

Baboo *Saligram Singh* for the appellant.

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Baboo *Hem Chunder Banerjee* and Baboo *Ram Churn Mitter* for the respondent.

DIN DOYAL
SINGH
v.
GOPAL
SARUN
NARAIN
SINGH.

The judgment of the Court (TREVELYAN and BANERJEE, JJ.) was as follows:—

The question before us is whether the term of limitation for a suit upon a registered instalment bond is six years or three years.

The decision of that question would depend upon the determination of the question whether article 116, Schedule II of the Limitation Act, governs an instalment bond. It is argued that it does not, because article 74 in express terms makes provision for an instalment bond.

We think that article 116 is intended to apply to all contracts in writing registered, whether there is or is not an express provision in the Limitation Act for similar contracts not registered, and this view seems confirmed by the distinction between the terms of this article and of article 115, in which the words “not herein specially provided for” occur. In this view we think that the provisions of article 116 govern this case, and that this appeal must, therefore, be dismissed with costs.

Appeal dismissed.

J. V. W.

Before Mr. Justice Trevelyan and Mr. Justice Banerjee.

SURESH CHUNDER BANERJEE, MINOR, BY HIS GUARDIAN AND EXECUTOR NOGENDRA CHUNDER BANERJEE AND ANOTHER (DEFENDANTS Nos. 2 AND 3) v. AMBICA CHURN MOOKERJEE AND OTHERS (PLAINTIFFS).*

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May 19.

Appellate Court, Power of—Power to refer to arbitration a case on appeal—Civil Procedure Code, 1882, s. 582.

Under s. 582 of the Civil Procedure Code, an Appellate Court has power to refer a case before it to arbitration, if the parties wish it to be referred.

* Appeal from Appellate decree No. 656 of 1890 against the decree of F. F. Handley, Esq., Judge of Nuddea, dated the 28th of February 1890, reversing the decree of Baboo Bepin Chunder Roy, Munsiff of Ranaghat, dated the 30th of April 1889.

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In re the petition of Sangaralingam Pillai (1) and Bhugwan Das Marwari v. Nund Lal Sen (2) followed.

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THE facts of this case are sufficiently stated in the judgment of the High Court.

AMBICA
CHURN
MOOKERJEE.

Baboo *Harendra Nath Mookerjee* for the appellants.

Baboo *Hari Mohun Chukerbutty* for the respondents.

The judgment of the Court (TREVELYAN and BANERJEE, JJ.) was delivered by—

BANERJEE, J.—It appears from the record that this case was referred to arbitration in the Lower Appellate Court, and a certain time was fixed within which the arbitrators were required to submit their award. The next order that we find on the order sheet is that “a decree be drawn up in terms of compromise by the pleaders;” and it appears from a note at the foot of the decree that the pleader of one of the parties objected to sign the decree on the ground that he had no authority from his client to compromise the appeal. We further find on the record an award signed by the arbitrators; but we do not find any petition of compromise put in by the parties after that. The award, however, bears on the back of it the following order:—“Decree in terms of the compromise as agreed to by both parties.” The decree that is drawn up is in terms of the award submitted by the arbitrators; but the order “that the decree be drawn up in terms of the compromise” was passed without giving the parties any opportunity to raise any objection to the award.

It appears to us clear, therefore, that though the case was originally referred to arbitration, yet, when the award reached the Court, it was regarded not as an award, but as a compromise by the parties; and a decree was ordered to be drawn up upon the footing of its being a compromise.

Against this decree and decision the defendants have preferred this second appeal; and it is contended on their behalf, *first*, that the decree is bad, because the Appellate Court has no power to refer a case to arbitration; and, *secondly*, that the decree is further bad, as it is based on an award without giving the parties

(1) I. L. R., 3 Mad., 78.

(2) I. L. R., 12 Calc., 173.

any opportunity to object to it; and it is pointed out in the course of the argument that there were other irregularities, such as the submission of the award long after the time allowed by the order appointing the arbitrators, without there being any extension of time obtained from Court.

