

(1961) 12 AHC CK 0011
In the Allahabad High Court
Case No : First Appeal No. 201 of 1951

Firm Nanak Chand and Others

APPELLANT

Vs

Lala Pannalal Proprietor

RESPONDENT

Date of Decision : 19-12-1961

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : AIR 1963 All 68

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : G.P. Bhargava, for the Appellant; Ambika Prasad, for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, J.—This is a defendants' appeal against whom a decree for recovery of a sum of Rs. 6,043/- with proportionate costs, pendente lite and future interest has been passed. The plaintiff respondent Lala Panna Lal filed a suit against the defendants appellants and one Dr. Sheo Shankar who is not an appellant before this Court on the allegation that the plaintiff carried on business in the name of Basant Lal Panna Lal and the defendants carried on the business in the sale and purchase of Bins and cigarettes through their firm named Nanak Chand and Sons, that the defendant firm used to take money in cash as loan from the plaintiff at the interest of annas -/12/-per mensem and in lieu of that used to pawn their Bins and cigarettes with the plaintiff.

It was further alleged that between October, 1946, and the beginning of December, 1947 the plaintiff had advanced loans amounting to Rs. 21,931/15/- to the defendants; that the defendants paid a sum of Rs. 17,017/- towards the loan which were duly credited in the name of the defendants in the account books of the plaintiff's firm and a sum of Rs. 4914/15/- was still outstanding against the defendants which despite repeated requests and demand the defendants failed to pay, hence the suit.

2. Dr. Sheo Shankar one of the defendants in his written statement pleaded that he had been carrying on the profession of a medical doctor in Hathras and he had no concern with the joint family firm styled as Nanak Chand and Sons dealing in Bins and cigarettes. He further denied that he was a member of the joint family which carried on the business of Biris and cigarettes.

The other defendants denied the plaintiff's claim and the defence in the main was that they did not take any loans as such from the plaintiff and the transactions were not done in the manner as alleged by the plaintiff. It was further pleaded that the entries in the account books of the plaintiff were wrong and in fact Biris and cigarettes of a larger value were pledged with the plaintiff's firm than the money advanced by them on that security and nothing was due to the plaintiff.

3. It appears that during the pendency of the suit the parties referred the dispute to arbitration after making an application to the Court on 17-3-1949. Lala Ganga Saran Bajaj, Sri Ishwari Prasad Bajaj and Sri Ramnath Poddar, residents of Hathras were appointed as Panches and the arbitrators gave their award dated 5-9-1949 by which a decree against the defendants, namely, Dr. Sheo Shankar, Laxmi Narain, Ram Narain and Babu Lal Sharma was passed for a sum of Rs. 3412/13/3-

The award further provided that the plaintiff could utilize Rs. 850/- which were in deposit in Court representing the sale price of Biris and the balance of Rs. 2562/13/- could be realised from any of the four defendants. It was also provided in the award that no interest was to be charged on the decretal amount and the decretal amount could only be realised from the ancestral property belonging to the joint family and not from the separate assets or the property of Dr. Sheo Shankar.

4. All the four defendants against whom the decree was passed by the arbitrators and the plaintiff filed objections to the award. The grounds on which the award was challenged mainly attributed misconduct on the part of the arbitrators in the proceedings carried on by them. It is not necessary for me to mention those grounds in detail or to express any opinion on the same. The proceedings of the Court show that on 23rd November, 1949, Sri Dharampal Varshiny, counsel of the plaintiff, Sri Mahendra Prasad, counsel for the defendants numbers 3 and 4 and Sri Ram Narain Misra, counsel for defendant No. 2 stated that the arbitration award be cancelled.

On 25th November, 1949, Sri Mohammad Is-mail counsel for defendant No. 5, stated that he had no instruction from his client in the matter. On the same day the learned Civil Judge passed an order which is paper No. 8-A.2 on record and which is to the effect that all parties want that award should be set aside and he accordingly set aside the award and fixed 7th March 1950, for further proceeding in the suit. The trial in the suit then proceeded before the learned Civil Judge and after a consideration of evidence on record he exempted Dr. Sheo Shankar

defendant No. 2, and passed a decree for a sum of Rs. 6,043/- with proportionate costs and pendente lite and future interest at 6 per cent per annum against defendants numbers 1, 3 and 4. The learned Judge further directed that defendant No. 5 Babu Lal Sharma who was a surety was liable to the extent of Rs. 2500/- out of the amount of Rs. 6043/- decreed. The suit against Dr. Sheo Shankar defendant No. 2 was dismissed.

