

Mt. Ishwar Dei Vs. Chhedu

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Court : Allahabad

Decided On : Jan-18-1952

Reported in : AIR1952All802

Judge : Nasir Ullah Beg, J.

Acts : [Arbitration Act, 1940](#) - Sections 17, 30 and 39

Appeal No. : Appln. No. 27 of 1949

Appellant : Mt. Ishwar Dei

Respondent : Chhedu

Advocate for Def. : M.M. Lal, Adv.

Advocate for Pet/Ap. : Kalbe Mustafa, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Nasir Ullah Beg, J.

1. This is a revision application arising out of the plaintiff's suit for dissolution of marriage.

2. The suit was brought by the plaintiff on the ground that the defendant had after his marriage with the plaintiff treated her cruelly. The plaintiff who was the wife levelled various charges-against the defendant. The defendant was alleged to have ill-treated her. It was also alleged that the defendant was guilty of adultery and immorality. The plaintiff claimed a decree for dissolution of marriage on the basis of a custom prevalent in the Murao community to which the parties belonged and according to which the wife was entitled to divorce the husband.

The defendant denied the allegations made by the plaintiff against him. The case of the defendant was that the plaintiff used to give away grain to her parents. The defendant took objection to it and started keeping a watch over it. This annoyed the plaintiff who deserted the defendant and the present suit is the result of the strained relations between the parties as a result of the above conduct of the plaintiff. The defendant further denied that any custom as alleged by the plaintiff existed. On the other hand he set up a counter-custom which gave a right of divorce not to the wife but to the husband. In the alternative the defendant pleaded that even if any such custom was proved, it would be against public policy.

3. After the issues were framed in the suit, the whole case was with the agreement of the parties referred to the arbitration of Shri Ajodhia Prasad, a local pleader. After considering the case of the parties the arbitrator gave his award on 9-12-1947. The arbitrator came to the conclusion that:

'there is no custom giving a general right to a wife to claim dissolution at her sweet will. Such custom appears opposed to public morality and the spirit of Hindu Law. A custom giving a restricted right to a wife to claim such relief in special circumstances may be valid and enforceable. '

He found that the relations between the parties were not happy. His award shows that he tried to persuade the defendant to divorce the plaintiff but the defendant refused to do it and he goes on to decide the matter thus :

'Under the circumstances of the case the best solution in the interest of the parties will be not to dissolve the marriage forthwith but give some time to the parties to reconsider the whole situation and their interests. For that end in view I direct that

defendant should bring a suit for restitution of conjugal rights against the plaintiff within a year from today where parties will have scope to substantiate their charges and counter-charges against each other. In case defendant succeeds in getting the relief of restitution of conjugal rights, the marriage tie will remain intact and the present suit will stand dismissed but if the defendant's suit is rejected and he is disallowed that relief by the Court or if the plaintiff fails to bring the suit, the marriage will stand dissolved thereafter.'

On 8-1-1948, the defendant filed objections to this award on the ground that this award was invalid. On 4-2-1948, the Court passed an order, the operative part of which runs as follows : '

'The objections are dismissed. The suit is decreed in terms of the arbitrator's award. The award shall form a part of the decree.'

The defendant filed an appeal against the aforesaid judgment and decree. The appellate Court allowed the appeal, upheld the objections of the defendant and remanded the suit to the trial Court with the direction that the said Court shall remit the award to the arbitrator for reconsideration who shall modify it by excluding the direction given by him to the defendant regarding the filing of a suit for restitution of conjugal rights and shall take into consideration the questions left undecided by him and then file afresh award in definite terms. The learned Munsif would then proceed to decide the case according to law.

