

Salle Singh Vs. Mullo Singh

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Court : Allahabad

Decided On : Feb-01-1932

Reported in : AIR1932All656

Appellant : Salle Singh

Respondent : Mullo Singh

Judgement :

Mukerji, J.

1. This is an application to revise a decree of a Small Cause Court under the following circumstances:

The plaintiff, who is the applicant before this Court, filed a suit for recovery of money, and the defence was that the-defendant had paid back a certain sum of money. The plaintiff is a minor. The plaintiff's next friend and the defendant agreed to refer the point in dispute to the arbitration of a certain gentleman. The arbitrator did not give any award within the time allowed by the Court, and on 22nd June 1931, the learned Judge, Small Cause Court, passed an order superseding the reference to arbitration and fixed 16th July 1931 for hearing of the case. On 16th July 1931, the case was taken up and I find on the order sheet an order bearing that date, by which the arbitrator was to be summoned to appear before the Court on 5th August 1931. After this order there is a note that the arbitrator has heard the case referred to him on the merits. This information, which is recorded in the

order-sheet, was furnished to the learned Judge by the defendant and there is a mention of this fact in his judgment. So far there was no order superseding the reference to arbitration. On 5th August 1931, the arbitrator appeared before the learned Judge, and then he made an order superseding the reference to arbitration and proceeded to record an oral award from statements made by the arbitrator. I may point out that the order of 16th July 1931 directed the arbitrator to appear and 'to dictate his award to the Court.

2. After the award had been recorded, the Judge gave the parties ten days' time to file objections. The plaintiff filed an objection but it was overruled and a decree was made in accordance with the award. The question is whether the order of the learned Judge was right and he could set aside his own order superseding the reference to arbitration. I have not been able to find any principle or any authority on which the Court could have been justified in setting aside its own order, dated 27th June 1931, superseding the reference to arbitration. Para. 8, Schedule 2, Civil P.C., lays down that when an order has been made superseding a reference to arbitration the Court 'shall proceed' with the suit. Again the fact, that an award has been made after the Court has made an order superseding the arbitration, is specifically mentioned as one of the valid grounds for setting aside an award. In the circumstances, it appears to me that the order of the Court below was entirely wrong. There is no rule of law which can authorize a Court to revise its own order except Section 151, Civil P.C., but that rule has no application to the facts of this case. The representation of the defendant that the arbitrator was prepared to make an award was unsupported by any evidence, and even if it was supported, it came too late, as the order had already been made superseding the award. In the circumstances of the case, I set aside the decree of the Court below and remand the suit to it to be tried in accordance with law.

3. The applicant's counsel is absent, but as it is a matter in revision, I heard it with the assistance of the learned Counsel holding the brief for the respondent. Owing to the absence of the counsel for the applicant, I make no order as to costs of this Court. Costs so far incurred in the Court below will abide the result.