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Manian Vs. Lala

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SooperKanoon Citation : sooperkanoon.com/477521

Court : Allahabad

Decided On : Feb-21-1933

Reported in : AIR1933All748; 147Ind.Cas.816

Appellant : Manian

Respondent : Lala

Judgement :

Sulaiman, C.J.

1. This is an application revision from a decree of the Court of Small Causes. The parties are Mahabrahmins entitled to offerings on the death of a client. There was a dispute between the parties which led to an apprehension of a breach of the peace with the result that proceedings under Section 107, Criminal P.C., were started on an application made before a Magistrate. During the course of the proceedings however the parties came to terms and their civil dispute was referred to the arbitration of a single arbitrator under a written agreement: the proceedings under Section 107 were not pressed and were dropped.

2. The arbitrator held; that the plaintiff was entitled to half of the offerings and directed that the defendant, who was in possession of the offerings in a particular case, should deliver half of the offerings to the plaintiff. The direction did not go on to provide in express terms for the payment of the value of half of the offerings in case the offerings themselves were not delivered. The plaintiff did not make any

attempt to file theawrad but served a notice on the defendant to deliver half of the offerings, which the defendant declined to do. On this the present suit for recovery of half the offerings or in the alternative for the recovery of the price was instituted.

3. The claim was resisted on two maim grounds. The first was that the award was incapable of enforcement and the suit did not lie. The second objection was that the agreement had been obtained under undue influence during the pendency of the criminal proceedings. Both these objections have been rejected by the Court below.

4. This is not a proceeding relating to the execution of a decree into which an award has been incorporated. Had it been so it might well have been argued that if the specific articles themselves cannot be delivered, the Court cannot substitute for the decree a new order giving the plaintiff the value of half the property. The present suit is for the recovery of price on the basis of title founded on the award. The case is clearly distinguishable from that of Sukhamal Bansidhar v. Baba Lal Kedia & Coy AIR 1920 All 258. This is not a case of an execution of an award which cannot be capable of further execution but is the case of an enforcement of a right based on an award which was declared that the title is with the plaintiff. It seems to me that if after that award the defendant refused to deliver the property and denied the right of the plaintiff, the latter has a remedy to claim the property in a Court of law and in the event of failure of delivery to get the value. The objection has therefore no force.

5. It seems to me that the objection as regards undue influence is equally without any force. It is not the case of the dropping of criminal proceedings started by a complaint made as to a non-compoundable offence which could not be compounded by the parties at their pleasure. On the other hand, the proceedings in question had been startled on application made under Section 107 and the proceedings could well be dropped if both parties settled their disputes and an apprehension of a breach of the peace ceased to exist. The present case is clearly distinguishable from the case of Kamani Kumar Basu v. Birendranath Basu . In my opinion, it cannot be said that the agreement for reference to arbitration was vitiated by any undue influence exercised on the defendant or that any part of the

term of the agreement contract was in itself unlawful. The result therefore is that this revision fails and is hereby dismissed with costs.

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