

**REVISIONAL CIVIL.**

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*Before Addison and Din Mohammad JJ.*

ATTAR SINGH-BALRAM SINGH—Petitioner

*versus*

VISHAN DAS-PRABH DAS AND OTHERS—  
Respondents.

1937

Jan. 6.

**Civil Revision No. 574 of 1936.**

*Specific Relief Act, I of 1877, sections 53, 54, 56 — Permanent Injunction — Suit for — to restrain arbitrators from proceeding with arbitration proceedings — whether competent.*

The petitioner instituted a suit for a declaration that no contract was entered into between the parties, and as the defendants had no right to refer the dispute to arbitration a perpetual injunction should issue to the arbitrators to restrain them from going on with the arbitration proceedings.

*Held*, that the right to an injunction depends in India upon Statute and is governed by the provisions of the Specific Relief Act, Chapters IX and X.

*And*, that the suit was incompetent as it was barred by the provisions of clause (i) of section 56 of the Act, and neither section 54 nor section 53 was applicable to the case.

*Ram Kissen Joydoyal v. Pooran Mull* (1), and *Jivan Mal-Thakar Das v. Shahzadah Nand and Sons* (2), followed.

*Gagan Chand v. Bharat Chamber of Commerce, Ltd., Delhi* (3), not followed.

*Petition for revision of the order of Mr. J. N. Kapur, Subordinate Judge, 1st Class, Amritsar, dated 13th August, 1936, staying the suit till the decision of the award.*

AMAR SINGH, for Petitioner.

SHAMAIR CHAND and QABUL CHAND, for Respondents.

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(1) I. L. R. (1920) 47 Cal. 733.      (2) 1931 A. I. R. (Lah.) 66.  
(3) 1934 A. I. R. (Lah.) 162.

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ADDISON J.—The plaintiff instituted a suit for a declaration that no contract was entered into between the parties and as the defendants had no right to refer the dispute to arbitration an injunction should issue to the arbitrators not to give an award. Following *Jiwan Mal-Thakar Das v. Shahzada Nand & Sons* (1), which is to the effect that such a suit as the present does not lie, the trial Judge has stayed the suit till the giving of an award which, he stated, could be attacked later on, if the occasion arose, by the parties. On his finding he might have dismissed the suit but he merely stayed it.

Against this decision the plaintiff preferred a revision petition to this Court, asking that the suit should not be stayed but should be proceeded with. This revision petition has been referred to a Division Bench for decision.

There is a case on all fours with the present reported as *Ram Kissen Joydoyal v. Pooran Mull* (2). It was there laid down that, in a suit for declaration that a certain contract entered into between the parties was not binding on the plaintiffs, inasmuch as they did not enter into such a contract, and that they were accordingly entitled to an injunction to restrain arbitration, no injunction could be claimed under section 54 or section 56 of the Specific Relief Act. It was also pointed out that if the plaintiffs' case that they did not enter into the alleged contract were well-founded, the arbitration proceedings, even if they resulted in an award, could only terminate in an award which would be a nullity, and could not possibly affect the rights of the plaintiffs; and if the arbitrators made an award in favour of the defendants (which it-

(1) 1931 A. I. R. (Lah.) 66.

(2) I. L. R. (1920) 47 Cal. 733.

self was doubtful), the plaintiffs would have ample opportunity to protect themselves by appropriate proceedings. Finally, it was held that sections 54 and 56 must be read together as supplementing each other, and that it would be an erroneous construction of the statute to hold that the right to an injunction should be determined independently of the provisions of sections 54 and 56 by reference to the terms of section 53.

With great respect I am in full agreement with this decision. The right to an injunction depends in India upon Statute and is governed by the provisions of the Specific Relief Act, Chapters IX and X. Chapter IX consists of two sections 52 and 53. These enact that preventive relief is in the discretion of the Court and that a perpetual injunction can only be granted by a decree. Chapter X then goes on to deal with perpetual injunctions, the first section being section 54. It defines when perpetual injunctions can be granted. The first paragraph of the section enacts that a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant. The next two paragraphs deal with two distinct classes of cases, namely, first, the case when the obligation arises from contract, and, secondly, the case where the defendant invades or threatens to invade the plaintiffs' right to, or enjoyment of, property. In the first of these two classes, the principle is formulated that the Court shall be guided by the provisions contained in the second chapter of the Statute. In the second class it is enacted that the Court may grant a perpetual injunction in five specific categories of events. It cannot be contended that the prayer for injunction in the present suit can be brought within the scope of section 54. This is clear from the first

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paragraph of the section which provides that, in order to entitle a litigant to a perpetual injunction, he must establish that the injunction is required to prevent the breach of an obligation—a term which is defined in section 3. There must thus be a breach of an existing legal right which is vested in the applicant before an injunction is granted to restrain the breach. Section 56 equally has no application and the two sections 54 and 56 supplement each other. The first defines the circumstances in which perpetual injunctions may be granted: the second enumerates the cases where an injunction must not be granted. Clause (i) of section 56 enacts that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other mode of proceeding (except in case of breach of trust). In this case it is alleged that there was no contract. If that is so, the arbitration proceedings, if they result in an award, can only terminate in an award which is a nullity and the plaintiff will have ample opportunity to protect himself by an appropriate proceeding. For this reason section 56 bars the present suit while it does not come within section 54.