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In support of the *first* objection, the learned Vakil for the appellant refers to the decision of this Court in the case of *Juggessur Dey v. Kritartha Moyee Dossee* (1); but we do not think that that decision applies to this case. The question whether the Appellate Court can refer a case to arbitration depends upon the provisions of section 582 of the present Code of Civil Procedure, which is different from the provisions of section 37 of Act XXIII of 1861, which was the law in force when that case was decided. Under the old law it was provided that "the Appellate Court shall have the same powers as the Courts of First Instance;" under the present Code it is enacted that "the Appellate Court shall have, in appeals, the same powers, and shall perform the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction." If the reference to arbitration on the application of parties is not a power to be exercised by the Court, it is a duty imposed upon the Court, and under the provisions of section 582 of the Code of Civil Procedure, we think that the Appellate Court can refer a case to arbitration if the parties to the appeal pray for such reference. This view is in accordance with the decision of the Madras High Court in the case of *Sangaralingum Pillai* (2), and also with the opinion of this Court in the case of *Bhugwan Das Marwari v. Nund Lal Sen* (3).

But the second objection is, we think, valid, as there was really no compromise in the case, and what has been treated as a compromise was, in fact, an award submitted by the arbitrators appointed in the case. It is necessary, therefore, that the formalities prescribed by the Act for awards should be strictly complied with. The appellants were therefore entitled to have an opportunity of objecting to the award if they thought fit; and the learned Judge below ought to have disposed of their objection before he could order the decree to be drawn up in terms of the award.

(1) 12 B. L. R., 266; 21 W. R., 210.

(2) L. L. R., 3 Mad., 78.

(3) I. L. R., 12 Calc., 173.

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The case must therefore go back to the lower Appellate Court in order that the appellants may have such an opportunity. When the record goes back to the Judge, he shall fix a day for the hearing of the case not less than ten days from the arrival of the record in his Court; so that the parties may have an opportunity of raising any objection to the award that they may think fit; and the learned Judge will then dispose of the objections, provided they are filed within ten days from the date of the arrival of the record.

The costs will abide the result.

Case remanded.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

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 June 8. RAJENDRA NARAIN BAGCHI (PLAINTIFF) v. WATSON & Co.
 (DEFENDANTS).*

Transfer of Property Act (IV of 1882), s. 135—Transfer of actionable claim.

The first paragraph of s. 135 of the Transfer of Property Act has no application to a case in which the debtors deny the existence of the claim altogether, and where the purchaser of the claim has to obtain judgment affirming the claim before any satisfaction is made or tendered.

Clause (d) of that section is not limited to cases where the judgment of a Court affirming the claim has been delivered, or where the claim is made clear by evidence before the sale of the claim.

Girish Chandra v. Kasiswari Debi (1), *Khosdeb Biswas v. Satis Mondul* (2), and *Subbarnmal v. Varbatarasama* (3), followed. *Jani Begum v. Jahangir Khan* (4) dissented from.

ONE Sriram Chowdhry was the owner of certain maurasi and putni taluqs, and the defendants were ijaradars under him of those mehals by virtue of a lease dating from 1288 (1881). On the death of Sriram Chowdhry, his widow, Hari Dasi Debi, on behalf of her minor sons, executed a kobala, dated 25th Choitro 1296 (6th April 1890), in favour of the plaintiff for the arrears of

* Appeal from Appellate decree No. 1103 of 1890 against the decree of W. H. Page, Esq., Judge of Moorshedabad, dated the 9th of June 1890, reversing the decree of Baboo Raj Chandra Sanyal, Subordinate Judge of Moorshedabad, dated the 20th of December 1889.

(1) I. L. R., 13 Calc., 146.

(3) I. L. R., 10 Mad., 289.

(2) I. L. R., 15 Calc., 436.

(4) I. L. R., 9 All., 476.