

Deoki Tewari Vs. Ram Autar Tewari

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Court : Allahabad

Decided On : May-11-1915

Reported in : (1915)ILR37All456

Judge : Tudball and ;Chamier, JJ.

Appellant : Deoki Tewari

Respondent : Ram Autar Tewari

Judgement :

Tudball and Chamier, JJ.

1. This application for revision arises out of a suit filed in the court of a Munsif. The parties agreed to refer the matters in difference between them to arbitration and an order of reference was made accordingly. The time for completing the award was extended from time to time up to December find, 1912. On the case being called on on that date it was found that the award had not been filed. The Munsif then made an order superseding the arbitration and fixed December 10th for the hearing of evidence. On December 5th the arbitrators filed an award purporting to have been made on December 2nd; but the Munsif held that the award had not been made in time, and he declined to recall his order superseding the arbitration. Ultimately he tried the case out and dismissed it. The plaintiff appealed to the District Judge, and one of his grounds of appeal was that the award had been made in time, and therefore the arbitration should not have been superseded. The

Additional Judge held that the Munsif was wrong in holding that the award had not been made within time, merely because it had not been filed in court within the time limited, and that he should have enquired whether it had been made by the arbitrators within that time. Accordingly he remanded the case under Order XLI, Rule 23. The Munsif after inquiry dismissed the suit again, holding that the award had not been made within time, and also that it was invalid on account of misconduct by the arbitrators. The plaintiff appealed and the Additional Judge found that the award had been made within time, and he remitted an issue on the question of misconduct. The Munsif found on the issue in favour of the plaintiff. The Additional Judge agreed with the Munsif and passed a decree in accordance with the award which was in favour of the plaintiff. The defendant has applied to this Court for revision of the order of the Additional Judge on the ground that the Munsif's second order, holding that the award was invalid on account of misconduct of the arbitrators, could not be interfered with by the Additional Judge. No appeal lies against the order of a court under paragraph 15 of the second Schedule to the Code of Civil Procedure setting aside an award, and it is contended that the order cannot be challenged in appeal against the decree in the suit, because even if it is erroneous it does not affect the decision of the case within the meaning of Section 105 of the Code. The applicant relies upon the decisions of this Court in *Ganga Prasad v. Kura* (1906) I.L.R. 28 All. 408 and *Kalyan Das v. Pyare Lal* (1907) 4 A.L.R. 256. In the latter case Aikman, J., merely followed the former which was a decision by two Judges. The learned Judges who decided the former case profess to follow the decision of Banerji, J., in *Shyama Charan Pramanik v. Prohlad Darwan* (1904) 8 C.W.N. 390, but an examination of the Judgment of Banerji, J., shows that he was of opinion that an appellate court was entitled, in an appeal against a decree, to interfere with the order of the court of first instance setting aside an award. He held that a second appeal lay against the decision of the appellate court, and he sent the case back in order that certain evidence might be taken. The Judgment of Banerji, J., seems to us to give no support whatever to the view taken in *Ganga Prasad v. Kura* (1906) I.L.R. 28 All. 408. The decision in the last mentioned case, and the decision in *Kalyan Das v. Pyare Lal* (1907) 4 A.L.R. 256 which follows it, seem to stand quite alone. They are inconsistent with several decisions of this Court beginning with the Full Bench

decision in Nanak Chand v. Ram Narain (1879) I.L.R. 2 All. 181 and ending with the decision of Knox and Griffin, JJ., in Ram Jiwal v. Nawal Singh (1902) I.L.R. 26 Bom. 551, with the decision of the Bombay High Court in Damodar Trimbak Dharap v. Raghunath Hari (1902) I.L.R. 26 Bom. 551, and with a long string of cases in the Madras High Court ending with Acluthayya v. Thimmayya (1908) I.L.R. 31 Mad. 345 XIII 84 R. It seems to us that an order of a court setting aside the award of an arbitrator and deciding that the case shall be tried by the court is an order affecting the decision of the case within the meaning of Section 105 of the Code. It has been held that the words 'affecting the decision of the case' in Section 105, mean 'affecting the decision of the case on the merits,' but even so we think that the order of the Munsif setting aside the award was liable to be challenged in appeal against the decree. As long ago as 1870 Sir, R. Couch, C.J, and Kemp, J., held that such an order affected the decision on the merits, see Mathooranath Tewaree v. Brindaban Tewaree (1870) 14 W.R. 327. The weight of authority is clearly against the applicant and we are of opinion also that the order of the Munsif was liable to be challenged in the appeal against the decree. It is not suggested that there is any other ground upon which we could in revision interfere with the order of the learned Additional Judge. This application is dismissed with costs.