

(1925) 11 MAD CK 0009
In the Madras High Court

Belagoduhal Virabhadra Gowd		APPELLANT
	Vs	
Kalyan Gangamma and Others		RESPONDENT

Date of Decision : 24-11-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : AIR 1926 Mad 1211 : 97 Ind. Cas. 465

Hon'ble Judges : Venkatasubba Rao, J; Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—The plaintiff claimed in this suit filed in forma pauperis the properties of one Kalyani Narasappa on the ground that he was an

illatom son-in-law of that deceased person. After the suit had been once dismissed and while an application for restoration was pending, there was

a reference to arbitration by the parties. The award of the arbitrators passed on 22nd December, 1921, gave the plaintiff 2 acres of wet land and a

sum of Rs. 1,500. The Subordinate Judge has found that the plaintiff accepted the award and received Rs. 1,500. Admittedly he signed Ex. VI in

which reference is made to the award. It does not, therefore, very much signify that at the final trial of this suit the receipt for the sum of Rs. 1,500

was not forthcoming. Nor does it matter that Rs. 500 went into the hands of one Sakkara Gowd as there is evidence that that sum was paid to him

in consideration of his assistance to the plaintiff in settling the dispute. As the decree of the lower Court is in accordance with the award, the

plaintiff cannot now claim to get anything more than what was allotted to him through the said mediation of arbitrators.

2. The only question of law raised in this case at the hearing of the appeal is that the reference to arbitration out of Court was invalid and cannot

constitute an adjustment of the subject-matter of the suit within the meaning of Order XXIII, Rule 3, C.P.C. In this respect I think we should

follow the decision of this Court in C.C. Dorayya Vs. C. Venkanna and Others, which adopted a decision of the Bombay High Court in Manilal

Motilal v. Gokaldas Rowji 59 Ind. Cas. 53 : 22 Bom. L.R. 1048. In Peddapalayam Bodachari v. Peddapalyam Muniyachari 65 Ind. Cas. 92 :

(1921) M.W.N. 756 : 14 L.W. 666 Krishnan and Odgers, JJ., followed with some hesitation Shavaksha Dinsha Davar v. Tyab Haji Ayub 37 Ind.

Cas. 140 : 40 B. 386 : 18 Bom. L.R. 559 but which was held to be wrong in Manilal Mot Hal v. Gokaldas Rowji 59 Ind. Cas. 53 : 22 Bom. L.R.

1048 by Macleod, C.J., who was a party to the earlier decision. Amar Chand v. Banwari Lall 69 Ind. Cas. 808 : AIR 1922 Cal. 401 is a decision

of a single Judge of the Calcutta High Court, and in Gajendra Singh Vs. Durga Kumari two learned Judges recently took the same view as that in

Manilal Motilal v. Gokaldas Rowji 59 Ind. Cas. 53 : 22 Bom. L.R. 1048 and the dissenting Judge, Mukerji, J., who held that an award was not an

adjustment by an agreement of parties within the meaning of Order XXIII, Rule 4 did not have his attention called to the decision of this Court

which followed Manilal Motilal v. Gokaldas Rowji 59 Ind. Cas. 53 : 22 Bom. L.R. 1048. Where the parties voluntarily refer their disputes to the

decision of mediators without the intervention of a Court and their Vakils present the award of the arbitrators for acceptance by the Court, the

proper view appears to be that such an award operates as a compromise of the dispute, and a consent decree may be passed in its terms. In the

present case there is all the less reason for not applying the cases which have held differently for the reason that when this reference to Arbitration

was made there was no pending suit and, therefore, those cases, which held that reference to arbitration during the pendency of a suit without the

intervention of the Court is not valid, do not strictly apply. For these reasons, I would dismiss the appeal and confirm the lower Court's decree

with costs.

Venkatasubba Rao, J.

3. I agree. The point to be decided is, whether the order of the lower Court giving effect to an adjustment between the parties contravenes any

provision of the C.P.C. The plaintiff-appellant contends that while a suit is

pending there cannot be a reference to arbitration without the sanction of Court and any award made in pursuance of such a reference not sanctioned, is a nullity. The facts are these. The plaintiff filed the suit iii which the appeal arises, for recovery of certain properties and the suit was dismissed for default on the 5th of November, 1921. The plaintiff and the 1st defendant referred their disputes to the arbitration of certain persons on the 22nd of December, 1921, who on the same day passed an award. I shall first assume that on the date of the reference, there was a suit pending. Schedule II to the C.P.C. deals with arbitration under two main divisions. See Ghulam Khan v. Muhammad Hassan 8 Sar. P.C.J. 154 : 25 P.R. 1002 (P.C.).

(1). Where in a pending suit the parties desire to have any matter referred to arbitration. Paragraphs 1 to 16 relate to this and all proceedings are under the supervision of the Court. The reference shall be made by an order of the Court.

(2) Where the parties without having recourse to any litigation agree to refer their differences to arbitration. This is dealt with under two headings:

(a) Where it is desired that the agreement to refer should have the sanction of the Court; in that case, all further proceedings are under the supervision of the Court, paragraphs 17 to 19 deal with this.

(b) Where in pursuance of the reference an award has been made and any person then desires to get the award enforced by Court. Paragraphs 20 and 21 relate to this.

4. It is now contended that the reference in question not having been made by an order of Court, the award passed in pursuance of it, cannot be recognised. The argument is put in this way. Section 89 provides that all reference to arbitration and all proceedings thereunder shall be governed by the provisions in the Second Schedule. It is said that any award made in pursuance of a reference not under those provisions is illegal as contravening the provisions of the section. I do not desire at present to enter into this large question, as the point arising in this case can be disposed of on a short ground. The award, after it was passed was accepted and acted upon by the parties concerned. The 1st defendant paid and the plaintiff received Rs. 1,500 under it. Under Order XXII, Rule 3, C.P.C., where a suit has been compromised by a lawful agreement, the

Court is bound to direct the compromise to be recorded and to pass a decree in accordance with it. Now, has there been an adjustment by a lawful agreement? The parties undoubtedly agreed to the terms of the adjustment and the mere fact that the compromise was the result of an award can make no difference. Supposing instead of there being a reference and an award, the parties settle the terms as the result of a mediation of friends, it cannot be contended that the compromise is for that reason unlawful. The effect of the reference and the award was merely to suggest to the parties the terms on which the matter might be settled and the final settlement was clearly the act of the parties themselves. The Court is not called on either to recognise the reference or to enforce the award as such. The compromise which it was asked to give effect to, falls within Order XXIII, Rule 3 and is not opposed to Section 89. In this view, it is unnecessary to consider what the position would be if the parties had not entered into a compromise on the basis of the award.

5. So far, I have dealt with the question on the footing that there was a pending suit. In my opinion, however, there was no suit pending on the date of the reference. As I have said, the suit was dismissed for default on the 5th of November, 1921, and the reference to arbitration was on the 22nd of December, 1921. Between these two dates, that is on the 12th November, 1921, the plaintiff had filed an application for the restoration of his suit. It is contended that the suit must be deemed to have been pending by reason of that application having been filed. I see no reason to have recourse to this fiction and I hold that on the date of the reference there was no suit pending.

6. I agree in the order proposed by my learned brother.