

W. Crisp Vs. Adlard and ors.

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Court : Kolkata

Decided On : Mar-18-1896

Reported in : (1896)ILR23Cal956

Judge : W. Comer Petheram, C.J. and ;Rampini, J.

Appellant : W. Crisp

Respondent : Adlard and ors.

Judgement :

W. Comer Petheram, C.J. and Rampini, J.

1. I think that this appeal must be allowed, and for several reasons.
2. In the first place, it is, I think, extremely doubtful whether this arbitration clause applies to disputes which may arise between the old partners after the partnership has come to an end.
3. But however that may be, I am very clearly of opinion that the refusal to arbitrate must be before the action is brought in order that it and the arbitration clause may constitute a defence to an action on the agreement. To hold otherwise would be to hold that one party to such an agreement might force the other to bring an action by refusing to go to arbitration, and then, after the action had been commenced, change his mind and defend it successfully, on the ground that it could not proceed in consequence of the arbitration clause, though the plaintiff had a good

cause of action when he brought his suit.

4. Order XXIV, Rule I, under the English Judicature Act, applies, I think, to defences on the merits which arise after the institution of the suit.

5. Another reason why this defence cannot succeed in this case, is that a Question arises under the plaint and written statement as to when the partner-ship came to an end, and this is certainly not one of the matters included in the arbitration clause. '

6. The result is, that the appeal will be allowed, the judgment set aside and the learned Judge in the Court below directed to reinstate the case on his file and dispose of it according to law.

7. The costs of this appeal will be in the discretion of the Judge who disposes of the case on the merits.

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