

Deodat Vs. Sheoambar and ors.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1887)ILR9All168

Judge : John Edge, Kt., C.J. and ;Tyrrell, J.

Appellant : Deodat

Respondent : Sheoambar and ors.

Judgement :

John Edge, Kt., C.J.

1. The first question in this case is whether Section 21 of the Specific Relief Act applies to a contract to refer to arbitration an action already pending. It appears to me that the wording of the section is wide enough to cover contracts to refer any matter which can legally be referred to arbitration. One of such matters is a suit which is proceeding in Court. That being my view of the scope of Section 21, the next question is, was there in this case a contract to refer a matter to arbitration which the plaintiff has refused to perform

2. This question depends to some extent upon the facts of this case, The first suit was brought in December 1884. Before it came on for trial, the parties agreed or contracted to refer the whole action to arbitration, and on the 31st January 1885, in pursuance of that agreement, applied for and obtained from the Munsif an order for reference. We have been informed that it was a part of this order that the

arbitrators should make their award within one week. However, before the week expired, the plaintiff made an application, not by consent but adversely, for leave to withdraw the action under Section 373 of the Civil Procedure Code, and to bring a fresh one. The Munsif, on the 3rd February 1885, granted the application, and made an order to the effect that the plaintiff might withdraw, and bring a fresh action, so far as the law allowed. The fresh action has now been brought. The Court below have held that Section 21 of the Specific Relief Act does not apply, that there is and was no agreement to refer, and that the effect of the Munsif's order was to cancel the order of reference. We asked Munshi Sukh Bam to point out any power which the Court has to revoke an order referring an action or matter in an action, except in the events referred to in Section 510 of the Code, but he has admitted that he cannot do so. The Court had, no doubt, power to deal with cases of partiality or other misconduct; but this power would only arise after the award had been made. Why this should be so, I cannot say. It would appear advisable that the Court should be able to revoke a submission before award, if satisfied that the arbitrators were acting corruptly, though of course strong evidence of this would be required. Munshi Sukh Bam cannot show any power to revoke a submission to arbitration in a case of this kind, and we can find nothing in the Civil Procedure Code enabling the Munsif to revoke the order of reference in this case. If there is no such power, it appears to us that there must be one of two results: either the Munsif had no power to act under Section 373 of the Code, if the effect of such action would be a revocation of the order of reference or, if the permission to withdraw would not involve such revocation, then the order to refer the action is still in force: so that the Munsif's order was either ultra vires or else inoperative as a revocation. In either alternative, the case falls within Section 21 of the Specific Relief Act. But Munshi Sukh Bam contends that the period of time within which the award was to be made expired before the bringing of the second action. To my mind that does not answer the defendant's point. Section 21 is in positive terms, and provides that 'save as provided by the Code of Civil Procedure, no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract, and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.' Now, this refers to a person refusing performance of a

contract while it is still operative. In this case, within the prescribed week, and while the agreement was still in force, Munshi Sukh Ram's client' did refuse performance, and showed such refusal effectively by applying for leave to withdraw.

3. Under these circumstances, I am of opinion that Section 21 of the Specific Relief Act applies to the case, and affords an answer to the suit, and that this appeal must be allowed with costs.

Tyrrell, J.

4. I concur with the learned Chief Justice, and would only add that, in my opinion, this suit is barred by the second clause of Section 373 of the Civil Procedure Code, as it appears to me that the Munsif had no jurisdiction to give the plaintiff permission to withdraw from the former suit and bring a fresh one for the same subject-matter. Under the circumstances which have been stated by the learned Chief Justice, the Munsif had delegated his authority in connection with the suit to an arbitrator appointed by him on the nomination of both parties; and under the circumstances described in the plaintiff's ex parte application, the Munsif was not competent to restore the suit to his file, and treat it as one awaiting his decision. The action of a Court referring a suit to arbitration under Chapter XXXVII of the Code is limited expressly by the provisions of that chapter to dealing with the award. It may remit or otherwise interfere with the award, but it may not otherwise treat the suit as one which has remained upon its own file.

5. I concur with the learned Chief Justice in decreeing this appeal with costs.

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