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FFORDE J.

If it may now be the case that before the sentence is executed it appears to the Jail authorities that the accused is insane, I have no doubt that proper steps will be taken to inquire into his mental condition. This is a matter, however, for the Local Government and not for this Court.

AGHA HAIDAR J. AGHA HAIDAR J.—I agree.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Jai Lal.

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Dec. 1.

AGYA SINGH (DEFENDANT) Appellant

versus

SUNDAR SINGH (PLAINTIFF) Respondent.

Civil Appeal No. 2811 of 1926.

Court Fees Act, VII of 1870, Schedule II, article 11—Appeal from an order filing an award—whether from a decree—Civil Procedure Code, Act V of 1908, sections 2 (2), 104 (f) and Schedule II, Rule 7—Arbitrator—misconduct—bribery—presumption of.

Held, that an appeal from an order under section 104 (*f*) of the Civil Procedure Code of 1908, is governed by article 11 of the second Schedule of the Court-fees Act.

Sarwan Pande v. *Jagat Pande* (1), followed.

Gauri Shankar v. *Anant Ram* (2), *Dharam Das* v. *Ajudhia Pershad* (3), *Hari Mohan Singh* v. *Kali Prosad Chaliha* (4), and *Ghulam Khan* v. *Muhammad Hassan* (5), distinguished.

Held further, that an agreement on the dissolution of a partnership to refer to arbitration the mutual disputes of the partners relating to the settlement of the partnership accounts, necessarily includes the question as to what contracts were

(1) (1927) 103 I. C. 315.
(2) (1926) 94 I. C. 646.
(3) 70 P. R. 1881.
(4) (1906) I. L. R. 33 Cal. 11.
(5) (1902) I. L. R. 29 Cal. 167 (P.C.).

joint and what were not, and what immoveable property belonged to the partnership, and how it should be distributed.

Sham Lal v. *Parshotam Das* (1), relied upon.

Held also, that from the mere fact that at about the time of delivering his award, the arbitrator had deposited a large sum of money into a bank, no presumption of bribery arose, in the absence of any evidence that the arbitrator had no means of his own or of any connection between the money in question and malpractice on the arbitrator's part.

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First appeal from the decree of Lala *Ghanshyam Das, Senior Subordinate Judge, Delhi, dated the 31st August 1926, granting the plaintiff a decree in terms of the award, etc.*

SARDHA RAM, BADRI DAS and HEM RAJ, for Appellant.

MAN SINGH and KISHAN DIAL, for Respondent.

JUDGMENT.

BROADWAY J.—Two persons, Sundar Singh and Agya Singh, were carrying on business as contractors in partnership. About the 20th of May 1925 they decided to end this partnership and referred the questions arising between them to the arbitration of *Sardar* Bahadur Singh, who had to go into the question of dissolution of the partnership and into the accounts. The arbitrator gave his award on the 15th of July 1925 subsequent to which *Sardar* Sundar Singh filed an application in the Court of the Senior Subordinate Judge, Delhi, for an order that the award should be filed and made a rule of Court. On the 30th of August 1926 an order was passed directing that the award be filed and a decree was drawn up in the terms of the said award. Agya Singh then preferred an appeal to this Court attacking the order directing that the award be filed and paid a court-fee

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(1) (1920) I. L. R. 42 All. 277.

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of Rs. 10 on the memorandum of appeal. At the hearing of this case a preliminary objection was taken by Mr. Man Singh, on behalf of the respondent Sundar Singh, to the effect that the appeal was insufficiently stamped inasmuch as article 1 of schedule 1 of the Court-fees Act was applicable. Under that article the court-fee prescribed is an *ad valorem* one. Mr. Man Singh in support of his contention referred to *Gauri Shankar* v. *Anant Ram* (1). That was a decision of my own sitting alone. A reference to my judgment in that case shows that the point now before the Court was not decided by me. The proceedings in that case were under para. 16 (1) of the second schedule, Civil Procedure Code, and I held there that the appeal did not fall within the purview of section 104 (*f*), Civil Procedure Code. Reference had been made in the course of the arguments in that case to *Dharam Das* v. *Ajudhia Pershad* (2) and *Hari Mohan Singh* v. *Kali Prosad Chaliha* (3), and Mr. Man Singh referred to these two authorities. Now both these cases dealt with the old Code. In *Dharam Das* v. *Ajudhia Pershad* (2) it was held that inasmuch as article 18 of the second schedule of the Court-fees Act did not apply, the only article applicable was article 1 of schedule 1 of the Court-fees Act, fixing an *ad valorem* fee in the case. The question was not discussed at any length by the Judges deciding the case and *Hari Mohan Singh* v. *Kali Prosad Chdliha* (3) is really more in point. There it was held by a Division Bench of the Calcutta High Court following *Ghulam Khan* v. *Muhammad Hassan* (4) that an order having the force of a decree is