4. Against the judgment of the lower Court allowing the appeal the plaintiff Mt. Ishwar Dei has filed this revision.

5. The first point urged by the learned counsel for the petitioner is that no appeal was maintainable in the lower Court and it had, therefore, no jurisdiction to hear the appeal. This objection is based on the ground that the memorandum of appeal states that it was an appeal against the judgment and decree of the lower Court. In this connection he invited my attention to Section 17, Arbitration Act according to which no appeal was maintainable from a decree passed on the basis of award. I find it difficult to accept this argument. It must be remembered that the present order is a composite order which on the one hand dismissed the objections and on

the other hand adopts the award and directs that a decree should be framed in terms of the judgment passed by it. Section 39, Sub-clause (vi) allows a party to file an appeal against an order refusing to set aside an award. This judgment can, therefore, be treated to be an order refusing to set aside an award. This reading of the memorandum of appeal is borne out by the grounds of appeal which indicate that the defendant sought to challenge the validity of the award and to reagitate the objections raised by him against the award in the trial Court. If the interpretation sought to be placed on Section 17, Arbitration Act, is accepted, then the objector's rights to file an appeal under Section 39, Sub-clause (vi), Arbitration Act would be taken away where a composite order of this nature is made and the provisions of Section 39(vi) would be nullified. I am, therefore, of opinion that the appeal was maintainable in the lower Court and was rightly entertained by it.

6. Coming to the merits of the case the learned counsel for the petitioner has argued that the Arbitrator was entrusted with the task of deciding the case and the decision that he gave could not be challenged except on grounds given under Section 30, Arbitration Act. Section 30 of the said Act lays down that an award shall not be set aside except on one or more of the following grounds given therein. To my mind the ground that would be applicable in the present case is given in the part of Clause (c) of Section 30 according to which the award could be set aside 'where it has been improperly pro-cured or is otherwise invalid.' The present award is vitiated on the residuary ground covered by the words 'otherwise invalid.' It is very difficult to find out the actual findings of the learned Arbitrator from a perusal of his award. The learned counsel for the petitioner has vehemently argued that the arbitrator came to a clear finding that the custom entitling a wife to pronounce a divorce under a certain specified circumstance was proved. I went through the award and I regret to say that I could not extract any such clear finding from the contents of the entire award. The fact that he found it necessary to approach the defendant with a view to persuade him to divorce the plaintiff strengthens the conclusions that he found that no such custom was proved.

On the face of it the award is very vague and it is difficult to know what his findings actually were. It was not necessary for the arbitrator to exhaustively give reasons for the conclusions arrived at by him or to give his findings on the issues raised in

the case. His award would have been a perfectly valid and good award provided he had given a clear decision of the case. I fail to find that he has done any thing of the kind. The parties were fighting out the matter in a Court of law and the case was referred to the arbitrator with a view to enable the parties to avoid this procedure and to get a speedy and final decision of the case. Instead of giving the decision what the arbitrator has done is to order the defendant to reagitate the matter in a Court of law. In the concluding part of his award, he has confused defendant with the plaintiff. The decision of the suit which he advised the plaintiff (though probably he meant the defendant) to file would be the correct decision according to the award. If the defendant of the present case did not file the suit, then the plaintiff's suit would stand decreed. He gave one year to the defendant to file the suit.

It seems to me that this award is not a decision of the case at all. The award seems to have done the very thing which the parties wished to avoid, namely going to a Court of law and bearing the expenses of protracted litigation. The case was sent to the arbitrator in order that he may decide it and not that he may point another mode by which the parties may get it decided. The purported award defeats the very purpose of arbitration by throwing the parties back to the very position from which they wanted to escape. I cannot certainly reconcile myself to the view that this is a proper or a just award or any kind of award at all. I am fully convinced that the learned arbitrator was acting in a perfectly honest and conscientious manner. The defect in the award seems to me to be a vital one and goes to the root of the award given by him and the award must, therefore, be treated 'as otherwise invalid.' I am of opinion that the judgment given by the lower Court is correct and there are no adequate grounds for interfering with it. The revision is accordingly dismissed with costs. The stay order dated 11-10-1949, is vacated.

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