another Magistrate the case was no longer on the file of the Magistrate and his jurisdiction was suspended. We, therefore, think that the order of acquittal made on July 31 is void and of no effect.

We, therefore, return the record and proceedings with a direction that the case should now proceed before the Court of the Sub-Divisional Magistrate at Nasik to whom it was transferred by the District Magistrate. This is, of course, without prejudice to the rights of the parties to effect a fresh composition before that Magistrate.

Order accordingly.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

BHIKHALAL GIRDHARDAS PATEL (ORIGINAL PLAINTIFF), PETITIONER *v.* ACHARATLAL LALLUBHAI AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS*.

1924. *December* 10.

Civil Procedure Code (Act V of 1908), section 115—Award—Decree in terms of award by Subordinate Court—High Court's power to entertain application in revision—Discretion.

Under section 115, Civil Procedure Code, 1908, it would be competent for the High Court to entertain an application against the decree passed by a Subordinate Judge in terms of an award, if it appears that the Subordinate Judge has brought himself within the provisions of section 115.

Merali Visram v. *Sheriff Dewji*(a), approved.

There is no obligation on the High Court to interfere on an application made under section 115, Civil Procedure Code, 1908, even if facts are proved which would bring the application within the section. It is purely a matter of discretion and no rule can be laid down as to how that discretion is to be exercised. Whether the Court will interfere or not is entirely for the Court which hears the application to decide on the particular circumstances of the case before it.

* Application under Extraordinary Jurisdiction No. 51 of 1923.

(a) (1911) 36 Bom. 105.

1924.

BHIKHALAL v. ACHARATLAL

APPLICATION under extraordinary jurisdiction praying that the order passed by M. H. Vakil, First Class Subordinate Judge of Nadiad, be set aside.

The petitioner, Bhikhalal Girdhardas and the four opponents purchased in partnership a factory at Godhra known as Steam Flour and Saw Mills Company for Rs. 35,000. The petitioner alleged that the management of the partnership business was carried on by the opponents who were served with a notice by the petitioner on July 22, 1920, to admit him into management. On the opponents' refusal to comply with the notice, the petitioner filed a Suit No. 333 of 1920 in the Subordinate Judge's Court at Nadiad for dissolution of partnership and for taking accounts. While the suit was pending on June 25, 1922, the petitioner and the opponents filed an application referring the matter to the arbitration of opponent No. 2, Manilal Kuberdas.

On June 27, 1922, the Court appointed Manilal Kuberdas as the arbitrator. The arbitrator made his award. The petitioner filed several objections to the award.

The Subordinate Judge dealt with the objections in the following terms :—

"He says the misconduct consists in the arbitrator allowing himself Rs. 30,430 6-9 (para. 23 of the award) though the books of the partnership show that he is entitled to Rs. 11,482-6-3 only.....I hold there is no misconduct at all on the part of the arbitrator. It is then said that he has allowed Rs. 14,862-12-9 to one partner, Pranjivan (para. 26). Out of this amount, Rs. 5,400 have been wrongly allowed by him. I hold this is not true. The sum in two sums of Rs. 5,000 and Rs. 400 has been credited in the Mill accounts, Exhibit 96. He has then, it is said, wrongly allowed Rs. 300 (para. 6) against the plaintiff. It does not appear it is so. It may be remembered here that if there be any *bona fide* mistakes committed by the arbitrator they cannot vitiate the award. He is a Court selected by the parties themselves."

The Subordinate Judge, therefore, directed that the award be filed and a decree be passed in terms of the award.

The petitioner, therefore, applied to the High Court.

G. N. Thakor, with *M. K. Thakor*, for the petitioner.

H. C. Coyajee, with *H. V. Divatia*, for opponent No. 2.

MACLEOD, C. J. :—This is an application by the petitioner asking this Court to interfere under its power given by section 115 of the Civil Procedure Code with the order made by the First Class Subordinate Judge drawing up a decree in terms of the award, which was made in pursuance of an order of the Court, dated June 27, 1922, appointing the 2nd opponent as arbitrator.

