lala Puran Chand's* interpolation before filing the first award was *ultra vires* and that the arbitrators had no authority to alter their award on the matter of costs. He accordingly ignored both the interpolation and corrections in the revised award and granted Gurditta Mal-Ram Partap a decree for Rs. 1,924-5-0 with proportionate costs. The suit brought by Anant Ram-Mangat Rai was dismissed with costs. Decrees were drawn up in each of the suits in accordance with the award as originally signed by the arbitrators.

Anant Ram-Mangat Rai have appealed to this Court through Mr. Manohar Lal, the claim in appeal being to set aside the order and decree of the Lower Court and to dismiss the plaintiff's suit with costs. Mr. Kanshi Ram on behalf of the respondents raised the preliminary objection that the appeal was improperly stamped as it only bore a ten rupees court-fee on it. Mr. Manohar Lal urged that his appeal fell within the purview of section 104 (1) (c) of the Civil Procedure Code and urged that he did not wish to be relieved from the payment of Rs. 1,924-5-0 but only

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sought relief against the payment of costs amounting to Rs. 491. He expressed his willingness to make good the court-fees on that amount. After hearing arguments Mr. Manohar Lal was ordered to make good the court-fees on the sum of Rs. 491 within a fortnight from the date of hearing. This order was passed under section 149 of the Civil Procedure Code and the appeal was therefore heard on the merits.

It appears that neither party took exception to the interpolation made in the original award by *Lala Puran Chand*. This has been taken exception to by the learned Senior Subordinate Judge alone. When the award was filed this interpolation was present in it and as a result the decision of the arbitrators on the question of costs was not clear. The learned Senior Subordinate Judge was therefore empowered by paragraph 14 of the second schedule to the Civil Procedure Code to remit the award to the arbitrators in order to have the ambiguity removed. The arbitrators complied with the order of the Court and were, in my opinion, empowered to make the alteration they actually did make. The final award therefore was the award as revised by the arbitrators and it was this revised award which should have been acted upon by the learned Senior Subordinate Judge and should have formed the basis of the judgment which he should have pronounced and the decree which should have followed the judgment so pronounced. Instead of acting on this revised award the learned Senior Subordinate Judge corrected or modified it by ignoring the alterations as well as the interpolation and acting on the award as it read at the time when it was signed by the arbitrators. In these circumstances it seems to me clear that an appeal under section 104 (1) (c) was competent and further that it must succeed. The

learned Senior Subordinate Judge acted within his jurisdiction in remitting the award as he did under paragraph 14. When the award was so remitted the arbitrators had authority to make the alterations they did.

I quite agree with the view expressed by the learned Senior Subordinate Judge that an award once signed becomes final and cannot be subsequently altered. When, however, the Court acts under paragraph 14 of the second schedule to the Civil Procedure Code and remits the award to the arbitrators for reconsideration on any point the arbitrators have authority to alter their original award as a result of their reconsideration and the award refiled by them is the award in the case and should be dealt with as such. In the circumstances it is clear that the learned Senior Subordinate Judge was wrong in not acting on the revised award and I would therefore accept this appeal and setting aside the decree of the trial Court so far as costs are concerned direct that the decree in this case shall be in the terms of the revised and final award and shall be for a sum of Rs. 1,924-5-0 without costs. The appellant will be entitled to the costs of this appeal in this Court.

FFORDE J.—I concur.

A. N. C.

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Appeal accepted.