

Protap Chunder Dass Vs. Arathoon

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Court : Kolkata

Decided On : Feb-15-1882

Reported in : (1882)ILR8Cal455

Judge : McDonell and ;Field, JJ.

Appellant : Protap Chunder Dass

Respondent : Arathoon

Judgement :

Field, J.

1. In this case one Baboo Protap Chunder Dass, the plaintiff, entered into an arrangement with Mr. Arathoon, the defendant, under which the former was to purchase rice on behalf of the latter, and was to receive one per cent. on all moneys actually advanced, and also a commission of one rupee eight annas of the transactions. After the execution of this agreement, rice was, on several occasions, purchased by the plaintiff and forwarded to the defendant. Disputes arose in consequence of its being alleged by the defendant that the rice so forwarded was not of a quality which had been contracted for. Other disputes, to which it is unnecessary to refer in detail, also arose in connection with consignments of rice and other matters concerned with the transactions had under the agreement; and the result was a suit by the plaintiff in which he claimed the sum of Rs. 2,920 odd. Upon the 30th of April 1879, he obtained, in the Court of the

Subordinate Judge of Dacca, a decree for a portion of the amount so claimed,--viz., Rs. 2,037 odd. Execution was taken out upon this decree, and the defendant was arrested. Upon his arrest an arrangement was made between the judgment-debtor and the decree-holder, by which the decree-holder undertook to release the judgment-debtor from arrest without having him sent to jail, and to allow him time to pay the amount of the decree by instalments: and the judgment-debtor undertook not to appeal against the decree, while the decree-holder further undertook not to appeal in respect of that portion of the claim for which he had failed. This agreement was at once acted upon by the decree-holder, who had the judgment-debtor released without being sent to jail. Subsequently, the judgment-debtor, in contravention of this agreement, appealed against the decree, and the first question, and indeed the only question, with which we have to deal upon this appeal is, whether, under the circumstances, the judgment-debtor could be allowed to carry on his appeal. The District Judge of Dacca decided that the agreement did not estop the judgment-debtor from appealing. In this view we are unable to concur. The case of *Anunt Dass v. Ashburner and Co.* I.L.R. 1 All. 267 is very similar to the case now before us, and we concur in the view taken by the majority of the Judges in that case. We think that Section 281 of the Indian Contract Act has no application. We think that the judgment-debtor, having induced the decree-holder to believe, and having expressly undertaken that he would not prefer an appeal, and having by this representation and undertaking procured his own release from arrest, was estopped from acting contrary to his deliberate representation and undertaking.

2. There are two other cases which, although not exactly in point to a certain extent, support the view which we take. The first is the case of *Moonshee Ameer Ali v. Moharani Indurjeet Singh* 14 Moore's I.A. 203; S.C. 9 B.L.R. 460. In that case the appellant had undertaken not to appeal from the judgment of the High Court to Her Majesty in Council if the High Court would confine its judgment to a single point,--viz., the validity of a certain *mokhtear-nama* relied upon in the case. The High Court did accordingly confine its decision to this one point. The appellant afterwards preferred an appeal to the Privy Council upon the whole case; and the High Court having certified the fact of the undertaking made by the appellant, the Lords of the Privy Council were of opinion that the appeal had been brought in

violation of good faith, and therefore ought not to be entertained. The other case is that of *Raj Mohun Gossain v. Gour Mohun Gossain* 8 Moore's I.A. 91; S.C. 4 W.R. P.C. 47. In that case the Privy Council expressed a strong opinion that a decree of an Appellate Court obtained after a compromise of the matters in dispute was an adjudication obtained not only with great impropriety, but, in effect, by fraud.

3. Having regard to these authorities, it appears to us that the defendant did, by his conduct and by his petition of the 21st May 1879, estop himself from afterwards preferring an appeal against the decree of the Subordinate Judge.

4. But it is said that the agreement by which the defendant undertook not to appeal was an agreement obtained by duress. We have heard the defendant's own account of the transaction as given in his deposition, and it appears to us impossible to say that this agreement was obtained by duress. We think that it was an agreement made of his own free will, and that it ought to be strictly enforced against him, seeing that he obtained the immediate benefit of it by being released from arrest. In connection with the present case there is an appeal, No. 160, which is an appeal from the order of the District Judge rejecting, on the ground that it was not properly stamped, an appeal from an order of the Subordinate Judge, dated 30th December 1879. By that order the Subordinate Judge rejected certain objections raised by Arathoon, the defendant--objections which in fact raised the same question with which we have just dealt,--viz., the question of duress, and directed that the decree originally passed on the 30th April 1879 should be amended in accordance with the petition of the 21st May. We think it exceedingly doubtful whether any appeal would lie against the order of the Judge rejecting the petition of appeal, on the ground that it was not properly stamped; but the question is not really very material, because the substantial question raised upon this appeal to the Judge has been disposed of in dealing with the substantial appeal from the District Judge's decree. Appeal No. 998 of 1880 will, accordingly, be decreed with costs, and the Miscellaneous Appeal, No. 160 of 1880, will be dismissed without costs.

1 [See. 28: Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal

proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Agreements in restraint of legal proceedings void.

Exception 1. This section shall not render illegal a contract, by which two or more persons agree that any dispute, which may arise between them in respect of any subject or class of subjects, shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Saving of contract to refer to arbitration dispute that may arise.

When such contract has been made a suit may be brought for its specific performance; and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.

Suits barred by such contracts.

Exception 2. Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.]

Saving of contract to refer questions that have already arisen.

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