

## APPEAL FROM ORIGINAL CIVIL.

*Before Sir Francis W. Maulean, K.C.I.E., Chief Justice, Mr. Justice Stephen, and Mr. Justice Woodroffe.*

RAMJIDAS PODDAR

v.

HOWSE.\*

1907  
Dec. 12.

*Arbitration—Application to stay proceedings pending arbitration—Arbitration Act (IX of 1899) s. 19.*

Section 19 of the Arbitration Act only applies where there has been a submission to arbitration before the commencement of legal proceedings.

APPEAL by the defendant, Ramjidas Poddar, from the judgment of HARINGTON J.

The plaintiff, Frederick William Howse, on the 24th August 1906, instituted a suit for the recovery of Rs. 13,362-13 as damages sustained by him through the defendant Ramjidas Poddar's breach of three contracts. On the 2nd November 1906, they agreed in writing to submit the disputes and differences arising between them to the arbitration of Mr. T. R. Pratt and Babu Sewpersad Poddar. Thereafter one of the arbitrators declined to proceed with the reference alleging dilatoriness and obstructiveness on the part of the defendant. The plaintiff then proceeded with the suit. On the 8th January 1907 the defendant applied under s. 19 of the Indian Arbitration Act for an order staying proceedings in the suit, and on the 22nd January 1907 the following judgment was delivered by

HARINGTON J. This is a rule to shew cause why this suit should not be stayed under the provisions of section 19 of the Arbitration Act, and why the arbitration to which the parties to the rule agreed should not be directed to proceed. The learned counsel, who appears to shew cause against the rule, takes an objection that section 19 of the Arbitration Act is inapplicable in the present case, because the dispute agreed to be referred to arbitration was the subject of a suit, and he contends that the Arbitration Act applies only to arbitrations

\* Appeal from Original Civil, No. 4 of 1907, in Suit No. 747 of 1906.

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by agreement and not to an arbitration in a dispute which is the subject-matter of a suit. Now, the preamble to the Arbitration Act is in the following terms: "Whereas it is expedient to amend the law relating to arbitration by agreement without the intervention of a Court of Justice; It is hereby enacted" and so on. The second section provides that "this Act shall apply only in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted in a Presidency town." Then follows section 19 which provides for the staying of legal proceedings. That section gives power to the Court to stay proceedings in a case "where any party to a submission to which this Act applies, or any person claiming under him, commences any legal proceedings against any other party to the submission, . . . . in respect of the matter agreed to be referred." In my opinion that section is clearly directed to the stay of a proceeding instituted after the submission to arbitration and it does not appear to me to be applicable to the stay of proceedings which have been commenced between the parties before the agreement to refer to arbitration was come to. And I think there is great force in the argument of Mr. Buckland that the terms of section 2 show that the Arbitration Act was intended to refer to arbitration of disputes which were not in fact the subject of suits, and my view is strengthened by the fact that the preamble to the Act relates to arbitrations without the intervention of the Court. I think the objection to the rule is sound, and that the only course open to the parties is to have recourse to proceedings under section 506 of the Civil Procedure Code and the other sections in that Chapter, and to have an order of Court referring the matter to arbitration and then by the provisions of section 508 the Court would be enabled to deal with the suit as provided by that Chapter. If the Arbitration Act were intended to refer to arbitrations in respect of suits already instituted, it is very singular that it only repeals the sections in the Civil Procedure Code which relate to arbitrations by agreement other than agreements in pending suits. The rule must be discharged with costs.

From this judgment the defendant appealed.

*Mr. Avetoom*, for the appellant.

*Mr. Zorab* and *Mr. Buckland*, for the respondent.

MACLEAN, C.J. We are clear that the case does not fall within section 19 of the Arbitration Act (IX of 1899). Here, a suit had been instituted to recover a substantial sum. The parties then agreed to an arbitration not only in regard to the subject of the suit but to all differences between them relating to other matters. Now the defendant in the suit applies under section 19, to stay proceedings in the suit. It is quite clear that that section applies only to cases where there has been a submission

to arbitration *before* the commencement of legal proceedings, and gives the Court power to stay such subsequent proceedings. That has no application to the facts of the present case. The appeal must, therefore, be dismissed with costs.

In the view we take of the case, it is not necessary to discuss the question whether or not an appeal lies.

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STEPHEN J. I agree.

WOODROFFE J. I also agree.

*Appeal dismissed.*

Attorneys for the appellant: *Ghosh & Bose.*

Attorneys for the respondent: *Orr, Dignam & Co.*

R. G. M.