

Guru Charan Sarkar Vs. Uma Charan Sarkar

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Court : Kolkata

Decided On : May-21-1916

Reported in : 70Ind.Cas.985

Judge : Teunon and; Richardson, JJ.

Appellant : Guru Charan Sarkar

Respondent : Uma Charan Sarkar

Judgement :

Teunon, J.

1. The only question in this appeal, is whether matters heard and, determined in proceedings under the Second Schedule to the Civil Procedure Code Clause 21 may be re-opened in a subsequent suit between the same parties and brought for the purpose of setting aside the award and the decree following upon the judgment pronounced in accordance therewith.

2. We have little difficulty in answering this question in the negative.

3. Even under the Civil Procedure Code of 1882 it was held by the Full Bench in the case of Mahomad Wahiduddin v. Haki-man 25 C. 757 : C.W.N. 529 : 13 Ind. Dec. (N.S.) 494 (F.B.) that an order refusing to file an, award was a decree. In Clause 21 of the Second Schedule it is now expressly provided that an order filing

an award shall be followed by a judgment and a decree.¹ These provisions and the further provisions in Section 26 that a suit may be instituted otherwise than by presentation of a plaint, make it clear that a proceeding under Clause 21 of the Second Schedule is a suit and that a subsequent suit brought for the purpose of re-agitating the matters therein heard and determined is barred by the provisions of Section 11 of the Code.

4. The appeal will, therefore, be dismissed with costs.

Richardson, J.

5. I agree, as in my opinion the word 'suit' in section of the Civil Procedure Code is wide enough to include proceedings under paragraphs 20 and 21 of the Second Schedule. It is true that the adjudication by which the Court directs the award to be filed is in the form of an order from which only one appeal is allowed' under Section 104 (1) and Section 10 (2). It is also true that upon the order being made, the Court is to pronounce judgment according to the award and that from the decree which follows no appeal lies 'except in so far as the decree is in excess of or not in accordance with the award.' Clearly, the decree is in the nature of a consent decree. But inasmuch as the order under which the award is filed is made upon notice to the parties to the arbitration and it is open to any party objecting to the award being filed to prove any of the grounds mentioned or referred to in paragraphs 14 and 15, it seems to me clear that under Section 11 the bar of res judicata applies to the matters which thus come to be directly and substantially in issue between the parties and that the issues so arising cannot again be raised in a subsequent suit, always assuming that the Court which made the order was a Court competent to try such subsequent suit. Under explanation II of Section 11, competency is to be determined irrespective of any provision as to a right of appeal.

6. In the present case it is clear that the suit re-opens questions which were fully dealt with in the order under which the award was filed. It may also be observed that no appeal was preferred from that order. It is sufficient to say that the whole matter was decided by a Court of competent jurisdiction in a former suit. I concur

in dismissing the appeal with costs.

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