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ROJOMOYEE DASSEE *v.* TROYLUKHO MOHINEY DASSEE.

[STANLEY J: I do not know if you are entitled to costs. At the present time I am not in a position to give the costs.]

Mr. Cotton: I ask for an order with regard to the costs of the infant grandson.

Mr. Bonnerjee: I submit that the plaintiff's costs should come out of the estate.

[STANLEY J: I reserve all costs.]

Mr. Chakravarti: The estate is in the hands of the widow, and she is the Receiver.

[STANLEY J: I do not know that there has been any mismanagement.]

Mr. Bonnerjee: Troylukho Mohiney Dasi was appointed Receiver in the last suit.

[STANLEY J. I shall appoint Troylukho Mohiney to be Receiver in this suit, as no one objects to this lady, who was appointed Receiver in the other suits, being appointed Receiver in this suit.]

Attorneys for the plaintiff. *G. C. Chunder & Co.*

Attorneys for the defendants. *P. N. Sen, A. T. Dey, N. C. Dutt, R. K. Bysack and M. N. Sen.*

R. G. M.

APPELLATE CIVIL.

1902
February 21.

Before Mr. Justice Banerjee and Mr. Justice Rampini.

MAHOMED WAHIDUDDIN
v.
HAKIMAN.*

Arbitration award—Arbitrator, am-muktear of one of the parties—Indebtedness of arbitrator to a party—Judicial misconduct—Civil Procedure Code (Act XIV of 1882) s. 525.

* Appeal from Original Decree No. 197 of 1899 against the decree of Babu Upendra Chandra Mullick, Subordinate Judge of Patna, dated the 5th of April 1899.

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If, after a reference to arbitration, it transpires that the arbitrator has been acting as am-muktear of one of the parties without any remuneration, the other party is entitled to withdraw from the reference, and the award made by the arbitrator after receipt of notice of revocation cannot be enforced by suit.

If the arbitrator is indebted to one of the parties at the time of the reference or becomes so indebted after the reference, and in either case does not disclose the fact to the other party, such party would be entitled to revoke the reference upon discovery of the fact, and any award made by such arbitrator would be invalid on the ground of judicial misconduct.

O. R. Coley v. *A. Da Costa* (1), *Toolsimoni Dasi* v. *Sudevi Dasi* (2), and *Kali Prosanno Ghose* v. *Rajani Kanto Chatterjee* (3), referred to.

THE plaintiff, Mahomed Wahiduddin, appealed to the High Court.

An application under s. 525 of the Civil Procedure Code was made for filing an arbitration award made without the intervention of any Court. The opposite party appeared on notice and objected to the award being filed, on the ground that there was no reference to arbitration by her, and that the deed of reference had been fraudulently caused to be signed by her without the purport of the document being explained to her. The Subordinate Judge rejected the application without taking any evidence for determining whether the objections taken by the opposite party against the validity of the award were made out or not. The petitioner moved the High Court under s. 622 of the Civil Procedure Code and obtained a rule, and upon the hearing of the rule before a Division Bench the case was referred to a Full Bench for the determination of the question whether, when an application is made under s. 525 of the Civil Procedure Code, the jurisdiction of the Court to order the award to be filed and to allow proceedings to be taken under it is taken away by a mere denial of the reference to arbitration on an objection to the validity of the reference. The question was answered in the negative by the Full Bench, and the case was sent back to the Court below to determine upon evidence whether the objections taken by the opposite party against the validity of the award were made out or not. The lower Court held that some of the objections had been made out, and that the award was invalid by

(1) (1890) I. L. R. 17 Calc. 200. (2) (1899) 3 C. W. N. 361.
(3) (1897) I. L. R. 25 Calc. 141.

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reason of its having been made after the revocation of the reference for good cause, and refused to file the award.

Dr. Ashutosh Mukerji and *Moulavi Mahomed Mustafa Khan* for the appellant.

Moulavi Mahomed Yusoof and *Moulavi Sowghatali* for the respondent.

BANERJI and RAMPINI JJ. This appeal arises out of an application made by the appellant under s. 525 of the Code of Civil Procedure for filing an arbitration award made without the intervention of any Court.

It is not necessary to say anything more about the previous stages of this litigation than this, that, in accordance with the decision of the Full Bench in this case the case (1) was sent back to the Court below to determine, upon evidence, whether the objections taken by the defendant against the validity of the award were made out or not.

It has now been held by the Court below that some of the objections have been made out, and that the award is invalid by reason of its having been made after the revocation of the reference for good cause.

Against this decision of the lower Court the plaintiff has preferred the present appeal, and it is argued on his behalf, *first*, that the Court below was wrong in disposing of the question of the validity of the award as a mixed question of law and fact, when the plaintiff had no notice that it was going to be so disposed of, and when the only notice that the plaintiff received was that the Court was going to decide the abstract question of law, whether the award was invalid by reason of the defendant having revoked the authority of the arbitrator; *secondly*, it is argued that upon the materials before it the Court below was wrong in holding that there was any valid reason for the revocation of the reference, or that the award was vitiated by reason of the misconduct of the arbitrator.

In support of the first contention we were referred to certain portions of the order-sheet, namely, to orders Nos. 38 to 44, as showing that the only question which the Court was going to

(1) (1897) I. L. R. 25 Calc. 757.

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consider and the only question upon which argument was heard, was the question whether the award filed was invalid by reason of the defendant having written a protest letter to the arbitrator.

