

Moti Lal Vs. Mt. Sharda Devi

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Court : Allahabad

Decided On : Oct-29-1947

Reported in : AIR1948All222

Appellant : Moti Lal

Respondent : Mt. Sharda Devi

Judgement :

Sinha, J.

1. This is an appeal under Section 39, Arbitration Act (x of 1940) against the order of the learned Civil and Sessions Judge of Cawnpore. The facts are briefly these:
2. A lease was granted on 4th June 1925, by Mt. Sharda Debi in favour of the appellant, Motilal. The latter executed a qubuliat in her favour. Motilal was allowed to keep the house for five years on a rent of Rs. 40 a month. He was permitted to make certain constructions according to his choice. There were other stipulations in the qabuliat as to how the constructions were to be made.
3. Mt. Sharda Debi brought a suit for recovery of Rs. 5400 on account of arrears of rent and damages. She furnished certain particulars with which it is not necessary to deal.

4. The defence, inter alia, was that Motilal had raised substantial constructions of the value of Rs. 5611 of which he must be given credit.
5. The parties entered into an agreement of arbitration and one Mr. Sridhar Bajpai, an advocate of Cawnpore, was appointed arbitrator. The material portion of the agreement is in these terms:

Pandit Sridhar Bajpai is appointed arbitrator for deciding the matters in controversy. The arbitrator is entitled to make open or private enquiries. He is authorised to decide the matter in controversy after hearing the evidence of the parties-both oral and documentary - and after making local inspection.
6. The arbitrator entered upon his duty and made a local inspection of the spot. In his estimate the value of the constructions raised by the appellant was Rs. 2633-5 and it is on the result of his inspection that he based his award.
7. Objections were filed by the appellant, but the learned Civil and Sessions Judge repelled them and he accepted the figure arrived at by the arbitrator. It is against this order that the appellant has come in appeal.
8. The learned Counsel for the appellant concedes that the terms of reference are very wide and the class of cases, which have condemned private or public enquiry by an arbitrator, have no application to the facts of the case. His grievance is that the arbitrator should have come to a decision after hearing the evidence-both oral and documentary - and after making a local inspection. In other words, though local inspection was not excluded, nevertheless both conditions should co-exist and the award should be based on the result of both.
9. In our opinion this contention is well founded. The terms of reference leave no room for doubt that it was within the contemplation of the parties that the examination of the evidence of the parties was necessary. This condition the arbitrator evidently did not fulfil.
10. The learned Counsel for the respondent argues that an arbitrator is the chosen representative of the parties and his decision should not lightly be disturbed. This is no doubt so, but before his decision can claim the sanctity which is normally its

due, he must comply strictly, both in spirit and in law, with the terms of the agreement. That indeed is the charter of his right and no deviation from it is permissible. If he fulfils this condition, it is immaterial, as held in *Aftab Begam v. Abdul Majid Khan* 11 A.I.R. 1924 All. 800, if the award is, in the words of Walsh J. right or wrong. Said the learned Judge-

The attack on this award is really an attack upon the substance which the arbitrators have decided. They may be right, they may be wrong, it is no business of the Court.

But if the conditions provided by the agreement are not fulfilled, the award has no legal value.

11. It is obvious, in the case before us, that the arbitrator did not follow, the directions contained in the agreement. He did not consider the evidence. Indeed it is nobody's case that he did. The Court below has, it appears, been influenced by the latitude given to the arbitrator. It is the latitude given to him, which required of him greater circumspection and more rigid adherence to the terms of the agreement. We are, therefore, of opinion that the award is not binding upon the parties.

12. We think the award must, in this case, be set aside. We allow the appeal, set aside the order of the Court below and send the case back, to that Court with a direction to hear and determine it in accordance with law. Costs on parties.

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