

1871  
 SASHI  
 CHARAN  
 CHATTERJEE  
 v.  
 TARAK  
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 v.  
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their decision, they had been repudiated by the defendants, or in other words that, before the award was made, the authority of the arbitrators was revoked; and having considered the objections, he held that there was no valid ground for not enforcing the award; and directed "that the suit be decreed in favor of the plaintiffs; that the award of the arbitrators be upheld; that the plaintiffs do get from the defendants costs in this suit, with interest at one per cent." He directed also that a memorandum should be sent to the Registrar. The defendants appealed to the Subordinate Judge, and urged that there was no mutual submission to arbitration; that the defendants did not assent to the supposed agreement of reference; and that one of the arbitrators, whose signature purports to appear on the award knew nothing of the award, that he had not signed it, in fact that his signature must be a forgery. The Subordinate Judge held that there was no right of appeal, and dismissed the appeal. Hence the present special appeal which was heard before COUCH, C.J., and MITTER, J. The question was referred to a Full Bench, "Whether in the present case an appeal lay from the Moonsiff."

The question was referred with the following remarks by COUCH, C.J. (who, after stating the facts, continued):—In the case of *Madhusudan Das v. Adaita Charan Das* (1), "it was

(1) *Before Mr. Justice L. S. Jackson and Mr. Justice Markby.* made an application, not precisely under the terms of section 327, but asking that the private award of the arbitrators be enforced, and that he get possession of the lands and other things thereby awarded to him.

The 26th June 1869.

MADHUSUDAN DAS DEFENDANT) v.  
 ADAITA CHARAN DAS (PLAINTIFF)\*

Baboo Prasanna Kumar Roy for the appellants.

Baboo Tarak Nath Dutt for the respondent.

JACKSON, J.—I think it is quite clear that the Subordinate Judge was wrong in entertaining this appeal. The plaintiff, or petitioner in the Moonsiff's Court,

The Moonsiff, it seems to me quite clear, intended to give Judgment for the plaintiff in exact accordance with that award and in so far as he refused anything to the plaintiff, it was where the plaintiff had sought, under cover of this application, to get possession of something not given him by the award. I think, therefore, that the Judgment of

\* Special Appeal, No. 3285 of 1868, from a decree of the 1st Subordinate Judge of Hooghly, dated the 11th September 1868, modifying a decree of the Moonsiff of that district, dated the 13th March 1868.

held that, where the first Court gave judgment in exact accordance with a private award, that judgment was final, and that the Subordinate Judge was wrong in entertaining an appeal. But in *Syad Wali Alam v. Mussamat Bibi Nasran* (1), it was held that, under section 325, the order for the execution of an award must be considered to be a decree of Court, from which an appeal will lie. It is however to be remarked upon this case that the words in section 325, "in every case in which the judgment shall be given according to the award, the judgment shall be final." are not noticed. In *Baboo Chintamun Singh v. Roop Kooer* (2), it was held by a Full Bench that an order rejecting an application to file an award under section 327 is not a decree, and is therefore not appealable. An order that an award be filed is not a decree, and would seem for the same reason not to be appealable. By section 327 the award when filed is to be enforced as an award made under the previous provisions of the Chapter, that is, enforced according to section 325 which says that a judgment according to the award shall be final. In this case the judgment of the Moonsiff was in accordance with the award, the objection to the award being that it was invalid, and ought not to be filed. The decision on this objection was by the order that the award should be filed, and the appeal is in reality against that order. Under section 327 there is no decree, and it would seem to follow from the decision of the Full Bench that there is no appeal. But in *Hulodhur Sungiree v. Gunesh Sathal* (3), decided on the 30th June 1866, it is said that on the allegation of want of consent of parties, an appeal lies from an order under section 327, directing an award to be filed and the Moonsiff was intended to be, and was, retaining that land, I think that the in accordance with the award, and, being plaintiff must bear the costs of this so, was final, and that the Subordinate Court and of the lower Appellate Court Judge, in entertaining the appeal and going into evidence as to what the arbitrators really meant to give, acted without Jurisdiction. The plaintiff will, doubtless, be entitled to retain possession of the land standing beneath, and covered by, the premises awarded to him; but as I do not understand that the defendant would have offered any opposition to his

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MARKBY, J.—I am of the same opinion.

(1) 3 B. L. R., App., 104.

(2) Case No. 353 of 1866 : 31st August 1866.

(3) 6 W. R., 60.

