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Court : Allahabad

Decided On : Sep-15-1939

Reported in : AIR1940All38

Appellant : Babu Govind Das and anr.

Respondent : Mt. Indrawati and ors.

Judgement :

Iqbal Ahmad, J.

1. This is an application for leave to appeal to His Majesty in Council from an order passed by a Division Bench of this Court dismissing a civil application in revision. It is conceded that the case does not fall within the purview of clauses (a) and (b) of Section 109 and Section 110, Civil P.C., but it is maintained that in view of the provisions of Clause (c) of Section 109 the case should be certified to be a fit one for appeal to His Majesty in Council. The facts giving rise to the present application may be briefly stated as follows: Mt. Indrawati, respondent, filed a civil suit in the Court of the Civil Judge of Muttra against Rai Saheb Govind Das and certain other defendants. The value of the subject-matter of the suit was Rs. 18,00,000. The suit was for a declaration that Indrawati, plaintiff, was the next reversioner after her mother Mt. Bhagwati of the property left by her father Kalyan Singh who was alleged to be separate from Govind Das and the other members of his family. Indrawati further claimed a declaration that a deed of agreement dated 18th

October 1919 entered into between her mother Mt. Bhagwati and the other members of the family of Kalyan Singh was null and void.

2. The defendants contested the suit and pleaded inter alia that Kalyan Singh was a member of a joint Hindu family with them and that the agreement dated 18th October 1919 was a valid and binding agreement and had been acted upon by all the partners. They maintained that the agreement was in the nature of a family settlement and was binding not only on the parties to that settlement but even on Indrawati plaintiff. They also alleged that Kalyan Singh had before his death made an oral will to the effect that the male members of his family would be the owners of the property after his death. After the issues were framed in the case the suit was transferred for trial to the Court of the Additional Civil Judge of Muttra and we are informed that the learned Judge recorded oral evidence adduced by the parties for about 10 to 11 months. During the progress of the hearing of the suit the parties agreed to refer the matter in difference between them to the arbitration of three persons, viz.

(1) Rai Bahadur Ram Nath Bhargava, Muttra,

(2) B. Basdeo Sahai, Vakil, Agra, and

(3) B. Mathura Prasad, Rais, Sasni. They accordingly filed an application in Court on 2nd January 1934 praying for an order of reference to the three gentlemen named above. In the application the authority given to the arbitrators to summon and record evidence and to decide the dispute between the parties was specified. There was however no provision in the application to meet the contingency of difference of opinion amongst the arbitrators. The Court accepted the application and referred to the three arbitrators the matter in difference between the parties for decision. In making this order of reference the Court also overlooked the provisions of para. 4 of Sch. 2 to the Civil P.C., and failed to make any provision in the reference about the appointment of an umpire or the decision of the case being according to the opinion of the majority of the arbitrators in the event of a difference of opinion among them.

3. The case remained pending before the arbitrators for some months and eventually on 19th May 1934 two awards were filed in Court, one signed by Rai Bahadur Ram Nath Bhargava and B. Basdeo Sahai dismissing the suit, and the other signed by B. Mathura Prasad decreeing the suit. The Court then allowed ten days' time to the parties to file objections to the awards. On 28th May the plaintiff filed an objection against the award of B. Ram Nath and B. Basdeo Sahai. By her objection she maintained inter alia that the award delivered by these two gentlemen was invalid as it was not a unanimous award. The next day, viz. on 29th May the defendants filed an objection against the award of B. Mathura Prasad. In this objection it was stated that the award signed by B. Ram Nath and B. Basdeo Sahai was in fact the unanimous award of all the arbitrators and that after that award was prepared with the consent of all the three arbitrators Indrawati won over B. Mathura Prasad arbitrator and did not let him sign the aforesaid award and that instead she got an award filed by B. Mathura Prasad decreeing the suit. It was also alleged in the objections that as a matter of fact the parties had agreed to be bound by the decision of the majority of the arbitrators, but by an oversight and through inadvertence this fact was not mentioned in the application for reference to arbitration.

4. After these objections were filed the learned Additional Civil Judge fixed 30th May 1934 for the hearing and disposal of the objections. It is needless to observe that the time allowed to the parties to substantiate their objections was too short and it may be conceded that the order fixing 30th May 1934 for the disposal of the objections was an indefensible order. The defendants alleged-and the allegation appears to be well founded-that they tried their best to produce the two arbitrators who had decided in their favour as witnesses in Court on 30th May and that their attempts were not crowned with success. They even applied on 30th May for further time being allowed to them to substantiate the allegations contained in their objections by producing the two arbitrators, but this application was disallowed by the learned Civil Judge. The Court was closed for the long vacation from 1st June to 1st July 1934 both days inclusive and on the reopening of the Court on 2nd July the learned Judge passed an order setting aside the two awards filed by the arbitrators and superseding the arbitration. Two of the defendants, viz. Rai Saheb Govind Das and Lachhman Das, then filed an application in revision in this Court

against the order dated 2nd July and the revision came up for hearing before a Division Bench of this Court. A preliminary objection was raised on behalf of Indrawati to the effect that no 'case' was decided by the Civil Judge within the meaning of Section 115, Civil P.C., and as such this Court had no jurisdiction to revise the order dated 2nd July. There being some conflict of Judicial opinion on the question raised by the preliminary objection the Division Bench referred the question of the maintainability of the revision to a Full Bench. The Full Bench held that the Court below

could not be considered to have decided a case within the meaning of Section 115, Civil P.C., where it has set aside the award and superseded the arbitration pending a suit which is consequently to be tried by the Court: vide *Govind Das v. Mt. Indrawati* : AIR1938 All557 .

