

(1933) 09 AHC CK 0001
In the Allahabad High Court

(Firm) Damodar Sarup Balsarup

APPELLANT

Vs

(Firm) Daya Shanker and Neader Mal

RESPONDENT

Date of Decision : 18-09-1933

Acts Referred:

Citation : AIR 1933 All 956 : 147 Ind. Cas. 59

Hon'ble Judges : Kendall, J

Bench : Division Bench

Judgement

Kendall, J.—This is a plaintiff's application for the revision of an order of the Judge of the Small Cause Court: of Meerut decreeing the plaintiff's suit in part. The circumstances are that the plaintiff sued the defendant for a sum of money, and the parties subsequently agreed to refer the matter to the arbitration of an advocate of the Court, that is to say, the arbitrator was empowered to decide the dispute between the parties after hearing evidence. Subsequently the defendant made a statement in the course of which he said that if the plaintiff were to make certain statements on, oath a decree might be passed in accordance with the plaint. The plaintiff, in the wording of the order sheet, "accepted to give a statement," and when he did so he did in effect state on oath the facts which the defendant had required of him. In making his award however the arbitrator made some deductions from the claim of the plaintiff. The plaintiff" made an objection to the award, but the Court found that it had no power-to modify it, and consequently decreed the suit in terms of the award.

2. The Court found that it had no power to modify the award owing to the provisions of para. 12, Schedule 2, Civil P.C. Mr. Panna Lal has argued in support of the present application that the Court had power under Clause (c), para. 14 of the Schedule 2, viz: that there was an objection to the legality of the award apparent on the face of it. The objection to the legality of the award is said to be that the arbitrator ignored a compromise or adjustment which has been made between the parties. The compromise or adjustment is said to be the statement made on oath by the defendant to the effect that he would be bound by certain

statements that might be made on oath by the plaintiff, and by the subsequent conduct of the plaintiff in making those statements of oath. I have not considered whether the arbitrator was equivalent to a Court as referred to in Order 23, Rule 3, Civil P.C, because it does not appear to me that the statement of the defendant and the conduct of the plaintiff can be held to amount to a compromise as defined in that rule which would deprive the arbitrator of the powers with which he was vested by the reference to arbitration. Those powers were to decide the dispute after recording the evidence of the parties and their witnesses, and he was to decide the suit in the manner that seemed just to him. He was not to be bound by the statement of any party or any witness. If there had subsequently been a formal agreement duly recorded under Order 23, Rule 3 and approved by the Court this would no doubt have been sufficient to tie the hands of the arbitrator, but in the circumstances stated above it does not appear to be that there was an agreement that could be so binding on the parties and the arbitrator as to divest the arbitrator of his powers. I cannot therefore allow that in modifying the demands of the plaintiff the arbitrator acted in any way illegally, and the result is that the application fails and is dismissed with costs.