Likewise, reliance cannot be placed upon section 53 of the Act which is merely a general section enacting that a perpetual injunction can only be granted by a decree in a suit. This section by itself does not give a general right to obtain a perpetual injunction in all cases in which it is asked but is dependent upon the sections which follow in Chapter X. These define when perpetual injunctions may be granted and also when they cannot be granted.

This Calcutta decision was followed in this Court by Dalip Singh J. in *Jiwan Mal-Thakar Das v. Shah-zadah Nand & Sons* (1) in a considered judgment. Jai

Lal J., however, in a very brief judgment in *Gyan Chand v. Bharat Chamber of Commerce, Ltd., Delhi* (1), followed *Gajanand Maskara v. Taleb Jalaluddin* (2) without referring to *Ram Kissen Joydoyal v. Pooran Mull* (3), which was decided after *Gajanand Maskara v. Taleb Jalaluddin* (2) or *Jiwan Mal-Thakar Das v. Shahzadah Nand & Sons* (4). With great respect it seems to me that the decision in *Ram Kissen Joydoyal v. Pooran Mull* (3) is to be preferred to that in *Gajanand Maskara v. Taleb Jalaluddin* (2). In the 1919 Calcutta case no reference was made to the Statute under which alone, in India, the right to an injunction depends, as remarked in *Tituram Mukerji v. Cohen* (5).

The same was the view taken by Rankin J. in *Sardarmull Jessraj v. Agar Chand Mehta & Co.* (6). He there said that where a dispute is referred to arbitration under a clause in a contract and one or other of the parties to the contract seeks to impeach it on equitable grounds, such as fraud, mistake or surprise, the Court will, and should, restrain the arbitration proceedings until the question of the contract out of which they arise has been determined by the Court; but where a party denies the contract altogether, his course is to let the arbitrators do what they like, to wait till there is a question of the award being enforced, and the moment he gets notice that the award is going to be or has been filed to object to it; and that where the proceedings will be a nullity and futile, although vexatious, the Court will not grant an interlocutory injunction.

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(1) 1934 A. I. R. (Lah.) 162.

(4) 1931 A. I. R. (Lah.) 66.

(2) 1919 A. I. R. (Cal.) 1042.

(5) I. L. R. (1906) 33 Cal. 203 (P. C.).

(3) I. L. R. (1920) 47 Cal. 733.

(6) (1919) 52 I. C. 588.

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An *obiter dictum* in *Narain Das-Jaini Lal v. Jai Narain-Bani Lal* (1) was relied on, on behalf of the plaintiff, but this need not be further considered as it was only a passing remark not affecting the decision of the case.

ADDISON J.

Following, therefore, *Ram Kissen Joydoyal v. Pooran Mull* (2) and *Jiwan Mal-Thakar Das v. Shah-zadah Nund & Sons* (3) I would hold that the suit was incompetent. There is thus no reason to interfere with the order of stay and I would dismiss this revision petition with costs.

DIN  
MOHAMMAD J.

DIN MOHAMMAD J.—I agree.

P. S.

*Revision dismissed.*


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**APPELLATE CIVIL.**
*Before Tek Chand and Coldstream JJ.*

KHILLU RAM AND ANOTHER (DEFENDANTS)

Appellants

*versus*

MST. DHANI BAI (PLAINTIFF) Respondent.

**Civil Appeal No. 592 of 1934.**

*Custom — Succession — Hindu Zargars (goldsmiths) of Dera Ghazi Khan town — Daughters, whether succeed to ancestral property or non-ancestral property in presence of collaterals — Riway-i-am — Transfer of Property Act, IV of 1882, section 51 : whether applicable to case of a trespasser making improvements.*

One Chandar Bhan, a Hindu Zargar of Dera Ghazi Khan town, who owned extensive landed and house property, died leaving an infant daughter about a year old. His property was appropriated by the defendant-appellant, a son of his

(1) 1923 A. I. R. (Lah.) 24. (2) I. L. R. (1920) 47 Cal. 733.

(3) 1931 A. I. R. (Lah.) 66.