

1903  
DEC. 3.  
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APPEAL  
FROM  
ORIGINAL  
CIVIL.  
—  
31 C 195.

This appeal, therefore, must also be dismissed with costs.

HILL, J. I agree.

STEVENS, J. I also agree.

*Appeals dismissed.*

Attorney for the appellant, Jogeshwar Roy: *W. J. Simmons.*

Attorneys for the appellant, Benode Behary Mookerjee: *Leslie & Hinds.*

Attorney for the respondent: *U. C. Dutt.*

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[203] APPELLATE CIVIL.

*Before Mr. Justice Ghose and Mr. Justice Pratt.*

NARSINGH DAS v. AJODHYA PROSAD SUKUL\*

[27th August, 1903].

*Award—Arbitration—Civil Procedure Code (Act XIV of 1882), s. 525—"The matter to which the award relates"—Jurisdiction.*

The words "the matter to which the award relates" in s. 525 of the Civil Procedure Code were not intended by the Legislature to refer to the precise amount or the precise matter awarded to one party or the other by the arbitrator; they refer to the subject matter of the arbitration, and not the matter actually awarded by the arbitrator.

[*Ref.* 29 Mad. 44; 19 C. L. J. 260=18 C. W. N. 857=22 I. C. 792.]

SECOND APPEAL by the plaintiffs, Narsing Das and another.

The plaintiffs, and the defendant had monetary dealings, and the matter of account between them was by a deed of agreement dated the 19th November 1899, referred to the arbitration of one Parameshwar Narain Mahta. The plaintiffs claimed a sum of Rs. 2,047-12-9 from the defendant who on the other hand claimed Rs. 4,774-15-6 from the plaintiffs. The arbitrator after examining the accounts produced before him found that the sum of Rs. 2,094-13-3 was due to the plaintiffs, but that there was a sum of Rs. 265-2 due to the defendant's wife by the plaintiffs which amount he determined should be set off against the claim of the plaintiffs, being of opinion that the account of the defendant and that of his wife were one and the same. He accordingly awarded the plaintiffs the sum of Rs. 1,829-11-3.

The plaintiffs applied to the Munsif of Mozafferpore that under the provisions of s. 225 of the Code of Civil Procedure the award of the arbitrator might be directed to be filed in Court and that a decree might in terms of the award be passed in their favour. The defendant objected to the jurisdiction of the Court on the [204] ground that his claim exceeded the sum of Rs. 4,000, and that of the plaintiffs exceeded the sum of Rs. 2,000 and raised other objections. The Munsif held he had jurisdiction, which, according to him, was in such cases to be determined by the matter to which the award related, and not the matter referred to arbitration; the award related not to the claim of the plaintiffs, but to what the arbitrator awarded, and that amount was less than Rs. 2,000 which was the pecuniary limit of his jurisdiction.

\* Appeal from Appellate Decree, No. 2052 of 1900, against the decree of Arthur Goodeve, Offg. District Judge of Tirhoot, dated July 31, 1900, reversing the decree of Bimala Charar Majumdar, Munsif of Mozafferpore, dated April 3, 1900.

On appeal, the District Judge held that, having regard to the language of s. 525 of the Code of Civil Procedure, the Munsif had no jurisdiction to entertain the application. The plaintiffs now appealed against the appellate decree of the District Judge.

*Dr. Rash Behary Ghose* (Babu Suresh Chandra Basak with him) for the appellants. The words "the matter to which the award relates" in s. 525 of the Civil Procedure Code mean the matter, or the precise amount actually awarded by the arbitrator, and not the subject-matter of the arbitration. If the plaintiffs had to bring a suit on the basis of the arbitration award, they would have to do so in the Court of the Munsif, the amount awarded being less than Rs. 2,000, and it cannot be said that they should have gone to some other Court for the purpose of filing the award.

