1931

NATHA
v.
GANESHA
SINGH.

SHADI LAL C.J.

tioned above and to the fact that the son, who has brought the present suit, has himself benefitted from the earnings of the trade carried on by his father, I consider that the money borrowed by the latter constituted a valid necessity for the sale of the house.

I would accordingly affirm the decree of the learned District Judge and dismiss the appeal with costs.

HILTON J.

HILTON J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Shadi Lal C. J. and Monroe J.

1931

Dec. 22.

RALA RAM-WALAITI RAM (DEFENDANTS) Appellants

versus

BANSI LAL-JAGGAN NATH (PLAINTIFFS) Respondents.

Civil Appeal No. 960 of 1928.

Civil Procedure Code, Act V of 1908, Schedule II, paras. 15 (1) (c) and 16 (2)—Arbitration—decree in accordance with award—Appeal—scope of—whether objection to the validity of the reference can be entertained—Revision.

Held, that in the Civil Procedure Code of 1908, the insertion in para. 15 (1) (*c*) of Schedule II of the words "or being otherwise invalid" has enlarged the scope of the grounds for setting aside an award in arbitration made under the supervision of the Court so that the award can now be challenged, not only on account of irregularities in the procedure of the arbitrator, but also on the ground that the award was made by a person who had not been properly appointed to act as arbitrator. This amendment of the law shows that the Legislature intended that all objections to the award

1931

RALA RAM-WALAITI RAM
v.
BANSI LAL-JAGGAN NATH.

should be determined by the Court which made the reference, and that, if that Court overrules the objections, including the one impeaching its validity, the decree upon such award should not be open to an appeal.

Held further, that the doctrine of *ejusdem generis* cannot be invoked to restrict the full and natural meaning of the phrase " or being otherwise invalid."

Ghulam Khan v. *Muhammad Hassan* (1), *Balkishan* v. *Sohan Singh* (2), *Mussammat Wiran Wali* v. *Hira Nand* (3), *Muhammad Valli Asmal* v. *Valli Asmal* (4), *Nidamurthi Krishnamurthy* v. *Gargiparthi Ganapathilingam* (5), *Lutawan* v. *Lachya* (6), *Hari Shankar* v. *Ram Piari* (7), and *Suraj Singh* v. *Phul Kumari* (8), followed.

Durga Charan Debnath v. *Ganga Dhar Debnath* (9), and *Golenur Bibi* v. *Abdus Samad* (10), dissented from.

Tej Singh v. *Ghasi Ram* (11), referred to and discussed.

Mahadeo Prasad v. *Badri Das-Ram Sarup* (12), distinguished.

Held also, that there was no valid ground which would justify the exercise of the revisional jurisdiction of the High Court.

First appeal from the decree of Khan Sahib Sheikh *Muhammad Hassan, Senior Subordinate Judge, Ludhiana, dated the 31st December, 1927, upholding the award and granting the plaintiff a decree for Rs. 5,621-9-0.*

MEHR CHAND MAHAJAN, M. L. PURI, and S. L. PURI, for Appellants.

FAKIR CHAND, CHANDRA GUPTA, and MUHAMMAD AMIN, for Respondents.

---

(1) (1902) I. L. R. 29 Cal. 167 (P.C.).
(2) (1929) I. L. R. 10 Lah. 871.
(3) (1931) I. L. R. 12 Lah. 408.
(4) (1924) 26 Bom. L. R. 171.
(5) (1914) 25 I. C. 583.
(6) (1914) I. L. R. 36 All. 69 (F.B.).
(7) (1923) I. L. R. 45 All. 441.
(8) (1926) I. L. R. 48 All. 226.
(9) (1930) 34 Cal. W. N. 813.
(10) (1931) I. L. R. 58 Cal. 628.
(11) (1927) I. L. R. 49 All. 812.
(12) (1928) I. L. R. 50 All. 955.

1931

RALA RAM-WALAITI RAM
v.
BANSI LAL-JAGGAN NATH.

SHADI LAL C.J.

SHADI LAL C.J.—This is an appeal from a decree based upon an award. The award was made in a suit brought for the recovery of a certain sum of money against the firm of Rala Ram - Walaiti Ram. According to the allegation in the plaint two persons, namely, Walaiti Ram and his son, Kulwant Rai, were the only partners in the firm; but Kulwant Rai, though served with summons, absented himself from the Court, and the case was defended by his father, Walaiti Ram, who described himself as the "managing proprietor of the firm known as Rala Ram-Walaiti Ram." After several adjournments, the plaintiffs and Walaiti Ram, purporting to act as the "proprietor of the firm known as Rala Ram-Walaiti Ram," entered into an agreement to refer the case to arbitration, and applied to the trial Court for an order of reference. Thereupon, the Court made an order to refer the dispute to the arbitrator nominated by the parties, and the latter, after receiving all the evidence produced before him, pronounced his award directing the defendants to pay Rs. 5,621-9-0 to the plaintiffs.