The first question is whether such an application is competent. We do not think that the authorities on the point go so far as to decide that no application can be entertained under section 115 against a decree passed in terms of an award. It is true that the head-note in *Ghulam Jilani* v. *Muhammad Hussan*[1] is to this effect, but it is not warranted by the terms of their Lordships' judgment, as we read it. At page 60 the judgment says :—

"The award having been duly made and not having been corrected or modified, and the application to set it aside having been refused, the Subordinate Judge had no option but to pronounce a decree in accordance with it. The Subordinate Judge does not appear to have exercised a jurisdiction not vested in him by law, or to have failed to exercise the jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with material irregularity. He appears to have followed strictly the course prescribed by the Code.

Inasmuch as their Lordships hold that the application in revision was incompetent, it would be a work of supererogation to discuss the various objections raised by the appellants in the High Court."

The inference is clear, that if it had appeared that the Subordinate Judge had brought himself within the provisions of section 115, the application for revision

[1](1901) L. R. 29 I. A. 51.

1924.

BHIKHALAL v. ACHARATLAL

would have been competent. But none of the objections in that particular case were directed to those provisions. We cannot agree, therefore, with the expression of opinion of Mr. Mulla in his notes to Paras. 15 and 16 of the Second Schedule to the Code, that no application for revision should be admitted in the case of an award, and we agree with the decision of this Court in *Merali Visram* v. *Sheriff Dewji*[1]. In this case the petitioner raised certain objection to the award of the arbitrator, making various allegations against the arbitrator, which, it was contended, if proved, amounted to misconduct. It is true that the Judge on the application to set aside the award, did not deal *seriatim* with all the allegations made by the petitioner against the arbitrator. He dealt with some of the objections, notably with regard to an item of Rs. 30,430, which the arbitrator, who had been a party to the partnership suit, had allowed himself, and an item of Rs. 14,862 which the arbitrator had allowed to another partner, Pranjiwan, and concluded by saying :—

"There is thus no misconduct proved and I hold the award cannot be set aside and should be filed and a decree drawn up in terms of the award."

It would have been better if the Judge had referred to all the objections in the petition, stating whether they had been relied upon or not when the matter was argued before him.

But we think the proper inference for this Court in revision to make is that the Judge acted properly in dealing with the objections, and that though he may not have made a reference to every one of them in his judgment, the omission points rather to the fact that those objections were not pressed before him. One of the allegations was that the arbitrator acted unfairly towards the petitioner in not hearing him or his evidence. Mr. Coyajee has pointed out to us that

[1] (1911) 36 Bom. 105.

although a summons was issued to the arbitrator to be examined as a witness, yet no attempt was made to examine him, but that was not the fault of the respondent.

We think, therefore, that it is more probable that the petitioner felt that these objections could not be pressed, so that there are no grounds on which we should exercise our discretion by interfering under section 115. In fact there are some reasons for believing that this application was simply made for delay.

It seems necessary to point out again, as has been done in many other cases, that there is no obligation on the High Court to interfere on an application made under section 115, even if facts are proved which bring the application within the section. It is purely a matter of discretion, and we cannot lay down any rules how that discretion is to be exercised. Whether the Court will interfere or not is entirely for the Court which hears the application to decide on the particular circumstances of the case before it.

We would, therefore, discharge the rule with cost.

Rule discharged.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

TARABAI KOM RAMRAO HANMANTRAO PATANKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* DATTARAM GOVINDBHAI GUJAR (ORIGINAL DEFENDANT), RESPONDENT*.

Mortgagor and mortgagee—Equity of redemption—Adverse possession.

The lands in suit were the Deshpande watan lands of H. H mortgaged them to G and P in 1870. In 1878, the equity of redemption after diverse

* Second Appeal No. 633 of 1922 (with S. A. Nos. 550 of 1922 and 76 of 1923).