1871 enforced. As the objection taken in the present case was went  
 SATTI of consent at the time the award was made, it comes within that  
 CHARAN decision. I think the grounds of the decision of the Full Bench  
 CHATTERJEE apply in the present case, and that no appeal lies; but as the  
 v. authority to the contrary was not noticed by the Full Bench, and  
 TARAK the award has not been over-ruled by it, I think we should refer the ques-  
 CHANDRA tion to a Full Bench.  
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LALA ISHWARI MITTER, J.—I concur in the order of reference proposed  
 PRASAD by the learned Chief Justice, but I do so upon the ground that  
 v. an appeal is taken away in such cases by the express provisions  
 BIR BHANJAN of section 325.  
 TEWARI

No. 741 of 1870.—This was also a case brought to enforce a private award under the provisions of section 327, Act VIII of 1859. The Court, after calling upon the parties to show cause why the award should not be filed, and disposing of the objection that was raised, directed that the award should be filed and enforced as an award made under the provisions of Chapter VI of the Code of Civil Procedure, and passed judgment in accordance with the terms of the award, but that decree was reversed on appeal. The special appeal was heard before LOCH and HOBHOUSE, JJ., by whom the following question was referred to a Full Bench.—

“When an award has been ordered to be filed, and judgment has been given in accordance with it under the provisions of section 327, Act VIII of 1859, is such judgment open to appeal?”

The question was referred because of the conflict of decision in the following cases:—*Hulodhur Sungiree v. Gunes Santhal* (1) *Ram Coomar Chowdhry v. Nobin Chunder Chowdhry* (2), *Brojololl Bajpye v. Umritololl Bajpye* (3) *Ram Bhanjan Bhakat v. Srikrishna Bhakat* (4), and *Madhusudan Das v. Adaita Charan Das* (5).

The cases came on to be heard together.

Baboo *Kasikant Sen* for the appellant in Case No. 868, and Baboo *Krishna Sakhu Mookerjee* for the appellant in Case

(1) 6 W. R. 60.  
 (2) W. R., 1864 Mis., 33.  
 (3) Mar. Rep., 163.

(4) 2. B. L. R. A. C. 260  
 (5) *Ante* p. 316.

No. 741, contended that an appeal lies where the objection is that the award was one which ought not to have been received or acted upon, either on the ground that it was made without sufficient authority or without the consent of the parties, and cited *Syad Wali Alam v. Mussamat Bibi Nasran* (1), *Maharaja Jaimangal Sing v. Mohanram Marwari* (2), *Sunt Lall v. Baboojee* (3), and *Hulodhur Sungiree v. Gunesh Santhal* (4).

(1) 3 B. L. R., App., 104.

(2) *B. f. r. : Mr. Justice Norman and Mr. Justice E. Jackson.*

The 14th September 1869.

MAHARAJA JAIMANGALSING (DEFENDANT) v. MOHANRAM MARWARI AND ANOTHER (PLAINTIFFS).

Mr. Allan and Baboo Budh Sen Sing for the appellant.

Mr. Paul (with him Baboo Anand Chandra Ghosal) for the respondents.

THE facts of the case are fully stated in the judgment of the Court, which was delivered by

NORMAN, J.—This is a case which was remanded by an order of this Court made by a Division Bench (Mr. Justice Kemp and Mr. Justice E. Jackson), dated the 6th of March 1868, to the Judge of Bhagulpore, to try whether anything and what was due from the defendant, Maharaja Sir Jaimangal Sing Bahadur, to the plaintiff upon two accounts, which are described in the judgment of Mr. Justice Jackson, as a "roka account" and a "cloth account."

After the case went back to the Judge of Bhagulpore, it was referred to two arbitrators, one of whom was Mr. Sandys, the former Judge of Bhagulpore, and the other was Moulvi Wahuddin, the Judge of the Small Cause Court, under an order stating that, with a copy of that order, the case be forwarded to each of the arbitrators, and also all papers, connected with the suit,

and that the arbitrators having decided the case in the presence of the pleaders of all parties, should send back the papers and their award within one month from the date of that order. This order was dated the 22nd May 1868. On the 23rd June, the arbitrators, in the presence of both parties, stated that, when the case came back, it was transmitted to them as arbitrators; that from the petition and the order under which they were appointed, it did not appear in what manner they were to deal with the case, whether in obedience to the order of the High Court or with general powers.

The explanation of that probably is that the arbitrators, reading the judgments of JACKSON and KEMP, JJ., in which those two learned Judges do not exactly agree in their views of the case, may have felt embarrassed as to what question they had to decide.

On the 23rd of June the arbitrators had stated that they could not act without full powers. On the 30th of June, the plaintiff presented a petition stating that it was intended that the arbitrators should decide with general powers. That petition was presented to the arbitrators, and not to the Judge.

On the 2nd July, the defendant also presented a petition to the arbitrators consenting that the case should be decided by them with general powers.

The arbitrators held sittings on the 2nd, 9th, and 22nd July; on the 20th,

(3) 12 S. D. A. Rep., Agra, 1863, 42.

(4) 6 W. R., 60,

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\* Regular Appeal, No. 107 of 1869, from a decree of the Judge of Bhagulpore, dated the 3rd February 1869.