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Court : Allahabad

Decided On : Dec-02-1921

Reported in : AIR1922All33; 64Ind.Cas.958

Judge : P.C. Banerji, J.

Appellant : Mannu and anr.

Respondent : Tulshi

Judgement :

P.C. Banerji, J.

1. The facts of this case are these. A suit was filed in the Court of Small Causes at Cawnpore for recovery of a certain sum of money which was alleged to have been due by the two defendants. One of these defendants was Musammat Mithana. On the first day fixed for the hearing she did not appear and the Court made an order that the proceedings as against her were to be ex parte. Apparently the case was not heard that day, but on the 13th of July 1920 Musammat Mithana appeared by a Pleader who filed a vakalatnama, which I find from the record authorised him to refer the matter to arbitration. On her behalf the Pleader stated that her defence was the same as that of the other defendant. On that day both parties filed an application praying that the case might be referred to arbitration. This application was verified by the plaintiff, the male defendant and the Pleader for Musammat Mithana. The case was referred to the arbitration of a Pleader and an award was

made dismissing the plaintiff's suit. The plaintiff filed objections in regard to the award, and his main objection was that as an order had been made that proceedings against Musammat Mithana should be held ex parte, Musammat Mithana could not appear at any subsequent stage of the suit and a reference to arbitration could not be made on her behalf. On this ground it was contended that the reference to arbitration was illegal and the award was void. There were various other objections, but the Court below did not decide them or pronounce any opinion in regard to them. The first objection which I have mentioned above found favour with the learned Judge of the Court of Small Causes and he held that as an order had been made that proceedings should be ex parte against Mithana, she could not appear at a subsequent stage of the proceedings without getting that order set aside. On this ground alone he has superseded the arbitration and set aside the decision of the arbitrator. From this order the present application for revision has been filed. In my opinion the application must prevail. As I have stated above, the Pleader who applied that the case be referred to arbitration on behalf of Musammat Mithana, had authority from her under the vakalatnama to refer the dispute between her and the plaintiff to arbitration. In virtue of that power he made an application for reference to arbitration. The mere fact that on a particular date on which the case had been taken up for hearing Musammat Mithana was not present and an order was made that proceedings should be taken against her ex parte on that date, did not preclude her from appearing at a later stage in the suit and it was not necessary for her to have that order set aside. If a decree had been passed against her ex parte, she could not appear at any subsequent stage of the suit and was bound by the decree and the only way in which she could proceed was to have the decree set aside. But in this case no ex parte decree was passed against Musammat Mithana, and, therefore, there was nothing to prevent her from appearing at a later stage of the suit and entering her defense. If she could appear and defend the suit, she could refer the dispute between her and the plaintiff to arbitration and she could authorise a Pleader to do the same. The Court below has, in my opinion, taken a wrong view of the case. It seems to have overlooked the fact that no decree had been passed against Musammat Mithana and it was not necessary for her to have the order recorded on the 8th of July 1920, to the effect that as against her proceedings should be ex parte, set aside. There were

various other objections to the award which the Court below did not try and dispose of. I accordingly allow the application and send back the case to the Court below with directions to consider the other objections raised on behalf of the plaintiff and to decide the case according to law after disposing of those objections. Costs here and hitherto will be costs in the cause.

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