We are of opinion that the portions of the order-sheet referred to do not bear out the contention of the learned vakeel for the appellant. Although there are portions of the orders referred to, which, if they stood alone, might support the appellant's contention, yet taking the orders as a whole, we must hold that the question which was discussed before the Court was not the abstract question whether the award was invalid by reason of mere revocation of the arbitrator's authority, but that it was the concrete question, the mixed question of law and fact, namely, whether the award was invalid by reason of the letter of protest dated the 5th January 1897, that is, by reason of the protests for the reasons stated in that letter. That was really the question before the Court, as appears from order No. 43, which is in these words:—"Upon plaintiff's application it is noted that the pleader informed the Court that other witnesses to prove ekrarnama only are present."

This goes to show that the Court enquired whether the plaintiff had any witnesses to examine upon any point other than the question of the execution of the ekrarnama, and was informed that the other witnesses of the plaintiff, that is, the witnessses, other than those examined, were cited to prove the ekrarnama, and upon that point the Court below did not think that any further evidence was necessary, as it says in its judgment that the execution of the ekrarnama was admitted by the defendant. The judgment also shows that the whole question was discussed before the Court, as there are arguments noticed in the judgment which could not have been addressed to the Court, unless the whole question was before it.

The first contention of the appellant, that he had no sufficient opportunity of establishing his case, has therefore no force.

Upon the second point we think that it is clear from the evidence that the revocation of the reference in this case was for a good and valid reason.

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The letter itself (Exhibit D), dated the 5th of January 1897, to the arbitrator, sets out the reason for which the defendant revoked the reference. That reason is stated in these words:—"That the said Mahomed Wahiduddin manages all your village and court affairs and he has been manager of all your affairs for a long time, hence he may, in lieu of his services rendered to you, influence you, which, being unjust, would be prejudicial to the interests of my client; my client therefore apprehends that justice will not be shown her." It was argued that, if this was the reason, the defendant on her own admission in her deposition must have been aware of the fact that the plaintiff was the am-muktear of the arbitrator long before the reference was made. We are of opinion that this is not so. All that the defendant in her evidence says is, that she heard from the plaintiff some five or six years ago that he was the muktear of the arbitrator; but she does not say that she was aware of the fact that the plaintiff acted as the arbitrator's muktear without receiving any remuneration—a fact which is not now disputed. This circumstance, then, was of itself sufficient to justify the revocation of the reference. But there is another important fact which appears in the evidence of the arbitrator himself. He says he is indebted to the plaintiff. The admission is made after some slight hesitation. It is argued for the appellant that there is nothing to show whether this indebtedness existed at the time of the reference, or whether the arbitrator became indebted subsequently. If it existed at the time of the reference and was not disclosed to the defendant, that would be a good reason for the revocation of the authority given to the arbitrator. If it came into existence subsequently, that was a good reason for the letter to the arbitrator, and so upon either of these two views this indebtedness of the arbitrator to the plaintiff would also be a good reason for revocation of the reference. The fact, moreover, that it was never disclosed would be a ground for invalidating the award on account of judicial misconduct. The view we take is supported by the case of *O. R. Coley* v. *V. A. DaCosta* (1), *Toolsimoni Dasi* v. *Sudevi Dasi* (2), and *Kali Prosanno Ghose*

(1) (1890) I. L. R. 17 Calc. 200. (2) (1899) 3. C. W. N. 361.

v. *Rajani Kanta Chatterjee* (1). For these reasons we dismiss this appeal with costs.

S. C. B. *Appeal dismissed.*

Before Mr. Justice Rampini and Mr. Justice Sale.

1901 *Nov.* 21.

RUP CHAND MAHTON

v.

GURDAN SINGH AND OTHERS.*

Bengal Tenancy Act (VIII of 1885) s. 61, and Sch. III, art. 2(a)—Deposit of rent—Notice of deposit on one of several joint landlords, effect of—Limitation.

Service of notice on one of the landlords of the deposit of rent under s. 61 of the Bengal Tenancy Act (VIII of 1885) has not the effect of reducing the period of limitation to six months as provided in art. 2(*a*) of Sch. III of the Act, if there are co-sharer landlords jointly and severally entitled to the rent.

THE defendant Rup Chand Mahton appealed to the High Court.

The suits were brought by the plaintiffs Gurdan Singh and others, for arrears of rent. The defendants raised various pleas denying their liability to pay rent, but the one material for the purpose of this report was that the claim for rent for the year 1303 B.S. was barred, because some of the defendants deposited their rent in Court under the provisions of s. 61 of the Bengal Tenancy Act, and asked the Court to serve notices of this deposit on the plaintiffs; and it was contended that there was a presumption that they were served, and that therefore the period of limitation for the recovery of the rent for that year was six months from the date of such service as laid down in Sch. III, art. 2 (*a*) of the Bengal Tenancy Act. It was found that the notice was served upon only one out of the 28 plaintiffs. The Munsif decided this plea as well as the other pleas against the defendant and decreed the suit, and on appeal the decree of the Munsif was affirmed by the Subordinate Judge.

* Appeal from Appellate Decree No. 214 of 1898 against the decree of Brij Mohun Pershad, Subordinate Judge of Tirhut, dated the 25th of September 1897, affirming the decree of Babu Joya Prosad Pandey, Munsif of Samastipur, dated the 30th of June 1897.

(1) (1897) I. L. R. 25 Calc. 141.