Two applications were made to set aside the award, one by Walaiti Ram, and the other by his son who, after absenting himself for more than a year, came forward to raise the objection that, as he was not a party to the agreement to refer the dispute to arbitration, the order of reference as well as the award was invalid. To avoid delay in the disposal of the case, the plaintiffs decided not to proceed against Kulwant Rai, with the result that his name was removed from the list of the defendants. The trial Judge then adjudicated upon the objections preferred by Walaiti Ram and, after overruling them, dismissed his applica-

1931

RALA RAM-WALAITI RAM *v.* BANSI LAL-JAGGAN NATH.

SHADI LAL C.J.

tion. The learned Judge consequently pronounced judgment according to the award, and it is against the decree, which followed upon that judgment, that the present appeal has been brought by the firm of Rala Ram-Walaiti Ram through Walaiti Ram.

Now, paragraph 16, sub-para. (2) of the Second Schedule to the Civil Procedure Code provides in express terms that no appeal shall lie from a decree based upon an award " except in so far as the decree is in excess of, or not in accordance with, the award." It is, however, contended by the learned Advocate for the appellants that the law giving finality to the award presupposes a valid reference and does not prohibit an appeal in a case in which the award proceeds upon an order of reference which in itself is invalid. He challenges the validity of reference on the ground that Kulwant Rai was a party interested in the suit and, that as he did not sign the agreement to refer it to arbitration, the order of reference should be held to be invalid. It is conceded that there are several judgments of this Court which enunciate the proposition that no appeal is competent against a decree which is in accordance with an award, and that the fact that the validity of reference is impeached does not take the case out of the ambit of this rule, *vide, inter alia, Balkishan* v. *Sohan Singh* (1), and *Mussammat Wiran Wali* v. *Hira Nand* (2). The learned counsel, however, asks us to reconsider the question because the contrary view has been expressed by the Calcutta High Court and also by a learned Judge of the Allahabad High Court. The judgment in *Durga Charan Debnath* v. *Ganga Dhar Debnath* (3), by Graham and Mitter JJ. is, no doubt, an

(1) (1929) I. L. R. 10 Lah. 871. (2) (1931) I. L. R. 12 Lah. 408.
(3) (1930) 34 Cal. W. N. 813.

1931

RALA RAM-WALAITI RAM
v.
BANSI LAL-JAGGAN NATH.

SHADI LAL C.J.

authority for the rule that an appeal lies where there is no valid reference to arbitration. The question was thereafter examined by the Calcutta High Court in *Golenur Bibi* v. *Abdus Samad* (1), in which, while Mitter J. adhered to his previous opinion, his colleague, Mukerji J. dissented from him and adopted the rule laid down by this Court.

It is to be observed that, prior to the enactment of the Civil Procedure Code of 1908, there was a divergence of judicial opinion on the question of whether an appeal would lie from a decree based upon an award, when the award itself is invalid. This controversy was, however, set at rest by the Code of 1908 which enlarged the scope of the grounds for setting aside the award by inserting the words "or being otherwise invalid" in paragraph 15, sub-paragraph (1), clause (*c*) of the Second Schedule to the Civil Procedure Code. The award can now be challenged, not only on account of irregularities in the procedure of the arbitrator, but also on the ground that it was made by a person who had not been properly appointed to act as arbitrator. This amendment of the law shows that the Legislature intended that all objections to the award should be determined by the Court which made the reference, and that, if that Court overrules the objections, including the one impeaching its validity, the decree based upon such award should not be open to an appeal. The learned Judges of the Calcutta High Court, however, restrict the scope of the words "being otherwise invalid" by applying the doctrine of *ejusdem generis*, and hold that the invalidity of a reference is not an objection *ejusdem generis* with those specifically mentioned in clause (*c*), and cannot,

(1) (1931) I. L. R. 58 Cal. 628.

1931

RALA RAM-WALAITI RAM
v.
BANSI LAL-JAGGAN NATH.

SHADI LAL C.J.

therefore, be made a ground of attack under that clause. It is evidently assumed that the invalidity of reference can be raised independently of any provision in the Schedule, and that the decision of the Court upon it can be attacked on appeal.

It must be remembered that their Lordships of the Privy Council made it clear in their judgment in *Ghulam Khan* v. *Muhammad Hassan* (1), that no appeal lay against a decree passed in accordance with an award made in the course of litigation, and they emphasized the principle of finality attaching to such decree. It was after that pronouncement that the Civil Procedure Code of 1908 was enacted, and the addition made to paragraph 15, sub-paragraph (1), clause (*c*), was intended to give finality to a decree based upon an award, irrespective of the nature of the objections advanced against the award. It was accordingly provided that all objections should be urged before the Court dealing with the award, and that its decision thereupon should not be challenged in appeal. An objection to the validity of an award includes an objection impeaching the reference upon which the award is founded, and the latter objection comes within the purview of clause (*c*). There is no cogent reason for distinguishing the one from the other, for the purpose of finality attaching to the decision of the Court upon the objections.

The doctrine of *ejusdem generis* cannot, in my opinion, be invoked to restrict the full and natural meaning of the phrase "or being otherwise invalid." Ordinarily, a general word receives its natural meaning, but, a general word, which follows particular and specific words of the same nature as itself, may

(1) (1902) I. L. R. 29 Cal. 167 (P.C.).