*Babu Shorashi Charan Mitra* (Babu Lachmi Narain Singh with him) for the respondent. The Legislature never intended that the words "the matter to which the award relates" should refer to the precise amount or the precise matter awarded to one party or the other by the arbitrator; they refer to the whole matter referred to arbitration. If the matter of partition of joint family property be referred to an arbitrator and he awards one portion of the property valued at less than Rs. 2,000 to one party, and another portion valued at more than Rs. 2,000 to another party, then according to the plaintiffs' contention one party would have to file the award in the Court of the Munsif, and the other in the Court of the Subordinate Judge or some higher Court.

GHOSE AND PRATT, JJ. This appeal arises out of an application made under section 525, Code of Civil Procedure for the purpose of a private arbitration award being filed in Court. [205] The application was presented to the Munsif of Mozaffarpore. That officer granted it; but his order has been set aside on appeal by the District Judge, on the ground that the Munsif had no jurisdiction to entertain the application in question. It appears that there were monetary dealings between the plaintiffs and the defendant; and the matter of the account between the parties was referred to the arbitration of one Rai Parmeshwar Narain Mahta Bahadur. He investigated the said matter of account, and it would appear that the plaintiff Narsingh Das claimed as due from the defendant Rs. 2,047-12-9, while, on the other hand, the defendant Ajodhya Prosad Sukul claimed against Narsingh Das Rs. 4,774-15-6. The defendant, however, did not produce his own account books, but relied upon the accounts produced by the plaintiffs, and upon examination of such accounts the arbitrator found that the sum of Rs. 2,094-13-3 was really due to the plaintiffs, but that there was a sum of Rs. 265-2 due to the defendant's wife, Musammat Sheobarat Koer, and he determined that the said amount should be set off against the plaintiffs' claim, he being of opinion that the account of Ajodhya Prosad Sukul and Musammat Sheobarat Koer were but one and the same. In this view of the matter he awarded to the plaintiffs the sum of Rs. 1,829-11-3. It is this arbitration-award that the plaintiffs applied to the Munsif to be filed in his Court.

It would appear that the pecuniary jurisdiction of the said Munsif is up to Rs. 2,000 and he apparently thought that inasmuch as the sum actually awarded to the plaintiffs was Rs. 1,829-11-3, he had jurisdiction to entertain the application. But, as already indicated, the District

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Judge, having regard to the language of section 525, Code of Civil Procedure, held that the Munsif had no jurisdiction.

The question raised before us depends upon the construction of the language of section 525 of the Code. That section runs as follows:—"When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates that the award be filed in Court;" and so on. The question we have to consider [206] is what may be the meaning of the words "the matter to which the award relates;" whether it means the subject-matter of the arbitration, or the matter actually awarded by the arbitrator; for it is obvious that if the former be the correct interpretation, the Munsif had no jurisdiction to entertain the application, while in the other case he had such jurisdiction. It will be noticed that the section begins with the words "when any matter has been referred to arbitration," and the words with which we are immediately concerned are "the matter to which the award relates." It seems to us on consideration that "the matter to which the award relates" must be the same matter referred to in the beginning of the section. In the present case, the matter referred to arbitration and the matter to which the award relates, is the account between the two parties concerned, one party claiming Rs. 2,047 and odd, and the other claiming Rs. 4,774, and the arbitrator had to determine how the account, really stood between the parties. He determined that though the plaintiffs were entitled to the sum of Rs. 2,094 as claimed by them, yet that amount must be reduced by the sum of Rs. 265-2 in favour of the wife of the defendant. We do not think that the words "the matter to which award relates" could have been intended by the Legislature as referable to the precise amount, or the precise matter awarded to one party or the other by the arbitrator. In order to test the correctness of the argument of the learned vakil for the plaintiffs-appellant, let us put an illustration. Suppose the parties were in dispute as regards the partition of their joint-family property. They refer the matter to an arbitrator, and the arbitrator awards one portion of the property valued at Rs. 1,829 to the plaintiff, and the other portion of the property valued at over Rs. 5,000 to the defendant. If the plaintiff's contention as raised before us be correct, the plaintiff would be entitled to present his application for the purpose of enforcing the award in the Court of the Munsif, while, so far as the other side is concerned, he should have to present his application to the Court of the Subordinate Judge, the result being that the same arbitration-award might be filed in two different Courts. It is obvious that such could not have been intended by the Legislature. It has, however, been said that if the [207] plaintiffs were to bring a regular suit on the basis of the arbitration-award, they might do so in the Court where relief could be granted to him under the award, and that would be the Munsif's Court. But the plaintiffs in this case do not seek any relief under the award in question, but they seek to have the award filed in Court. That is the award which deals with the whole matter referred to arbitration and not simply with the amount awarded to the plaintiffs.

