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provisions. It is evident from these considerations that the Court cannot permit the opponent to continue in the practice of a profession which is deemed to be an honourable profession while he is an undischarged bankrupt, more particularly in view of his past record to which our attention has been drawn. I concur in the order proposed by my learned brother.

Order accordingly.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Fawcett and Mr. Justice Mirza.

1928
April 5

KESHAVLAL MOHONLAL JHAVERI AND OTHERS (ORIGINAL PLAINTIFFS), APPLICANTS *v.* BAI LAXMI, WIDOW OF BALABHAI SAVCHAND (ORIGINAL DEFENDANT), OPPONENT.*

Arbitration—Applicants present under protest—Return of arbitration proceedings to Court—Request by the Court to arbitrators to proceed with the award—Jurisdiction to proceed with arbitration.

In certain suits pending before arbitrators, on the day fixed by them for taking evidence, the applicants were present under protest and wished that the arbitrators should note that fact. On receipt of the application the arbitrators returned the proceedings to the Court with an endorsement that under the circumstances they did not think it proper to decide those matters. The Court returned the papers and proceedings to the arbitrators with a note as follows: "The arbitrators are requested to finish the work. The protest does not matter. It is unjustified. The Court has confidence in the arbitrators. The arbitrators should not retire for that would mean that the plaintiff succeeds in his tactics." The arbitrators then resumed their arbitration. On an application to reverse the order and for a stay of the proceedings before the arbitrators:—

Held, that the order of the Court was proper, for the note made by the Court was not an order which forced or compelled the arbitrators to resume the arbitration against their own wish, but it was in the nature of a request made to the arbitrators to reconsider their decision and to resume the arbitration if they were agreeable to do so.

Har Narain Singh v. *Bhagwant Kuar*[1]; *Maharajah Joymungul Singh Bahadoor* v. *Mohun Ram Marwaree*[2]; *Basdeo Mal, Gobind Prasad* v. *Kanhaiya Lal, Lachmi Narain*,[3] followed.

Shibcharan v. *Ratiram*,[4] distinguished.

APPLICATION praying for setting aside the order of the Joint Subordinate Judge at Ahmedabad.

*Civil Revision Application No. 83 of 1928.

(1) (1887) 10 All. 137.
(2) (1875) 23 W. R. 429.
(3) (1920) 43 All. 101.
(4) (1884) 7 All. 20.

The applicants filed Suit No. 347 of 1925 against the opponent and the opponent filed a cross Suit No. 471 of 1925 against the applicants in the Court of the Second Class Subordinate Judge at Ahmedabad for several injunctions.

The suits were referred to the arbitration of two persons through Court.

On February 26, 1928, which was the date fixed by the arbitrators for taking evidence, the applicants appeared under protest and requested the arbitrators to make a note to that effect.

On the same date, both the arbitrators sent back the papers of the cases to the Court stating that they were unwilling to work and make any award.

The learned Judge however wrote to the arbitrators as follows :—

" The arbitrators are requested to finish the work. The protest does not matter. It is unjustified. The Court has confidence in the arbitrators. The arbitrators should not retire, for that would mean that the plaintiff succeeds in his tactics. If not for anything else, at least for the sake of principle and in order to put down such tactics, they ought to continue."

On receipt of the letter, the arbitrators fixed a meeting to proceed with the arbitration from a point where they had left it. At that meeting the applicants appeared by their pleader without any protest and applied for an adjournment. The application was granted and the proceedings were adjourned to March 18, 1928.

On March 16, the applicants applied to the High Court, for reversing the order of the Court and for staying the proceedings before the arbitrators.

Coyajee, with *H. V. Divatia*, for the applicants.

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

MIRZA, J. :—We have heard full arguments in this matter but the point seems to us to be a simple one, and depends upon the interpretation we are to put

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upon the writing sent to the arbitrators by the learned Judge. The application made by the plaintiffs to the arbitrators was that certain suits having been sent to the arbitrators and fixed by them for taking evidence that day the applicants were present under protest and wished that the arbitrators would note that fact. On that application the arbitrators made the endorsement "As the plaintiff gives the application as stated above, we do not think it proper that we should decide these matters under these circumstances. Therefore we return the proceedings." On receipt of the papers and proceedings the learned Judge returned them with a note as follows :—

"The arbitrators are requested to finish the work. The protest does not matter. It is unjustified. The Court has confidence in the arbitrators. The arbitrators should not retire for that would mean that the plaintiff succeeds in his tactics. If not for anything else at least for the sake of principle and in order to put down such tactics they ought to continue."

After receipt of this note the arbitrators resumed their arbitration and fixed a meeting to proceed with the arbitration from a point where they had left it. At that meeting the applicants appeared by their pleader without any protest, and applied for an adjournment. That application was acceded to, and the proceedings were adjourned to March 18. Meanwhile on March 16, 1928, the applicants took out this Rule and obtained an interim stay of the arbitration proceedings. The interpretation we put upon the writing of the learned Judge is, that it is not an order which forces or compels the arbitrators to resume the arbitration against their own wish. It is in the nature of a request made to the arbitrators to reconsider their decision and to resume the arbitration if they were agreeable to do so. Had it been an order compelling the arbitrators against their wish to resume the arbitration, the case would fall under the ruling in *Shibcharan*

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v. *Ratiram*[1] and the further proceedings in arbitration would be vitiated. But that is not the case here. In our opinion the present case falls under the rulings in *Har Narain Singh* v. *Bhagwant Kuar*[2]; *Maharajah Joymungul Singh Bahadoor* v. *Mohun Ram Marwaree*[3] and *Basdeo Mal, Gobind Prasad* v. *Kanhaiya Lal, Lachmi Narain.*[4] In the view we have taken, no question of jurisdiction arises. The interim stay granted is dissolved and the rule discharged with costs.

Rule discharged.

J. G. R.

(1) (1884) 7 All. 20.
(2) (1887) 10 All. 187.
(3) (1875) 23 W. R. 429.
(4) (1920) 43 All. 101.

PRIVY COUNCIL.

PARASHURAM DATTARAM SHAMDASANI AND ANOTHER (PLAINTIFFS) *v.* TATA INDUSTRIAL BANK, LIMITED AND OTHERS.

J. C.*
1928
May 8

[On Appeal from the High Court at Bombay]

Company—Voluntary liquidation—Amalgamation with another Company—Resolution appointing Liquidators—Supervision of Directors—Exclusion of statutory powers—Objectionable Form—Indian Companies Act (VII of 1913), sections 203, 213.

A company having entered into an agreement for amalgamation with another company special resolutions were passed in pursuance of the Indian Companies Act, 1913, sections 203, 213, for voluntary winding up and for the appointment of liquidators for the purpose of carrying into effect the agreement. The latter resolution provided that the liquidators should act under the supervision of the directors. Two shareholders in the liquidated company sued personally for declarations that the amalgamation agreement was not binding upon them and that the resolutions were invalid, they alleged various grounds which did not include any objection to the form of the liquidators' appointment. Both Courts in India dismissed the suit. During the argument on appeal to the Privy Council it was sought to amend the plaint by raising that objection.

Held, that the form of the resolution appointing the liquidators was highly objectionable, in that it subjected the liquidators to the supervision of the directors and thus purported to restrict them in the exercise of their statutory duties, but that an amendment of the plaint should not be permitted, since it was sought too late and the irregularity had produced no injustice, the amalgamation (which had been fully carried out) being beneficial to the shareholders;

**Present:* Lord Shaw, Lord Blanesburgh and Lord Salvesen.