

Narain Das Vs. Ram Prasad

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SooperKanoon Citation : sooperkanoon.com/467689

Court : Allahabad

Decided On : Jan-31-1912

Reported in : 14Ind.Cas.455

Judge : Karamat Husain and ;Tudball, JJ.

Appellant : Narain Das

Respondent : Ram Prasad

Judgement :

1. In this case, the parties referred their dispute to an arbitrator who submitted his award. The following objections were taken on behalf of Narain Das in the Court of first instance. The arbitrator was guilty of misconduct, the award covered a question which had not been referred by the parties to arbitration, and the reference to the arbitrator was not made by all the parties. The third point, it would seem, was not pressed before the Court of first instance. The decision of that Court on the question of misconduct was that there was no misconduct. On the question of excess in the award, the decision was that there was a matter which though not referred by the parties, was decided by the arbitrator, and that matter ought to be expunged from the award. The learned Munsif passed a decree in accordance with the award so far as it covered the points referred to arbitration. Ram Prasad appealed to the District Judge against the decree made by the Court of first instance. The case was transferred to the Additional Subordinate Judge who set aside the decree of the Court of first instance and sent back the case to

that Court for trial on the merits. In the course of his judgment, the learned Additional Subordinate Judge says: One of the objections is that the award in accordance with which the judgment was passed was no award in law. From the record it appears that in one case Gauri Shanker and Chirmiti were defendants, and in the other case Ram Parsbad, Chirmiti and Guddar were parties. It also appears that the application for reference to arbitration was not verified by any one on behalf of Chirmiti and Guddar. It also appears that the arbitrator never gave any notice to these persons, and they were no parties to the arbitration proceedings. So I do not see how it can b9 said that the award was good award in law.' An appeal from the order is preferred to this Court. It is c intended that under paragraph 16, Clause (2) of Schedule II of the Code of Civil Procedure, no appeal lay from the decree inasmuch as there was no decree in excess of or not in accordance with the award. It is contended by the learned Vakild for the other side that there was no reference by all the parties to the suit, and that therefore, the award was invalid. In our opinion, there is no force in the contention of the learned Vakild for the other side. All the objections that were taken before the Court of first instance, were heard by that, Court and decided, and after disposing of those objections that Court passed a decree in accordance with the award as it was modified after hearing the objection. In these circumstances, an appeal could be taken to the lower Appellate Court under the provisions of paragraph 16, Schedule II of the Code of Civil Procedure, on only two grounds, i.e., if the decree was in excess of or not in accordance with the award. Neither of these two grounds existed in the present case. A reference to the records of the two cases clearly show³ that the matter was referred to arbitration by all the parties concerned. We, therefore, allow the appeal, set aside the order of the lower Appellate Court and restore the decree passed by the Court of first instance with costs.