

(1903) 12 CAL CK 0016
In the Calcutta High Court

Deep Narain Singh

APPELLANT

Vs

Dietert

RESPONDENT

Date of Decision : 02-12-1903

Acts Referred:

English Arbitration Act, 1889 — Section 12

Citation : (1904) ILR (Cal) 274

Hon'ble Judges : Francis W. Maclean, C.J.;Stevens, J;Hill, J

Bench : Full Bench

Judgement

Hill, J.—That leave was given under Clause 12 of the Letter Patent also shows that the suit was not on a foreign judgment.

2. The award was put in as evidence which would not be necessary if the suit was on a foreign judgment. The award having been filed in the Court in England became a record of that Court, and no proof of the award was necessary. The suit is a suit on the award on which an order u/s 12 of the English Arbitration Act has been made. What the effect of that order is, is a different question.

3. In paragraph 8 of the plaint we state, which statement remains unchallenged because the defendant allowed judgment to go by default, how a part of our cause of action, arose within the limits of the Original Jurisdiction of this Court and then leave under Clause 12 has been obtained. A demand followed by a promise to pay the amount of the award in Calcutta, is a cause of action in Calcutta.

4. I rely upon the oases cited by the learned Advocate-General for the definition of "Cause of action" and also on Roghoonath Misser v. Gobindnarain ILR (1895) Cal. 451.

Maclean, C.J.

5. If you had not said a word of what you have stated in paragraph 8 of your plaint, you had a right to get a decree upon the award for the whole amount. You

did not require any fresh promise to pay.

6. The question of jurisdiction goes to the root of the case, and if your Lordships are against me on the point of jurisdiction, I need not argue the point, of foreign judgment. I am out of Court whether the suit be taken as one on the award or on a foreign judgment.

Macleay, C.J.

7. The undisputed facts in this case are as follows:

Up to the time of his death, which occurred in 1898, one Tejnarain Singh Bahadur carried on business in the City of London under the name of T.N. Singh & Co., and after his death the defendant carried on the same business under the same title. Disputes arose between the present plaintiffs and the firm of T.N. Singh & Co.; those disputes were referred to the arbitration of certain well-known members of the English Bar, and on the 29th of March 1899, Mr. Laurence, K.C., a well-known member of the Bar, was appointed Umpire, and he by his award dated the 11th of December 1899, directed that a large sum should be paid by the defendant to the plaintiffs with certain costs. By an order of the 1st March 1900 made by the High Court of Justice, Queen's Bench Division of England, it was ordered that the award dated the 11th of December 1899 should be enforced in the same manner as a judgment or order, and that the costs of the application upon which the order was made should be taxed and paid by the firm of T.N. Singh & Co. The award is annexed to the schedule to the plaint. The money was not paid, and the plaintiffs have sued on the Original Side of this Court to recover the sum mentioned in the award, with interest at the rate of six per cent, per annum, and also asked that the defendant should pay the costs of the suit.

8. The matter came before Mr. Justice Ameer Ali as an undefended action: and the learned Judge made a decree on the 12th February 1903 in favour of the plaintiffs for the sum which, they asked for. The defendant has appealed. It is hardly necessary for me to dwell upon the inconvenience, to say the least, of this method of procedure. We have not the advantage of the views of the Court below, nor has the Judge of the Court below had an opportunity of expressing his opinion upon the legal points now raised. However, the appellant is within his rights, and I will say no more about it.

9. There are three points upon which it is urged that the judgment of the Court below is not sustainable and the suit ought to have been dismissed,--first; that the order of the 1st of March 1900 of the High Court of Justice is not a foreign judgment within the meaning of that term; secondly, that the suit is not a suit upon the award; and, thirdly, whether it was a suit upon the judgment or whether it was a suit upon the award, the Court below had no jurisdiction to entertain it.

10. If the latter point be well founded, the two earlier points become immaterial.

The inclination of my opinion is that the order of the 1st March 1900 is not such a judgment as to entitle the plaintiffs to sue upon it in this Court to recover the monies awarded to them by the award but it is unnecessary to finally decide this. A gain, looking at the frame of the pleadings, I should be disposed to say that it was open to the Court to make the decree it did, on the footing that the suit was one based upon the award rather than upon the order of the 1st of March 1900. But as I have already pointed out these matters are immaterial, if we are of opinion that the Court below had no jurisdiction to entertain the suit. The jurisdiction of the Court is given by Section 12 of the Letters Patent of 1865, and the real question we have to consider is whether "the cause of action has arisen either wholly or, in case the leave of the Court shall have been first obtained, in part within the local limits of the Ordinary Original Jurisdiction of the High Court." It has not been suggested that the defendant at the time of the commencement of the suit dwelt or carried on business or personally worked for gain within such limits.