(1) (1926) 94 I. C. 646.
(2) 70 P. R. 1881.
(3) (1906) I. L. R. 33 Cal. 11.
(4) (1902) I. L. R. 29 Cal. 167 (P.C.).

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in fact a decree and it was therefore held that the fee payable was an *ad valorem* one. *Ghulam Khan* v. *Muhammad Hassan* (1) was a case decided ultimately by their Lordships of the Judicial Committee, who state at page 182 as follows :—" The decisions of the Indian Courts on those provisions are so conflicting that it may be useful to state generally the conclusions at which their Lordships have arrived on some of the disputed points brought to their attention in the course of the argument." They then proceeded to lay down certain definite conclusions and the third one is as follows :—

" Where the agreement of reference is made and the arbitration itself takes place without the intervention of the Court and the assistance of the Court is only sought in order to give effect to the award, the proceedings are described as a suit and registered as such and must be taken in order to bring the matter, the agreement to refer or the award, as the case may be, under the cognizance of the Court. That is or may be a litigious proceeding. Cause may be shown against the application and it would seem that the order made thereon is a decree within the meaning of that expression as defined in the Civil Procedure Code."

Now, it seems to me that their Lordships held that an order directing the filing of an award in circumstances such as exist in the present case fell within the definition of the expression " decree " as defined in the Civil Procedure Code that was then in force. A reference to that definition and the definition of the term or expression " decree " as found in the existing Code shows that they are different in

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material particulars. There it was specifically laid down that an order specified in section 588 of the old Code is not within this definition. A reference to section 588 shows that an order filing an award or refusing to file an award in an arbitration without the intervention of the Court was not made appealable. It follows therefore that such an order fell within the definition of the expression " decree " and the necessary consequences followed. In the present Code section 2 (2) defines a decree and specifically states that the expression shall not include (*a*) any adjudication from which an appeal lies as an appeal from an order; while section 104 of the Code (new) in subclause (*f*) specifically provides for an appeal against an order filing or refusing to file an award in an arbitration without the intervention of the Court. In these circumstances it appears to me that the order in the present case is not and cannot be regarded as a decree and therefore the remarks of their Lordships of the Judicial Committee in *Ghulam Khan* v. *Muhammad Hassan* (1) do not appear to me to be applicable.

Mr. Man Singh on this being pointed out to him admitted that the order in this case was not a decree but contended that it was an order having the force of a decree. He was, however, unable to cite any authority in support of his contention and I am unable myself to see how an order of this nature can have the force of a decree and I would therefore hold that for the purposes of court-fees an appeal from an order under section 104 (*f*), Civil Procedure Code, would be governed by article 11 of the second schedule of the Court-fees Act. In this view I am supported by *Sarwan Pande* v. *Jagat Pande* (2) a Division

(1) (1902) I. L. R. 29 Cal. 167 (P.C.). (2) (1927) 103 I. C. 315, 316.

Bench decision of the Allahabad High Court. At page 316 their Lordships say :—

"In our judgment the Court below was wrong in holding that the memorandum of appeal was not sufficiently stamped. It is to be noted that an appeal is allowed by section 104 (*f*), Civil Procedure Code, against an order filing or refusing to file an award without the intervention of the Court. That being so, the present applicant was entitled to file an appeal against the order of the learned Munsif by which he ordered the award to be made a rule of the Court. The appeal being against an order the requisite court-fee stamp was of eight annas and the memorandum of appeal being stamped with a court-fee stamp of that value, was sufficiently stamped and the appeal ought to have been heard on the merits."

