

**Pramatha Nath Sen Gupta Vs. Sheikh Abdul Aziz Meah**

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**Court :** Kolkata

**Decided On :** Jan-19-1923

**Reported in :** AIR1923Cal436,75Ind.Cas.443

**Judge :** Rankin and ;Panton, JJ.

**Appellant :** Pramatha Nath Sen Gupta

**Respondent :** Sheikh Abdul Aziz Meah

**Judgement :**

Rankin, J.

1. This is a second appeal brought by the plaintiff who acted as a Commissioner in a partition suit which was referred to arbitration under the Second Schedule of the Code. It appears that an arbitrator having been appointed certain petitions were made to the arbitrator including one by the plaintiff in the suit asking that, in respect of a certain property, there should be a local enquiry. On the 8th March 1915 the Court having appointed the arbitrator to determine all the matters in difference between the parties in the suit empowered him to dispose of all the petitions filed before him including the plaintiff's petition for the appointment of a Pleader Commissioner. The order gave the arbitrator power to appoint 'whomsoever he likes' and directed the plaintiff to deposit Rs. 100 at present as Commissioner's fees etc., within seven days. The plaintiff deposited Rs. 100 in terms of that order and the plaintiff in the present suit was appointed Commissioner under that order. His actual appointment was made by the arbitrator under the power given to him by that order of the Court. The present defendant who was then plaintiff was applied to from time to time by the Commissioner to put in certain additional sums as further fees and in the end the Commissioner got ready his report and approached the plaintiff in the suit on the footing that, unless a couple of hundred rupees more were paid, he could not be expected to file his report. Thereupon a mortgage-bond was given to the Commissioner by the then plaintiff promising to pay Rs. 200. On that bond the Commissioner has now sued

2. The first Court has decreed the suit and the lower Appellate Court has dismissed the suit on the ground that the mortgage-bond taken by the Commissioner in that way is taken contrary to law and cannot be sued upon. I shall, for the present purpose, put on one side altogether any question except this, whether the taking of that mortgage bond by the Commissioner was such a breach of his duty towards the parties, to the arbitrator and to the Court that it cannot be sued upon as being an illegal contract. In my opinion that proposition ought to be affirmed, and, nonetheless so, that it is good law that when one party at the instance of another has done work or come under an obligation, there may be an implied contract by the party at whose instance the Work has been done to indemnify the other. The Commissioner, if sufficient fees were not forthcoming, was quite entitled to go to the arbitrator and to object to do the work without remuneration. It was quite proper for the arbitrator, if he thought fit, to require the plaintiff to pay further sums of money into the arbitrator's hands. It was quite open to the arbitrator to enquire as to the amount due, to fix the terms of the Commissioner's remuneration and to deal with the matter as justice should require. It appears that no actual rate was fixed by contract with anybody. It is said that the rate usually allowed under the Rules of the

High Court-was taken as a guide in assessing what was due to the Commissioner. But the plaintiff was not in so good a position as the arbitrator to dictate the Commissioner any terms, to tax his bills, to query entries in the diary or to see that he did his duty properly., It is quite true that, in all probability, the arbitrator would feel obliged to make the plaintiff and no other party deposit the amount necessary to meet the Commissioner's claim. What happened was that, at a time When the Commissioner was assisting the arbitrator to discharge judicial duties as between one party to a partit on suit and another, he was appraoching the plaintiff from time to time and getting sums of money on account, and finally as a condition of rendering his report, he took from the plaintiff this mortgage bond for a fixed sum of money, viz., Rs. 200 which the plaintiff promised to pay. In my judgment, this is entirely contrary to the duty of a Commissioner whether he be regarded as appointed by an arbitrator or whether he be regarded as appointed by the Court, the arbitrator having power to nominate the individual. It is quite incredible that the duties of a Commissioner should be thought consistent with approaching an individual party and getting him to pay sums of money in discharge of an untaxed bill of costs upon the footing that, unless this is done, the report will not be filed. In my judgment, there is no doubt about the principle. The Commissioner's duty was to keep all parties at arms length, to receive no favour from any one, to look to one no more than to another. If he wanted his money he had the arbitrator as the person whose duty it was to put proper pressure on the right party and to provide for an adequate remuneration in a reasonable and proper way. For the Commissioner himself to put any sort of pressure upon one party so as to make the. immediate payment of an untaxed bill a condition without which the Commissioner's duty would not be done, or would be done at another time is not merely ill-advised conduct, it is improper and illegal conduct. No such bargain so procured can stand. It is an improper advantage obtained by an officer of Court by abuse of his position as such officer. The case of Gopalaratnamayyar v. Bupala Narasimma Nayudu 4 M. 399 : 1 Ind. Dec. (M.S) 1113 is a case with reference to a suit for fees by a Commissioner after the litigation in question has come to an end. That is another matter altogether. It is not the case that the Commissioner is the servant of the party at whose instance the Court or the a bitrator makes the appointment. The work done is not work done for that party. It is work done for the Court and the right to sue a party at whose instance the Court appoints a Commissioner is not the right to sue a party for whom the plaintiff has worked. It must be based upon a different principle of law, namely, that where one party does work, or incurs an obligation at the instance of another there is, in certain circumstances, an implied provision of indemnity. It seems to me necessary that there should be no doubt cast on the broad rule that a Commissioner appointed by a Court must keep himself clear of any ambiguous conduct towards any party in the matter of his fees. I think the conclusions at which the learned Subordinate Judge has arrived are correct and that his decision should be upheld.

3. The appeal is accordingly dismissed with costs.

Panton, J.

4. I agree.

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