

Abdul Karim Vs. Kallan

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SooperKanoon Citation : sooperkanoon.com/475171

Court : Allahabad

Decided On : Nov-10-1932

Reported in : AIR1933All166; 147Ind.Cas.198

Judge : Bajpai, J.

Appellant : Abdul Karim

Respondent : Kallan

Judgement :

Bajpai, J.

1. On the allegation that certain disputes between the parties to the present litigation had been referred to arbitration without the intervention of a court and an award had been made thereon, the opposite party to the present application applied to the Munsif of Muttra, who had jurisdiction over the subject-matter of the award, that the award be filed in court. The formalities enjoined by the Second Schedule of the Civil Procedure Code were followed by the learned Munsif and after hearing the objections of the present applicant, the learned Munsif decreed the suit in terms of the award.

2. It is necessary that I should at this stage indicate the procedure that ought to be followed in these matters because I have come across cases in which the procedure strictly required by the Code has not been followed by the courts below.

When an application for the filing of the award under Paragraph 20 of the Second Schedule of the Civil Procedure Code is made, it is the duty of the court to direct notice to be given to the parties to the arbitration other than the applicant requiring them to show cause within a time specified why the award should not be filed. Under Paragraph 21 of the same schedule if the court is satisfied that the matter has been referred to arbitration and that an award has been made thereon and that no grounds such as are mentioned or referred to in Paragraph 14 or Paragraph 15 exist, the court shall order the award to be filed and shall proceed to pronounce judgment according to the award. It appears that in the present case the learned Munsif was satisfied that the award was not vitiated by reason of the circumstances mentioned in para. 14 or para. 15 and was satisfied that the matter had been referred to arbitration and that the award had been made thereon. It is clear that he should, in the first instance therefore, have passed an order that the award be filed, and he should then have proceeded to pronounce judgment according to the award. There should have been, therefore, a decree of the learned Munsif pronouncing judgment according to the award and a formal order directing that the award be filed. Instead of this what was done was, as is very often done in these cases, that no formal order directing the award to be filed was passed but all that was done was to pass a decree in terms of the award.

3. The defendant, that is to say the present applicant, was aggrieved by the decision of the learned Munsif and he filed an appeal before the lower Appellate Court and headed his memorandum of appeal as directed against the decree of the learned Munsif, that being the only document that was prepared by the court below, although the grounds taken in the memorandum were such as could have been taken legitimately against the order directing the award to be filed. It is important to note that when a decree is passed upon the basis of an award and that decree is challenged in appeal, the only ground that can be taken is that the decree is in excess or not in accordance with the award, and such a ground does not appear in the memorandum of appeal.

4. The learned Judge of the lower Appellate Court begins his judgment by saying that this is a miscellaneous appeal from the order of the Munsif of Muttra under Scheduled II, para. 21 ordering an award to be filed and passing a decree in

accordance with the award. It is, therefore, clear that he appreciated the position taken by the appellant before him and realised that the appeal was a miscellaneous appeal against the order of the Munsif ordering an award to be filed. Proceeding the learned Judge noticed the preliminary objection on behalf of the respondent before him and held that there were no such defects in the decree which justified his interference in an appeal against the decree. It is obvious therefore that at a later stage he to a certain extent, for which I do not say that he is to blame, resiled from the former position which he had taken up in the earlier part of his judgment. In the interests of justice I think the learned Judge of the lower Appellate Court ought to have insisted, when the matter came up before him, upon the learned Munsif passing two separate orders and then asking the appellant before him to elect as to which order he proposed to appeal against. This was not done. But sustaining the preliminary objection the lower Appellate Court dismissed the appeal, although it appears that on the merits it was favourably inclined towards the appellant before him.

5. I hope my observations as to the procedure to be followed by courts below in these matters will receive due attention. So far as this particular case is concerned I allow the applicant before me to have his memorandum of appeal before the lower Appellate Court treated as an appeal against the order of the learned Munsif directing the award to be filed and the decree accompanying the said memorandum as the former order in the case. In this view of the matter an appeal did lie to the lower Appellate Court under the provisions of Section 104 Clause (f) of the Civil Procedure Code, and setting aside the order of the court below I remand this case to that court with instructions to re-admit the appeal upon its original number, treat it as an appeal against the order directing an award to be filed and dispose of it according to law. The applicant before me must pay the costs of the opposite party in this Court and in the court below as directed by that court. Subsequent costs will abide the event.