1931

RALA RAM-WALAITI RAM v. BANSI LAL-JAGGAN NATH.

SHADI LAL C.J.

take its meaning from them and may be presumed to be restricted to the same genus as those words. It is, however, clear that this rule of construction is used only for the purpose of ascertaining the intention of the Legislature, and, as observed by Maxwell in his book on the Interpretation of Statutes, 7th Edition, at page 288, "the restricted meaning which primarily attaches to the general word in such circumstances is rejected when there are adequate grounds to show that it has not been used in the limited order of ideas to which its predecessors belong. If it can be seen from a wider inspection of the scope of the legislation that the general words, notwithstanding that they follow particular words, are nevertheless to be construed generally, effect must be given to the intention of the Legislature as gathered from the larger survey." Now, the history of the law on the subject of appeal in cases of arbitration under the supervision of the Court points to the conclusion that the Legislature intended to give finality to the decision of the trial Court on all objections to the award, and to restrict the appeal to the solitary case in which the decree is at variance, or not in accordance, with the award, and, even then to confine its scope to that part of the decree which differs from the award.

The rule laid down by this Court that no appeal is competent even when the validity of the reference is impugned coincides with the view expressed by the Bombay High Court in *Muhammad Valli Asmal* v. *Valli Asmal* (1), and by the Madras High Court in *Nidamurthi Krishnamurthy* v. *Gargiparthi Ganapathilingam* (2). The same view was adopted by a Full

(1) (1924) 26 Bom. L. R. 171. (2) (1914) 25 I. C. 583.

1931

RALA RAM-WALAITI RAM
v.
BANSI LAL-JAGGAN NATH.

SHADI LAL C.J.

Bench of the Allahabad High Court in *Lutawan* v. *Lachya* (1), and was affirmed in *Hari Shankar* v. *Ram Piari* (2), and *Suraj Singh* v. *Phul Kumari* (3). Our attention has been invited to the judgment in *Tej Singh* v. *Ghasi Ram* (4), where a reference to arbitration was made on the application of only some of the parties to the suit, and the question arose whether a person, who did not join in submitting the dispute to arbitration, was entitled to prefer an appeal against the decree of the trial Court made in accordance with the award. Ashworth J. answered the question in the negative, but held that the High Court could deal with the matter in revision. His colleague, Mukerji J. was, however, inclined to favour the right of appeal but preferred "not to decide whether an appeal would lie," because he agreed with Ashworth J. that the High Court had jurisdiction to take up the matter in revision. It is not clear how the High Court could entertain an application for revision, if an appeal lay in the case. As expressly provided by section 115, Civil Procedure Code, the revisional jurisdiction of the High Court can be exercised only in a case in which "no appeal lies thereto." Reliance is placed also on the judgment in *Mahadeo Prasad* v. *Badri Das-Ram Sarup* (5), where Mukerji J. expressed the opinion that the phrase "or being otherwise invalid" does not include the question whether there was, or was not, a valid reference to arbitration, and that an application for revision would lie on the ground of the invalidity of the reference. This judgment cannot, however, be claimed as an authority for allowing an appeal in a case in which the validity of the reference is challenged.

(1) (1914) I. L. R. 36 All. 69 (F.B.).
(2) (1923) I. L. R. 45 All. 441.
(3) (1926) I. L. R. 48 All. 226.
(4) (1927) I. L. R. 49 All. 812.
(5) (1928) I. L. R. 50 All. 955.

1931

RALA RAM-WALAITI RAM
v.
BANSI LAL-JAGGAN NATH.

SHADI LAL C.J.

The above survey of the case law leaves no doubt that the preponderance of judicial authority is clearly in favour of the view that no appeal lies from a decree made in accordance with an award, and that it is immaterial whether the validity of the award is challenged on the ground of the illegality of the procedure of the arbitrator or on account of the invalidity of the reference which constitutes the foundation of his authority. This view receives support from the history of the legislation on the subject and from the doctrine attaching finality to a decision based on an award made under the supervision of the Court.

Mr. Mehr Chand Mahajan for the appellant, however, argues that an appeal lies in this case because the decree granted by the trial Court is at variance with the award. The only variation mentioned by the learned counsel is that while the award makes the "defendants" liable for money, the decree is against the "fiim Rala Ram-Walaiti Ram through Walaiti Ram." The award, when examined as a whole, however, shows that the expression "defendants" was intended to apply to the aforesaid firm, and there is, therefore, no divergence between the two documents. Nor can the appellant Walaiti Ram, who claimed to be the sole proprietor of the firm, consider himself aggrieved by the alleged variation, which, according to him, had only the effect of exempting his son from liability.

The result of the above discussion is that no appeal lies from the decree of the Subordinate Judge, nor is there any valid ground which would justify the exercise of the revisional jurisdiction of the High Court.

I would accordingly dismiss the appeal with costs.

MONROE J.

MONROE J.—I agree.

N. F. E.

Appeal dismissed.