

Lachman Das Vs. Abparkash

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Court : Allahabad

Decided On : Feb-11-1908

Reported in : (1908)ILR30All169

Judge : John Stanley, C.J. and ;William Burkitt, J.

Appellant : Lachman Das

Respondent : Abparkash

Judgement :

John Stanley, C.J. and William Burkitt, J.

1. The decree in this case in respect of which the appeal before us has been preferred was passed upon a so-called award. After evidence had been given and some of the issues in the case had been determined by the Court, and there remained two issues only for determination, by consent of the parties the matters in difference were left to the arbitration of two gentlemen who happened to be present in Court. The Court there and then passed an order referring the matter to arbitration, but did not as is required by Section 508, fix a time for the delivery of the award or name the arbitrators. The arbitrators forthwith proceeded in Court, without the examination of the parties, to draw up an award, and upon the award so drawn up, which does not deal specifically with the two issues which remained undetermined, a decree was passed. The main objection to the decree which was so passed is that the whole proceedings were irregular owing to the fact that the

provisions of Section 508 were not complied with. Other objections were also raised, with which we think it unnecessary to deal. If the only objection were in respect of the omission to fix a date for the delivery of the award, we should have been disposed to regard that as an irregularity which would be cured by the acquiescence of the parties in the preparation of the award by the arbitrators, were it not for the clear and explicit language of their Lordships of the Privy Council. Indeed in this Court there is a decision of a Bench that the omission in the order of the Court to fix a time for the delivery of the award would invalidate the award. This was the case of *Chaha Mal v. Hari Ram* (1836) I.L.R. 8 All. 548. In that case Oldfield and Brodhurst, JJ., held that the law requires that there shall be an express order of the Court fixing the time for the delivery of the award, for extending or enlarging such time, and that an award which is invalid under Section 521 of the Code of Civil Procedure, because not made within the period allowed by the Court, is not an award upon which the Court can pass a decree, and a decree passed in accordance with such an award is not a decree in accordance with an award from which no appeal lies. The Privy Council pronouncement to which we have referred was made in the case of *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar* (1891) L.R. 18 I.A.. Lord Morris, delivering the judgment of the Board, observes: 'Their Lordships are of opinion that Section 508 is not merely directory, but that it is mandatory and imperative. Section 521 declares that no award shall be valid unless made within the period allowed by the Court, and it appears to their Lordships that this section would be rendered inoperative if Section 508 is to be merely treated as directory.' In view of the statement of the law by their Lordships we cannot but regard the proceedings taken in this suit as being obnoxious to the mandatory provisions of Section 508, and accordingly we must allow the appeal. Allowing the appeal, we set aside the decree of the Court below and remand the suit to that Court under Section 562 of the Code of Civil Procedure with directions that it be reinstated in its original number in the file of pending suits and be disposed of according to law. Costs here and hitherto will abide the event. Objections have been filed by the plaintiff appellant under Section 561 of the Code. These objections fall to the ground in consequence of our decision on the appeal. We dismiss them, but without costs. Appeal decreed and cause remanded.

