

In Re: Mathuraman Chettiar and anr.

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Court : Chennai

Decided On : Oct-30-1952

Reported in : AIR1953Mad395; (1953)IMLJ142

Judge : Govinda Menon and ;Basheer Ahmed Sayeed, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115; [Arbitration Act, 1940](#) - Sections 39(1)

Appeal No. : S.R. No. 38068 and A.A.O. No. of 1952

Appellant : In Re: Mathuraman Chettiar and anr.

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : R. Viswanathan, Adv. for ;S. Gopalaratnam, Adv.

Judgement :

Govinda Menon, J.

1. A question has been referred to us as to whether an appeal lies against an order passed by a single judge of this Court under Section 115, Civil P. C., whereby a reference to an arbitration has been superseded and the suit is directed to be tried. Since the respondent was unrepresented at this stage, we gave notice to the learned Government Pleader who has been heard on the question of maintainability.

2. There was a suit for partition in which a reference to arbitration was made. There were three arbitrators, one of whom was nominated by the plaintiff and another by the defendant. After some time when the proceedings were stagnating, the defendant filed an application that since the arbitrator nominated by the plaintiff was not functioning and was non-co-operating with the other arbitrators, the court may be pleased to remove him and appoint another in his stead. The plaintiff also filed an application, but the prayer was that the arbitration should be superseded and the suit should be tried on the merits. The learned Subordinate Judge dismissed the plaintiff's application for superseding the arbitration and allowed the defendant's application for the nomination of a new arbitrator.

Two revisions were filed to this Court under Section 115, Civil P. C., by the plaintiff, one against the order dismissing his application' and the other against the order nominating a new arbitrator. Both of them were heard together by our learned brother, Raghava Rao J. who by a common order allowed the revision against the order dismissing the application to supersede the arbitration and also allowed the revision against the order by which a new arbitrator was to be nominated. The result of the allowance of these two revision petitions was that the arbitration was superseded and the suit was directed to be tried on the merits. The present attempt is by the defendant to file an appeal against the order of Raghava Rao J. The office has taken the objection that an appeal is not maintainable and the matter has come before us for arguments.

3. Mr. R. Viswanathan for the proposed appellant relies upon Section 39(1)(i), Arbitration Act, and contends that since the arbitration has been superseded for the first time by this Court, an appeal will lie under that clause. He invited our attention to a decision in -- 'Munisami Mudaliar v. Rajaratnam Pillai', 45 Mad 028, in which a Pull Bench of this Court held that an order of sanction to prosecute a party for giving false evidence passed by a Judge sitting on the Original Side of this High Court is appealable to a Division Bench under the provisions of Section 195, Criminal P. C. The unamended Section 195 (6) was to the following effect:

'Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate.' Then, Sub-

section (7) stated as follows: 'For the purposes of this section every Court shall be deemed subordinate only to the Court to which appeals from the former Court ordinarily lie.'

On a construction of these two sub-sections, the Full Bench held that an appeal lay to the Division Bench hearing appeals from a single Judge on the original side of the High Court, from an order granting sanction. On the analogy of this decision, the learned counsel contends that a Division Bench on the appellate side is a Court authorised by law to hear appeals from original decrees of the Court passing the order. What is urged is that supposing on the original side of this Court an order superseding arbitration is passed, then under Section 31(1) an appeal will lie to this Court itself which will be heard on the appellate side by a Division Bench.

4. The difficulty in accepting this contention is that when the learned Judge heard the two revisions before him he was exercising a power conferred on him under Section 115, Civil P. C., as is made clear by Section 41(a), Arbitration Act, which is to the effect that 'the provisions of the Civil Procedure Code of 1908, shall apply to all proceedings before the Court, and to all appeals under this Act.' In -- 'Gauri Shankar v. Jagat Narain', 56 All 608, a single Judge in considering the nature of the powers exercised in revision expressed the view that as a 'decree' as defined in Section 2, Civil P. C., means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit an order passed in revision undoubtedly comes within this definition. It is not necessary for us to rely on this decision for the proposition that the powers of revision are those exercised in the appellate jurisdiction, Section 115 makes it clear that a power of revision can only be exercised by the High Court when no appeal is provided to it, in its appellate jurisdiction. We therefore, are of opinion that when Raghava Rao J. superseded the arbitration, he was functioning as an appellate Court and when he functions as an appellate Court there is a prohibition that no second appeal shall lie from an order passed by him under Section 39(2), Arbitration Act.

This is concluded so far as this Court is concerned by the decision in -- 'Radhakrishnamurti v. Ethirajulu Chetti and Co.', ILR (1945) Mad 564, which view

has found acceptance in -- 'Madhavdas v. Vithaldas', : AIR1952 Bom229 and -- 'R. Wright & Partner Ltd. v. Governor General in Council', ILR (1948) Cal 265. If in an appeal an order is passed superseding an arbitration and no second appeal can lie from such an order, we fail to see how there can be an appeal against an order passed in revision. Clause 15 of the Letters Patent definitely says that an order passed under Section 115 by a single Judge of the High Court is not appealable to a Bench.

5. Even on the wording of Section 39(1), in our opinion, there can be no appeal. The Judge sitting for hearing revision petitions is not a different Court from a Division Bench hearing appeals. All the Judges constitute members of the same Court and both are parts of one and the same institution. It cannot be said that a Judge sitting on the appellate side singly is a Court different from a Division Bench. Section 39(1) contemplates two different Courts, viz., a Court which supersedes the arbitration and a different Court which is authorised by law to hear appeals from the original decrees of the Court passing the order, Since there is no duality of Courts in this case, we cannot say that there can be any application of Section 39(1) on the facts of the present case.

Mr. Viswanathan was asked the question as to what would be the result if a Division Bench for the first time hears a revision under Section 115 and supersedes an arbitration in which case would it be that an appeal can lie from a Division Bench to a Full Bench under Section 39(1)? The learned counsel is compelled to answer that since there is no other Court, an appeal would not lie except to the Supreme Court. In the view which we take that the Courts are one and the same, no appeal lies. The requirements of Section 39(1) have not been satisfied and the papers will be returned to the proposed appellant.