

MISCELLANEOUS CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Jai Lal.

BANSI LAL (DEFENDANT) Petitioner

versus

GOPAL LAL (PLAINTIFF) Respondent.

Civil Miscellaneous No. 479 of 1928.

Civil Procedure Code, Act V of 1908, section 110—Leave to appeal to His Majesty in Council—only granted where Appellate Court alters decision of trial Court substantially.

Matters in dispute in a pending suit having been referred to arbitration, an award was made to the effect that defendant should, within a time fixed, give possession of a certain Factory to the plaintiff and in default should pay plaintiff Rs. 13,000. Objections to the award were made by defendant which were disallowed and the award was ordered to be filed, but as the time fixed for delivery of the factory had by then expired, the Court, considering it unnecessary to incorporate in its decree a direction relating to the delivery of the factory, granted a decree to the plaintiff only for the Rs. 13,000. Defendant appealed to the High Court, and his appeal was accepted only to the extent that the decree of the trial Court was modified to bring it into conformity with the award. Defendant then applied for leave to appeal to His Majesty in Council.

Held, that as the High Court had in substance affirmed the decision of the trial Court, the alteration made by it in the decree not being of a substantial nature, leave to appeal to His Majesty in Council under section 110 of the Code of Civil Procedure could not be granted.

Chandar Sekhar v. Amir Begam (1), *Kamal Nath v. Bithal Das* (2), *Bhagat Singh v. Jai Ram* (3), and *Ghulam Abbas v. Govindrao* (4), relied on.

Application for leave to appeal to His Majesty in Council, against the judgment of Mr. Justice Zafar Ali and Mr. Justice Jai Lal, dated the 4th April 1928.

(1) (1922) 66 I. C. 721.

(3) 22 P. R. 1915.

(2) (1922) I. L. R. 44 All. 200.

(4) (1925) 91 I. C. 200.

1928

Nov. 16.

BADRI DAS, for Petitioner.

JAGAN NATH AGGARWAL and JAGAN NATH TALWAR, for Respondent.

1928

BANSI LAL
v.
GOPAL LAL.

The judgment of the Court was delivered by—

JAI LAL J.—This is an application by the defendant for leave to appeal to His Majesty in Council from a judgment of this Court, dated the 4th April, 1928.

The facts are these. In a suit pending in the Court of the Senior Subordinate Judge the dispute between the parties was referred to arbitration and the arbitrator gave an award to the effect that the defendant should, within the time fixed by him, give possession of a certain factory to the plaintiff and that if he failed to do so he should pay Rs. 13,000 to him. The defendant filed objections to the award on various grounds, which were, however, disallowed by the trial Court and the award was ordered to be filed. But the learned Judge, being of opinion that as at the time when he passed the order filing the award the date fixed by the arbitrator for giving possession of the factory had expired, considered that it was not necessary to incorporate in the decree a direction relating to the delivery of the factory and therefore he granted a decree to the plaintiff for Rs. 13,000.

An appeal was preferred to this Court from that decree and on the 26th May, 1927, a Division Bench of this Court admitted the appeal holding that an appeal lay from the decree of the Subordinate Judge in so far as the said decree was not in accordance with the award. The appeal was consequently heard by this Bench who accepted it on the 4th April, 1928, by modifying the decree of the Subordinate Judge so as to make it in conformity with the award. It may be

1928

BANSI LAL
v.
GOPAL LAL

mentioned that the defendant was the appellant in this Court and it was on his contention that the decree was not in accordance with the award that the alteration in the decree was made.

The defendant now applies for leave to appeal to His Majesty in Council on the ground that the decree of the trial Court not having been affirmed by this Court, he has a right to appeal to His Majesty in Council, because the amount involved is more than Rs. 10,000. It is not contended that any substantial question of law is involved in the case.

We are of opinion that no leave to appeal can be granted. In an appeal from a decree based on an award no objection can be taken except in so far as the decree is not in accordance with the award, and the object of the petitioner by raising the grounds of appeal, which he has submitted with his application for leave to appeal, is really to go behind the finding of the Senior Subordinate Judge that the award was a valid one, and thus to raise grounds which are not admissible. If, on the other hand, his object be to have the decree of the trial Court restored by expunging therefrom the amendment made here, then it means that he wants that to be undone which was done at his instance and on his objection.

Respondent's counsel has relied upon a number of reported cases, as for instance *Chandar Sekhar v. Amir Begam* (1), *Kamal Nath v. Bithal Das* (2), *Bhagat Singh v. Jai Ram* (3) and *Ghulam Abbas v. Govindrao* (4), from which it appears that unless the decision of the trial Court has been altered substantially by the High Court, section 110 does not entitle

(1) (1922) 66 I. C. 721.

(3) 22 P. R. 1915.

(2) (1922) I. L. R. 44 All. 200.

(4) (1925) 91 I. C. 200.

the parties to obtain leave to appeal to His Majesty in Council. In our opinion the alteration made in this case was in favour of the petitioner and was not of a substantial nature; because in substance we affirmed the decision of the trial Court and there is no question of law involved in the appeal.

We dismiss this application with costs.

A. N. C.

Application dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Agha Haidar.
MANOHAR LAL-DEV KARNDAS—Petitioners

versus

THE COMMISSIONER OF INCOME TAX

Respondent.

Civil Miscellaneous No. 180 of 1928.

Indian Income Tax Act, XI of 1922, sections 23 (4) and 34—Assessment under section 23 (4)—whether bars re-assessment under section 34—where income has escaped assessment.

Held, that the fact that the Income Tax Officer has already assessed the assessee under section 23 (4) of the Income Tax Act, does not render his successor incompetent to re-assess them under section 34 of the Act within one year from the original assessment on the ground that income, profits or gains chargeable to income-tax had escaped assessment.

Bulaqi Shah v. Crown (1), and *The Commissioner of Income Tax, Madras v. Sundaresa Iyer* (2), followed.

Application under section 66 (3) of the Income Tax Act for issue of a mandamus to the Commissioner of Income Tax, for statement of the case.

RAJ KISHAN and HEM RAJ MAHAJAN, for Petitioners.

JAGAN NATH AGGARWAL, for Respondent.

(1) 1 Indian Income Tax Cases 256. (2) 2 Indian Income Tax Cases 173