For these reasons, we are of opinion that the view adopted by the District Judge is correct, and that this appeal should be dismissed. At the same time we think that the District Judge should have, while reversing

the order of the Munsif, returned the petition filed in the Court of the Munsif for the purpose of its being presented to that of the Subordinate Judge; and we order accordingly.

We make no order as to costs.

*Appeal dismissed.*

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31 C. 207 (=8 C. W. N. 160).

APPELLATE CIVIL.

*Before Mr. Justice Ghose and Mr. Justice Pratt.*

JUNG BAHADUR v. MAHADEO PROSAD.\*

[24th August, 1903.]

*Appeal—Dismissal of application for default—Revivor—Civil Procedure Code (Act XIV of 1882), ss. 103, 318, 588, 647.*

There is no appeal against an order rejecting an application under s. 103 of the Civil Procedure Code for reviving an application under s. 311 of the Code, which has been dismissed for non-appearance of the judgment-debtor

*Ningappa v. Gangawa* (1), *Raja v. Srinivasa* (2) and *Hurreenath Koondoo v. Modhoo Soodun Saha* (3) followed.

[Fol. 29 All. 596; 19 C. W. N. 25=27 I. C. 492. Ref. 3 C. L. J. 276; 14 C. L. J. 489=12 I. C. 745.]

APPEAL by Jung Bahadur and others, judgment-debtors.

The appellants made an application under s. 311 of the Civil Procedure Code for setting aside the sale of some property in execution of a decree made against them; but as negotiations for [208] a compromise were going on between them and the decree-holders, the hearing of the application was adjourned several times, and eventually it was fixed to be heard on the 20th of April 1901 when the application was dismissed for non-appearance of the judgment-debtors. On the 9th of May 1901 they applied, under s. 103 of the Civil Procedure Code, to the Subordinate Judge of Chupra for reviving their application under s. 311, alleging that their *karpardazes* misunderstood the date fixed to be the 27th of April, and so informed them; that their pleader's signature on the order sheet was not obtained, and they had no intimation that the 20th of April was the date fixed for the hearing of the case, and that on the 27th of April they, the judgment-debtors, sent their witnesses to attend the Court where they were informed that the case had been struck off on the 20th of April for want of prosecution on their part. The Subordinate Judge rejected the application, holding that s. 103 of the Code did not apply to the present case by reason of s. 647 of the Code.

The judgment-debtors appealed to the High Court, and the respondents took a preliminary objection that no appeal lay.

Babu *Makhan Lal* for the respondents. No appeal lies against the order of the Court below, rejecting the application of the judgment-debtor. S. 588, cl. (8) of the Civil Procedure Code gives an appeal only against an order rejecting an application to set aside the dismissal of a suit. S. 647 does not confer any right of appeal not expressly given

\* Appeal from Order, No. 448 of 1901, against the order of M.L. Haldar, Subordinate Judge of Chupra, dated June 8, 1901.

(1) (1885) I. L. R. 10 Bom. 433.

(3) (1879) 19 W. R. 122.

(2) (1888) I. L. R. 11 Mad. 319.