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Court : Allahabad

Decided On : Aug-28-1933

Reported in : AIR1933All902; 145Ind.Cas.970

Appellant : Gorakh Prasad

Respondent : Baldeo Prasad and ors.

Judgement :

ORDER

Kendall, J.

1. This is an application for the revision of a decree and order of the Judge of the Small Cause Court of Rasra decreeing the plaintiff's suit against three defendants in the circumstances which have been described at length in the judgment of the trial Court. It is only necessary to repeat here that the parties in a quarrel had appointed two persons, Gorakh Prasad and Shaikh Abdul Jabbar, as their arbitrators to settle the dispute, and each side had deposited Rs. 250 with Gorakh Prasad on the agreement that if either of the parties to the dispute refused to abide by the award he should forfeit the amount that he had deposited. Some sort of an award was made by Gorakh Prasad which the plaintiff in the present suit refused to accept, with the result that Gorakh Prasad handed over the amount deposited by the plaintiff to the defendants, Sheo Ram and Jamna Ram. The present suit was brought to recover the amount from Gorakh Prasad on the ground that he was

not justified under the agreement in handing over the deposit to the defendants, Sheo Ram and Jamna Ram, because there had been no joint and common award by the arbitrators and consequently the plaintiff in the present suit had not become liable to forfeit his deposit.

2. It is claimed on behalf of the applicant Gorakh Prasad that the Judge of the Small Cause Court had no jurisdiction to entertain the suit and two reasons have been referred in this Court, viz., that the suit was one relating to a trust, and was therefore barred from the jurisdiction of the Small Cause Court under Article '18', Schedule 2, Provincial Small Cause Courts Act, 1887, and secondly that the suit was one for compensation for an act which would be an offence punishable under Ch. 17, Penal Code, but for the provisions of Ch. 4, and consequently it was barred by Article 35, of the schedule. In support of the first argument it is pointed out that in the plaint it has been represented that the money was deposited with the arbitrators by way of trust (amanat) and that in fact it was a 'trust' in the ordinary sense of the word, though not as defined in the Indian Trusts Act. I have been referred to the decision in the case of *Teomal v. Dharamdas* A.I.R. 1929 Sind 49, in which the word 'trust' has been somewhat liberally interpreted and it has been held that in circumstances not altogether different from those in the present case a suit in the Small Cause Court will not lie. On the other hand, I have been referred to the case of *Sri Venkatachallapathy Sahaya Vivarasaya Co. v. Kanagasabha Pathia Pillai* (1910) 33 Mad 494 in which a Full Bench of that Court, after pointing out the difference between the provisions of the Presidency Small Cause Courts Act and the Provincial Small Cause Courts Act have held that in Article 18, in the Provincial Small Cause Courts Act, the expression 'relating to a trust' is of more general nature than in the other Act, in that the suits which are barred are those 'relating to a trust' and not only those 'to enforce a trust.' The Bench held however that the words 'relating to a trust' must be interpreted in a restricted sense. In the case of *Hans Raj v. Ratni* (1904) 27 All 200 and *North-Western Commercial Banking Corporation v. Muhammad Ismail Khan* (1902) 21 All 208 suits somewhat analogous to the present one have been held to come within the jurisdiction of the Small Cause Court. It has been objected on behalf of the applicant that in both these cases the defendant was an agent and could therefore not possibly be held to, be a trustee, so that the circumstances are

different. I am not prepared to hold that there is any real distinction. It is true that in *Hans Raj v. Ratni* (1904) 27 All 200 the Bench remarked:

On the contrary the suit was brought against a so-called agent for recovery of property placed in his hands and of money received by him on the plaintiffs' behalf.

3. For anything that has been said to the contrary, an arbitrator may be a 'so-called agent,' and there is no doubt that the present suit was one for recovery of a property that had been placed in his hands and of money that had been received by him on the plaintiff's behalf. The present suit has been dealt with at considerable length and with great care by the Judge of the Small Cause Court, and I am certainly not prepared to hold that he acted without jurisdiction unless the fact is placed beyond all possibility of any doubt, and I am not inclined to follow the authority of the Sind Court in preference to those of our own Court and the indications given by the Full Bench of the Madras High Court in interpreting Article 18.

4. The other contention relates to Article 35, and this has been dealt with very shortly by the trial Court. The allegation in the plaint is merely that there had been no joint award by the arbitrators and that Gorakh Prasad had acted illegally in giving the money to the defendants. It is true that in the course of the evidence allegations were made that Gorakh Prasad was owed money by Sheo Ram and Jamna Ram, that they were about to become insolvent, that he had colluded with them and that he was guilty of offences of criminal breach of trust and criminal misappropriation. These allegations however are not made in the plaint, and reading the plaint as a whole it is apparent that the suit was based on the contentions that under the terms of the agreement Gorakh Prasad was not justified in paying the money to the defendants, and nothing more. The question of whether Gorakh Prasad was justified under the agreement in acting as he did has been the subject of a great deal of argument and an elaborate discussion by the trial Court, and it would be idle to contend that Gorakh Prasad could not plead that he was acting under colour of the authority given to him in the agreement. I am really only concerned however with the allegations in the plaint, and as I do not find that it contained any clear allegation of criminal misappropriation or breach of trust, I

must hold that Article 35, Schedule 2, did not bar the suit.

5. As regards the merits of the case to which some reference has been made, there is a very full and careful judgment in which the learned Judge has come to the conclusion after considering all the circumstances that there was not a joint and common award, so that in failing to abide by the pronouncement of Gorakh Prasad, the plaintiff in the suit could not be said to have violated the agreement. It has been suggested that the Judge relied only on the evidence of one person, and it appears from the judgment that he did base his decision very largely on the evidence of one of the arbitrators. It was not necessary for the Court to describe the evidence in any detail, and it does not appear that the judgment was not in accordance with law. The result is that the application fails and is dismissed with costs.

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