
(1931) 02 AHC CK 0004
In the Allahabad High Court

Ajaz Ali	Vs	APPELLANT
Mt. Zohra		RESPONDENT

Date of Decision : 23-02-1931

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1932 All 76

Hon'ble Judges : Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sen, J.—Mt. Zohra, a minor Mahomedan girl brought a suit with Mohammad Ibrahim Khan for her next friend in the Court of the Munsif of Etah for recovery of Rs. 780. The suit was directed against Aijaz Ali, who is the applicant before this Court. Aijaz Ali was admittedly married to Mt. Zohra. The latter alleged that she had been divorced by her husband. She claimed from him Rs. 250 being the price of certain ornaments alleged to have been wrongfully appropriated by the husband; Rs. 500 for her dower debt and Rs. 30 for her maintenance during the period of iddat. The divorce is alleged to have taken place on 10th October 1929.

2. The defendant denied having divorced his wife and repudiated the claim in toto. On 23rd June 1930, the suit was referred to arbitration. Plaintiff appointed Babu Jagat Narain vakil as her arbitrator. The defendant appointed Babu Ahmad Hussain Khan, mukhtar, as his arbitrator. On Moulvi Hasan Mohomad, vakil, was appointed as the umpire The material portion of the agreement of reference runs as follows:

The parties shall abide by and shall agree to any decision which may be made by the arbitrators and the umpire. The award shall, be given effect to with reference to the opinion of the majority,

3. The crucial question in this case was whether or not there had been a divorce. The suit had been instituted shortly after the marriage. The age of the plaintiff at

the time of the suit was just over 14. There can be no manner of doubt that the marriage had proved unhappy. Parties appear to have acted wisely to refer the "matter to arbitration. The arbitrator for the defendant held that there had been no divorce by the parties He was therefore of opinion that the plaintiff's suit was liable to dismissal. He gave no award as to the amounts claimed.

4. Babu Jagat Narain the arbitrator for the plaintiff definitely came to the following conclusions:

(2) The defendant had divorced the plaintiff.

(2) The amount of dower agreed upon was Rs. 500 as claimed but in view of the financial position of the defendant, the plaintiff ought to get a decree for Rs. 100 only.

(3) The price of ornaments appropriated by the defendant was Rs. 50.

(4) The plaintiff was entitled to Rs. 30 for her maintenance during her iddat.

5. By reason of the aforesaid difference of opinion the matter came up before Moulvi Hasan Mahomed the umpire. He disagreed with the defendant's arbitrator and definitely came to the conclusion that the marriage between the parties had been annulled; that the price of ornaments appropriated by the defendant was Rs. 50, that the plaintiff was entitled to Rs. 30 for her maintenance during the Iddat and that the amount of dower fixed at the time of marriage was Rs. 500. In view however of the status in life of the defendant he allowed the plaintiff's claim for dower for Rs. 125 only

6. The document containing the award of the umpire is paper No. B-56. It would appear from the above that although the award of the umpire is substantially in agreement with the award of the plaintiff's arbitrators there was a difference in the two awards as to the amount which the plaintiff should recover from the defendant. Plaintiff contended that the last mentioned awards constituted the award of the majority and should be given effect to. The defendant contended that there being a divergence of opinion amongst the arbitrators and a difference between the umpire and the plaintiff's arbitrator in one particular at least, there was no opinion of the majority as contemplated by the agreement of reference. The proceeding was therefore of no legal effect. The Court below has passed a decree in accordance with the award of the umpire (paper No. B 56.)

7. Defendant comes before this Court with an application for revision u/s 115, Civil P.C. It has been contended on his behalf that there was no effective award in accordance with the agreement of reference and that the Court below had acted beyond its jurisdiction in basing a decree upon the opinion of Moulvi Ahmad Hussain which was not the opinion of the majority. The Court below has relied upon a decision of the Madras High Court in Kupurao v. Venkataramayyar [1882] 4 Mad 311 in which it was held that whether the parties had asked the Court to appoint two arbitrators one for each of the parties and an umpire and had agreed to abide by such decision as might be passed by them unanimously

or by a majority of them, in such a "case if the arbitrators were unable to decide, an award by the umpire alone was valid. This decision beyond question supports the view of the Court below but it is difficult to understand upon what principle or authority the judgment proceeds, "Where the parties agree to be bound by the unanimous opinion of the arbitrators or by the opinion of the majority in case of difference the Court has no power to force upon the parties the award of the umpire alone for this was not one of the articles in the agreement of reference.

8. In *Jannat Bibi v. Abdul Aziz* [1887] CWN 197 the plaintiff had appointed two arbitrators and the defendant had also appointed two and it was agreed that if two of the arbitrators should differ from the other two the question was to be settled by an umpire who should agree with the opinion of one set of the arbitrators and had no power beyond that. In this case the plaintiff's arbitrators made no award at all. The defendant's arbitrators awarded Rs. 6,757-15-3. The umpire awarded Rs. 7,357-15-7 "and consequently did not agree with the arbitrators who made the award." It was held by Edge, C.J. and Tyrell, J. that the award was futile. The Court therefore superseded the award and remanded the case for disposal on merits. This matter had come up before the High Court in first appeal from the decree and not as a civil revision. This case is somewhat parallel to the case in hand and the principle enunciated herein is applicable to the facts before me.

9. Assuming that the learned Munsif was wrong in giving effect to the award of the arbitrators the question which arises is as to whether the decree of the Court below is open to challenge u/s 115, Civil P.C. It was open to the defendant to repudiate the award on any of the grounds set out in para. 15, Clause (1) Schedule 2, Civil P.C., and the award could be attacked upon the grounds that it was "otherwise invalid." But where the ground of attack has failed and the Court has refused to set aside the award under para. 16(1), Schedule 2, a decree must be passed in accordance with the award and a finality attaches to such a decree. Mr. Khwaja for the applicant contends that no finality attaches to an award which is ab initio invalid. This used at one time to be the view of some of the High Courts and the leading case in support of this view is *Kali Prosanna v. Rajani Kant* [1898] 25 Cal 141. The authority of that case was considerably shaken if not expressly overruled by the decision of the Judicial Committee in *In re Chulam Khan v. Mahmood Hasan* [1902] 29 Cal. 167 and the rule laid down therein has been incorporated in the statute in para. 16(1)(c), Civil P.C. Where objections to an award have been heard and disposed of by a Court of competent jurisdiction a finality attaches to the decree passed in accordance with the award and the matter cannot be allowed to be challenged in revision. It was within the jurisdiction of the Subordinate Judge to entertain and decide the point. His jurisdiction extended to deciding the point either way, i.e. either rightly or wrongly. If the Subordinate Judge has gone wrong and there appears to be good reason for acceding to Mr. Khwaja's contention that he has gone wrong the applicant is not entitled to the benefit of Section 115, Civil P.C. This Court is reluctant to interfere in revision where the order of the Court below is

substantially just. I have no doubt that the order of the Court below accords with justice. Moreover the Subordinate Judge does not appear to have exercised a jurisdiction not vested in him by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of his jurisdiction illegally or with material irregularity. I therefore dismiss this application with costs.