11. The contention of the plaintiffs is that the cause of action in, part arose within the local limits of the Ordinary Original Jurisdiction of the High Court, and that, as the leave of the Court was obtained, the Court had jurisdiction to entertain it. The question then is, "Did the cause of action, in part, arise within the local limits of the Ordinary Original Jurisdiction of the High Court?"

12. If we regard the suit either as one upon the judgment or upon the award, the cause of action did not arise within the limits I have referred to. But it has been ingeniously argued that, I having regard to the allegations in paragraph 8 of the plaint and king them to be proved, the cause of action, in part, arose within the local limits of the Ordinary Original Jurisdiction of the Court. What the true definition of the cause of action is has been the subject of many decisions, and one of the most recent upon the point, which in England has, I believe, been generally accepted and, which I think, we may safely follow in India, is that of *Bead v. Brown* (1888) 22 L.R. Q.B.D. 128. There Lord Esher, then Master of the Rolls, says: "It has been defined in *Cooke v. Gill* (1873) 8 L.R. C.P. 107 to be this every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to "prove each fact, but every fact, which is necessary to be proved." Lord Justice Fry says: "Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action." Lord Justice Lopes says: "It includes every fact which it would be necessary to prove, if traversed, in order to enable a plaintiff to sustain his action."

13. Applying that definition to the present case, whether we regard this suit as one upon the order of the 1st March 1900 or as one upon the award, would it have been necessary for the plaintiffs to prove the allegations in the 8th paragraph of the plaint before they could have recovered? I think not. When the plaintiffs had proved the judgment, if the suit can properly be regarded as one

upon a judgment, or the award, if as one upon the award, they had proved all that was necessary for them to prove. Applying Lord Justice Fry's test, if the plaintiffs had not proved the facts alleged in paragraph 8, would the defendant have been immediately entitled to judgment? I should say not.

14. If the facts stated in paragraph 8 amount to anything, they would appear to suggest some, new bargain, the consideration for which moving from the defendant is not very apparent. But the plaintiffs are not suing independently upon this new bargain; they are suing either on the judgment or on the award, no part of which cause of action arose within the local limits of the Original Civil Jurisdiction of the Court. On this ground, it seems to me that the lower Court had no jurisdiction to pass the decree under appeal.

15. It is unfortunate that this point was not discussed in the lower Court, but, as I have said, it is open to the plaintiff to raise it here. The appeal therefore must succeed on this point.

16. Under the circumstances, I do not think that this is a case in which we ought to allow any costs.

Hill, J.

17. I am of the same opinion, and I only wish to add with respect to the question whether any part of the plaintiffs' cause of action arose in Calcutta, that it appears to me that what is asserted in the 8th paragraph in the plaint to have taken place between the solicitor for the plaintiffs and the defendant in the month of September 1902 did not alter the legal relations of the parties. It seems, to me that the undertaking on the part of Mr. Leslie, (the plaintiffs' solicitor) to forbear from instituting their suit, until he had heard from his clients in consideration of the defendant agreeing to pay immediately the sum of five hundred pounds was not an undertaking which under the circumstances of the case was enforceable in law, or which had any effect upon the legal position of the parties. If Mr. Leslie had instituted the suit within that period, and the defendant on the footing of his undertaking objected that it was premature, the objection would not have been, I think, maintainable; for the consideration upon which Mr. Leslie's promise was founded was illusory, amounting as it did only to an undertaking on the part of the defendant to do that which he was already legally bound to do. I do not think that an event, to which no legal effect attaches, can enter as an element into the creation of a cause of action, and for that reason the argument which was advanced here on behalf of the plaintiffs that, by reason of what took place between their attorney and the defendant in September 1902, part of the cause of action arose in Calcutta, cannot, I think, be maintained. That transaction to my mind formed no part of the cause of action.

18. I quite agree in what has fallen from my Lord, and I merely wish to add what I have now said as it appears to me to have its bearing upon the question of jurisdiction.

Stevens, J.

19. I concur.