5. In view of this decision of the Full Bench the Division Bench dismissed the application in revision filed by the defendants. It is from this order that the defendant-applicants propose to file an appeal to His Majesty in Council. The question sought to be raised in the proposed appeal is about the maintainability or otherwise of the application in revision that was filed in this Court, and it is urged that too narrow an interpretation has been put by the Full Bench on the word 'case' used in Sec. 115, Civil P.C. It is stated in the application that the question to be raised in the proposed appeal is of great general and public importance and the case is therefore a fit one for appeal to His Majesty in Council under Section 109(c), Civil P.C.

6. It is clear that Clause (c) of Section 109 applies even to interlocutory orders and in appropriate cases such orders can be made the subject of an appeal to His Majesty in Council. The mere fact that the order superseding the arbitration passed by the Court below was an interlocutory order cannot therefore be a bar to the present application for leave to appeal to His Majesty in Council. But before the application can be granted this Court must be satisfied that the case is otherwise a fit one for appeal to His Majesty in Council. It is impossible to give an exhaustive list of cases which may be deemed, apart from the provisions of clauses (a) and (b) of Sec. 109 and Section 110, Civil P.C., to be fit for appeal to

His Majesty in Council, but it may safely be laid down that the discretion vested in this Court by Clause (c) of Section 109 is to be sparingly exercised and that a case cannot be certified as a fit one for appeal on the mere ground that it raises a substantial question of law. One of the matters to be taken into consideration in this connexion must invariably be whether the permission to appeal is or is not calculated to unduly delay the disposal of the substantive dispute between the parties on its merits. If the interlocutory order, the validity of which is sought to be tested by an appeal to His Majesty in Council, is one that is not calculated to prejudicially affect the right of either party to the litigation to have the substantive matters in dispute in the litigation decided by a competent Court ordinarily leave to appeal ought not to be granted. The scope of Section 109(c) of the Code formed the subject of consideration by a Division Bench of the Calcutta High Court in *Benoy Krishna Mukherji v. Satish Chandra Giri* : AIR1927 Cal481 . It was laid down by Rankin J. in that case that

while interlocutory orders do come under Sec. 109(c), Civil P.C., the mere fact of their having some public or private importance that may be taken to be the equivalent of a high money value does not give the party complaining an option to take the matter on appeal to England.

7. The learned Judge further laid down that

leave for such appeal should be granted only when the case involves practical considerations of a special character such as when the order complained of is oppressive or in its cumulative effect crippling.

8. It was further observed in that case that

ordinarily interlocutory proceedings should not be protracted by granting leave to appeal from orders passed in them inasmuch as that would make the litigation oppressively expensive and postpone the real elucidation of the facts by a trial of the suit.

9. In *Iqbal Bahadur v. Mt. Ram Sree* : AIR1934 All58 it was observed that

in order to invite the application of Section 109(c), Civil P.C., the case should be one which raises some question of considerable importance whether public or private or some question which is of wide public importance, even though the subject-matter in dispute cannot be reduced into actual terms of money and that a mere substantial question of law arising between the parties which would have been sufficient if the case had fulfilled the requirements of Section 110, would obviously not be sufficient for purposes of Section 109(c).

10. Having regard to the observations made in the two cases just cited we are not satisfied that the case before us is fit for appeal to His Majesty in Council. As stated before, a substantial portion of the oral evidence that the parties proposed to produce was recorded by the trial Judge before the application for reference to arbitration was made and all that now remains for the trial Judge to do is to record some more evidence and then proceed to hear arguments and decide the case. The supersession of the arbitration is therefore not calculated to involve the parties in excessive expenditure of money. Further, the omission in the application for reference to arbitration and in the order of reference passed by the Court to make any provision to meet the contingency of there being difference of opinion between the arbitrators, *prima facie* renders the order of reference ineffective and in-operative. We cannot shut our eyes to the fact that two diametrically opposite awards were delivered by the arbitrators concerned and that both parties were dissatisfied with the awards and preferred objections to the same. It would have been very difficult to substantiate by oral evidence the allegation that prior to the filing of the award in Court the arbitrators had arrived at a unanimous decision and as such the award filed by the two arbitrators should be accepted. Again, *prima facie* the suit by Mt. Indrawati is more or less of a representative character and even if the suit was to terminate by an award considerable scope for further litigation by future reversioners would remain and it would not be surprising if a future reversioner in the event of the decision being against Mt. Indrawati may file a suit on the allegation that the award was the result of collusion between the parties to the suit. Be that as it may, the decision of the suit by the Court, in the situation that has arisen will be far more desirable and in the interests of the parties concerned. We therefore reject this application with costs. The stay order is discharged.

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