

arises, Can the obligor be called on summarily under the section cited, at the instance of the assignee?

“It appears to be considered a rule of practice that an assignor must be a party to a suit by the assignee. See Macpherson’s Civil Procedure, page 131, and *In the matter of the petition of Bhanjan Mandal* (1). I have, therefore, referred the applicant to a regular suit, as it would be necessary to make the assignor a party defendant, but his pleader has asked that the assignor be made a party under section 73 of Act VIII. of 1859.”

“It appears to me that the provisions of Act VIII. of 1859 will not apply to an application made under section 53 of Act XX. of 1866, except as to enforcement of decrees passed under that section, and that none but the obligee can apply to enforce the agreement recorded under section 52, and that I ought to refuse to make the assignor a party defendant, as this would take more the form of a regular suit, and it would be necessary to summon the assignor, which I could not do, under the ruling in *Krishna Kishore Ghose v. Brajanath Mozoomdar* (2). I must, therefore, refuse to call upon the obligor summarily, and the applicant must be referred to a regular suit, making the necessary parties defendants.”

The opinion of the Court was delivered by

PEACOCK, C. J.—The Judge of the Small Cause Court is correct in holding that a summary application under section 53, Act XX. of 1866. cannot be entertained at the suit of the assignee of the obligee.

*Before Sir Burnes Peacock, Kt., Chief Justice, and Mr Justice Mitter.*

ELAM PARAMANICK *v* SOJAITULLAH SHEIKH \*

*Award—Act XI. of 1865, s. 6—Act VIII. of 1859, s. 327.*

When a matter has been referred to arbitration without the intervention of any Court, a Small Cause Court, in the Mofussil, has jurisdiction to entertain an application under section 327 of Act VIII. of 1859, to file the award, provided it relates to a debt not exceeding the amount cognizable by such Court, and that the defendant resides within its jurisdiction.

\* Reference from the Court of Small Causes at Koosht a.

(1) 4 S. D. R., 94.

(2) 7 W. R., S. C. C. Rulings, 11

1863

GAUR MO  
DAS  
v  
RAM  
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1868

June 27

1868

PARA.  
 MANICK  
 v.  
 MAITULLAH  
 MIKIH.

The following case was submitted, by the Judge of the Small Cause Court at Kooshtea, for the opinion of the High Court :

“The plaintiff having had dealings of paddy and cash with the defendant, lent him paddy and cash on different occasions, and failing to obtain satisfaction of his demands, referred the matter to arbitration, without the intervention of any Court of Justice. The arbitrators gave their award for the plaintiff, and directed him to enforce it through the medium of the proper Court, in case defendant refused payment of the amount awarded. Now, the plaintiff appears before this Court with an application, praying that the award may be filed, and the necessary orders passed.

“But the question, whether a private award may be filed in this Court or in the ordinary Civil Court, appears a doubtful one. I am of opinion that the Court of Small Causes cannot have jurisdiction over the matter. Section 6, Act XI. of 1865, which defines the jurisdiction of the Court, gives it no power to file such a document. If it be taken for a contract for judgment, the Court has no power to proceed to enforce it at once. Under section 327, Act VIII. of 1859, when any person applies to file a private award, the Court having jurisdiction in the matter, shall direct notice to be given to the opposite party to show cause why the award should not be filed. If no sufficient cause be shown against the award, it shall be filed, and may be enforced. But, if the validity of the agreement of the parties to the arbitration be called into question, the Court would have to settle it before proceeding to pronounce judgment upon the matter for giving effect to the private award.

“The late Sudder Court’s Circular, dated 14th April 1860, provides that an application to give effect to a private award ‘should be brought on the file as a regular suit, but that it ‘should be on a stamp of the value required for miscellaneous ‘petitions.’ The simple suits cognizable by the Court of Small Causes cannot possibly include such a regular suit amongst their number.

“Then section 327, Act VIII. of 1859, directs, that any person interested in the award may make application to the Court

having jurisdiction in the matter to which the award relates. The word "Court" in this section cannot possibly refer to the then not existing Courts of Small Causes, but to the ordinary Civil Courts, which are empowered to entertain all suits not falling within the exclusive jurisdiction of the Small Cause Court, by section 6, Act XI. of 1865, or of any other Courts by special Acts.

1863  
ELAM PABAI  
MANICK  
v.  
SOJAITULLAH  
SHEIKH.

"From the circumstances stated above, it would appear that the matter is cognizable by the ordinary Civil Courts, and not by the Courts of Small Causes, which are not required to make any preliminary enquiries for bringing a case on their file, but to enter at once into the merits of cases made cognizable by section 6, Act XI. of 1865.

"I, therefore, beg most respectfully to submit the case for the decision of the Hon'ble Judges of the High Court, on the point, whether an application for giving effect to a private award is to be presented to the ordinary Civil Courts of local jurisdiction, or whether the Court of Small Causes constituted under Act XI. of 1865, is competent to entertain it."

The opinion of the Court was delivered by

PEACOCK, C. J.—If the award relate to a debt, not exceeding the amount cognizable by a Small Cause Court, we are of opinion that the Small Cause Court has jurisdiction under section 327, Act VIII. of 1859, to entertain an application to file the award, provided the defendant resides within the jurisdiction. In such a case, the Small Cause Court would have jurisdiction over the matter to which the award relates.

*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Miller.*

IN RE SHASHI BHUSHAN BHADURY.

*Pleader—Act XX. of 1865, s. 12—Calcutta Court of Small Causes—Act IX. of 1850.*

1868  
June 27.

A pleader, holding a certificate under section 12 of Act XX. of 1865, is not thereby entitled to be admitted to practice in the Court of Small Causes at Calcutta. *In re Tulsidas Seal* (1) distinguished.

(1) 2 Ind. Jur., N. S., 133; and 7 W. R., 228.