
(1924) 12 BOM CK 0002

In the Bombay High Court

Case No : Civil Extraordinary Application No. 51 of 1923

Bhikhalal Girdharlal

APPELLANT

Vs

Acharatlal Lallubhai

RESPONDENT

Date of Decision : 10-12-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1925 Bom 341 : (1925) 27 BOMLR 423 : 87 Ind. Cas. 910

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—This is an application by the petitioner asking this Court to interfere under its powers given by Section 115 of the CPC with the order made by the First Class Subordinate Judge drawing up a decree in terms of the award, which was made in pursuance of an order of the Court, dated June 27, 1922, appointing the second opponent as arbitrator.

2. The first question is whether such an application is competent. We do not think that the authorities on the point go so far as to decide that no application can be entertained u/s 115 against a decree passed in terms of an award. It is true that the head-note in *Ghulam Jilani v. Muhammad Hussan* (1901) L.R. 29 IndAp 51 : 4 Bom. L.R. 161 is to this effect, but it is not warranted by the terms of their lordships' judgment, as we read it. At page 60 the judgment says:"-

The award having Jeeu duly made and not having been corrected or modified, and the application to set it aside having been refused, the Subordinate Judge had no option but to pronounce a decree in accordance with it. The Subordinate Judge does not appear to have exercised a jurisdiction not vested in him by law, or to have failed to exercise the jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with material irregularity. He appears to have followed strictly the course prescribed by the Code.

Inasmuch as their Lordships hold that the application in revision was

incompetent, it would be a work of supererogation to discuss the various objections raised by the appellants in the High Court.

3. The inference is clear, that if it had appeared that the Subordinate Judge had brought himself within the provisions of Section 115, the application for revision would have been competent. But none of the objections in that particular case were directed to those provisions. We cannot agree, therefore, with the expression of opinion of Mr. Mulla in his notes to Paras 15 and 16 of the Second Schedule to the Code, that no application for revision should be admitted in the case of an award, and we agree with the decision of this Court in *Merali Visram v. Sheriff Dewji* ILR (1911) 30 Bom. 105 : 13 Bom L.R. 1017. In this case the petitioner raised certain objections to the award of the arbitrator, making various allegations against the arbitrator, which, it was contended, if proved, amounted to misconduct. It is true that the Judge, on the application to set aside the award, did not deal seriatim, with all the allegations made by the petitioner against the arbitrator. He dealt with some of the objections, notably with regard to an item of Rs. 13,430, which the arbitrator, who had been a party to the partnership suit, had allowed himself, and an item of Rs. 14,862 which the arbitrator had allowed to another partner Pranjivan, and concluded by saying : "There is thus no misconduct proved and I hold the award cannot be set aside and should be filed and a decree drawn up in terms of the award."

4. It would have been better if the Judge had referred to all the objections in the petition, stating whether they had been relied upon or not when the matter was argued before him.

5. But we think the proper inference for this Court in revision to make is that the Judge acted properly in dealing with the objections, and that though he may not have made a reference to every one of them in his judgment, the omission points rather to the fact that those objections were not pressed before him. One of the allegations was that the arbitrator acted unfairly towards the petitioner in not hearing him or his evidence. Mr. Coyajeo has pointed out to us that although a summons was issued to the arbitrator to be examined as a witness, yet no attempt was made to examine him, but that was not the fault of the respondent.

6. We think, therefore, that it is more probable that the petitioner felt that these objections could not be pressed, so that there are no grounds on which we should exercise our discretion by interfering u/s 115. In fact there are some reasons for believing that this application was simply made for delay.

7. It seems necessary to point out again, as has been done in many other cases, that there is no obligation on the High Court to interfere on an application made u/s 115, even if facts are proved which bring the application within the section. It is purely a matter of discretion, and we cannot lay down any rules how that discretion is to be exercised. Whether the Court will interfere or not is entirely for the Court which hears the application to decide on the particular circumstances of the case before it.

8. We would, therefore, discharge the rule with costs.