

Risal Singh Vs. Faqira Singh

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Court : Allahabad

Decided On : May-14-1931

Reported in : AIR1932All453; 136Ind.Cas.568

Appellant : Risal Singh

Respondent : Faqira Singh

Judgement :

Sulaiman, Ag. C.J.

1. This is a plaintiff's application in revision from an order of the Munsif of Saharanpur setting aside an arbitration award. A preliminary objection to the hearing of this application is taken and it is urged that no case has been decided and therefore no revision lies under Section 115, Civil P.C. The learned advocate for the respondents relies on the case of Budra Prasad v. Mathura Prasad : AIR1925 All566 , decided by a Bench of which I was a member. It was pointed out in that case that there had been a recent decision in the case of Shah Muhammad Fakhruddin v. Bahimullah Shah : AIR1925 All458 in which exactly the same point (had been decided against the applicant. Following that decision we held that no revision lay. In the case of Shah Muammad Fakhruddin v. Bahimullah Shah : AIR1925 All458 another Bench had held that no application in revision would lie from an order setting aside an award. The Bench considered that they were following the pronouncement of the Pull Bench in Budhu Lal v. Mewa Ram A.I.R. 1921 All. 1. But in this Full Bench case the opinion of Ryves, J., which turned the

scale was simply this that:

no revision lies from a finding on an issue relating to the question of jurisdiction.

2. There is however an earlier case of *Chattar Singh v. Lekhraj Singh* [1883] 5 All. 293, in which also it was held that no revision lay from an order setting aside an award. On the other hand, in *Bhola Nath v. Baghunath Das Mithan Lal* : AIR1929 All743 , it was held that an application in revision would lie from an order superseding a reference to arbitration before the award was delivered. That case also was decided by a Bench of which I was a member. The case of *Chatarbhuj v. Raghubar Dayal* A.I.R. 1914 All., which was exactly on all force with the case before us, was cited and followed by us. We held that the termination of the proceeding relating to the supersession of the arbitration amounted to a case decided within the meaning of Section 115, Civil P.C. The learned advocate for the respondents has urged before us that the two last mentioned cases can be distinguished on this ground that an application for the supersession of the arbitration proceedings before the award is delivered is not expressly provided for anywhere in the Code and the proceeding started by such an application may be treated as a separate proceeding. A case within the suit, resulting in the supersession of the arbitration, may amount to a case decided' within the meaning of Section 115, Civil P.C. On the other hand, the order setting aside the award is an order contemplated by Schedule 2, Civil P.C., and is a part of the proceeding in the suit itself.

3. I must admit that the distinction sought to be drawn is very thin and that to some extent there is unfortunately a want of harmony. *Bhola Nath's* case : AIR1929 All743 can be distinguished only on the ground that if the Court allows a new proceeding to be started, which the law does not contemplate and which is outside the scope of the suit, resulting in the interruption of its normal course, and passes an order not warranted by law, the proceeding is deemed to be a 'case' in itself. As the facts of the case before us are identical with the facts of the first three cases quoted above, it must be decided in accordance with the view expressed in those cases. I would therefore dismiss this revision.

King, J.

4. I Concur. The order setting aside the arbitration award disposed of a proceeding during the pendency of the suit and, in my opinion, the decision of the question whether the award was valid or invalid did not amount to the decision of a 'case' within the meaning of Section 115, Civil P.C. The rulings in *Chattar Singh v. Lekhraj Singh* [1883] 5 All. 293, *Shah Muhammad Fakhruddin v. Bahimullah Shah* : AIR1925 All458 and *Budra Prasad v. Mathura Prasad* : AIR1925 All566 are exactly in point and I think that they should be followed.

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