I would therefore disallow the preliminary objection and holding that the memorandum of appeal is sufficiently stamped proceed to hear the case on the merits.

Turning to the merits of the case, Mr. Sardha Ram for the plaintiff, Agya Singh, contended that the agreement to refer to arbitration dated the 20th May 1925 did not contain any reference to matters which the arbitrator decided; namely, the question as to what contracts were joint and what were not joint was not referred to the arbitrator, nor was the question as to the immoveable property of the partnership. The agreement to refer is to be found translated at page 5 of the printed paper-book from line 14 to 22. This translation Mr. Sardha Ram has admitted to be correct. A reference to this shows that the terms of reference were very wide. It recites that the parties to this appeal had been carrying on work

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as contractors in partnership for a considerable period and had decided to end the partnership business, but that for certain reasons, not given, they were unable to dissolve the partnership amicably. They therefore referred their mutual disputes which related to the settlement of partnership accounts to *Sardar* Bahadur Singh, Sub-Divisional Officer, who was to be the sole arbitrator and whose decision on the matter was to be binding on both.

It appears that the arbitrator went into the question as to whether certain contracts were partnership contracts or not, and also dealt with certain immoveable properties which he found belonged to the partnership. It appears to me that there was nothing either irregular or improper in what the arbitrator did. In order to arrive at a proper settlement of the partnership accounts, it seems to me that it was necessary for the arbitrator to ascertain first what the assets and liabilities of the partnership actually were, and in order to discover this it was obviously necessary for him to decide any dispute that might arise during the course of his investigation into the partnership affairs as to whether or not any particular contract or property belonged to and formed part of the partnership assets. In this view I am supported by *Sham Lal* v. *Parshotam Das* (1). I would therefore hold that there is no force in this objection and that the agreement to refer to the arbitrator the settlement of the partnership accounts necessarily included a reference of all the disputes that might arise during the arbitration proceedings as to what property was to be taken into account. Had there been any moneys belonging to the partnership in banks or deposited with other persons, it is obvious they

(1) (1920) I. L. R. 42 All. 277.

would have been and ought to have been included in the distribution and therefore I consider that the arbitrator rightly included in his distribution the immoveable property which admittedly belonged to the partnership.

Next it was urged that the arbitrator had been guilty of corruption. This matter was put in issue and decided against the appellant by the Court below. The charge of corruption is based on the fact that while the award was given on the 15th July 1925, the arbitrator had on the 29th June 1925 deposited a sum of Rs. 20,000 in the Punjab Sind Bank at Amritsar. Admittedly there is no direct connection between this deposit and any malpractice on the part of the arbitrator. We are, however, asked to presume that this payment was the result of a bribe or illegal remuneration given to him by the respondent. It has not been pointed out to us that the arbitrator had no private means of his own, and I think it would be unfair to raise the presumption contended for.

Next it was urged that the award was bad for want of finality, inasmuch as by clause 5 of the award the appellant was directed to transfer or endorse the separate title deeds and documents and other valuable securities in favour of the respondent. It was contended that the arbitrator should have drawn up a list of all the documents referred to. Inasmuch as the arbitrator decided, rightly or wrongly, that the respondent was entitled to all the properties represented by these title deeds and valuable securities and, as far as can be made out from the arguments advanced at the bar, there is no doubt as to what these title deeds and valuable securities actually were, I am unable to see that the award is bad on this account.

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If in the course of the execution of the decree passed in terms of the award any question arises as to whether or not a particular title deed refers to property which belongs to the partnership, the question can be settled by the executing Court. The decree itself would, to my mind, be specific enough.

Finally, it was urged that the arbitrator was wrong in administering a special oath to the respondent. It appears that the oath was administered at the instance of the appellant and this objection therefore scarcely appears to be within his powers. In any event, the arbitrator has solemnly stated as a witness that the oath was administered at the instance of the appellant, that the statement was made by the respondent on the oath as required by the appellant and he filed the record of the statement made which he said had been signed by both appellant and respondent. The appellant went into the witness-box after the arbitrator had given his evidence and did not deny his signature nor contradict the arbitrator's statement. I must therefore hold that there is no substance in this objection.

I would, therefore, dismiss this appeal with costs.

JAI LAL J.

JAI LAL J.—I agree.

N. F. E.

Appeal dismissed.