5. In appeal before me the learned counsel for the appellants on 24-11-1961 filed an application for leave to urge a further ground challenging the decree of the Court below on the basis that the learned Judge had illegally set aside the award merely on the consent of the parties and the learned counsel also made a statement that the defendants appellants were prepared to pay to the plaintiff the amount decreed by the arbitrators. As the ground which was sought to be urged by the learned counsel for the appellants went to the root of the matter. I allowed that ground to be raised. The learned counsel for the respondent took time more than once for taking instructions from his client, namely, the plaintiff respondent whether he was agreeable to accept the offer of the counsel for the defendants appellants and receive the amount decreed in the award. The learned counsel, for the plaintiff respondent appeared before me today and he is not in position to state on behalf of his client that he is agreeable to receive the amount, decreed by the award and he has contended that the award was rightly set aside as all the parties to the award had consented to that course.

6. The learned counsel for the defendants appellants has drawn my attention to the fact that Sri Babu Lal Sharma, defendant No. 5 was not a consenting party to the setting aside of the award in question. I have already mentioned above the statement made by the learned counsel of defendant No. 5 Babu Lal Sharma on 25th November, 1949, in which it was stated that the learned counsel had not received any instructions. It is clear, therefore, that while the counsel for the plaintiff and the respective counsel for defendants numbers 2, 3 and 4 had made a statement that the award be cancelled, there is nothing on the record to show that the defendant No. 5 Babu Lal Sharma had also consented to that course. The learned Civil Judge was in error when on 25th November, 1949, in his order he stated that all parties wanted that the award should be set aside.

7. It has been submitted by the learned counsel for the appellants that an award could not be set aside merely on the ground that the parties to the award desired or agreed to its cancellation. Reliance has been placed by the learned counsel on the case of AIR 1937 507 (Oudh)

The decision in the said case, to my mind, fully supports the contention of the learned counsel. The decision turned on the language of Clause 15 (1) of Schedule (II) Civil Procedure Code 1908 and their Lordships held that the Court had no jurisdiction to set aside an award on any ground other than those specified in the said clause and repelled the argument that as one of the parties to the award wanted it to be set aside and the other party did not object, it could be a valid ground for setting aside the award.

In the present case I am concerned with Section 30 of the Arbitration Act of 1940. Section 30 of the Arbitration Act of 1940 is as follows :

"An award shall not be set aside except on one or more of the following grounds namely: -

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35;

(c) that an award has been improperly procured or is otherwise invalid."

8. It would be seen from the language of the above section that three grounds have been mentioned on which the award can be set aside. The language is imperative and is similar to that of Clause 15 (1) of Schedule (II) Civil Procedure Code. The learned counsel for the respondent has not been able to show me any provision under the Arbitration Act of 1940 in support of his proposition that it was open to the learned Civil Judge to ignore the award in the circumstances of the case when all the parties to the award desired it to be cancelled.

The counsel for the respondent contended that u/s 33 of the Arbitration Act of 1940 when any application is made by any party challenging the validity of an award the Court shall decide the question and it implies that the Court has ample power to set aside the award on any grounds other than mentioned in Section 30 of the Act and the power and jurisdiction of the Court is not necessarily confined to the grounds mentioned in the latter section. In effect the learned counsel's argument is that the power and the jurisdiction of the Court u/s 33 of the Act is not controlled by the provisions of Section 30 of the Act. I do not see any force in the contention of the learned counsel of the respondent.

To my mind Section 33 relates to the procedure which has to be adopted for getting an award set aside, while Section 30 confines the power or jurisdiction of the Court to which an application is made for setting aside an award on the grounds mentioned in that section. The two sections have to be read together and if what is contended for by the learned counsel for the respondent is correct, then the imperative language of Section 30 of the Act that an award shall not be set aside except on one or more of the grounds, sanctioned in Section 30 would lose all force and the object of that provision would be defeated as it will extend the power of the Court to set aside the award on any ground other than those mentioned in Section 30 of the Act.

I, therefore, hold that the learned Civil Judge was in error in setting aside the award merely on the statements of the respective counsel for the parties. Moreover, one of the parties to the award, namely, defendant No. 5 Babu Lal Sharma, as observed above, had not consented and the statement of his counsel that he had no instructions in the matter could not be interpreted as consent on the part of defendant No. 5 for the cancellation of the award.

9. It was the duty of the learned Civil Judge to have considered the objections filed by the parties to the award on merits and if he were satisfied that a case was made out for setting aside the award on any one or more of the grounds mentioned in Section 30 of the Arbitration Act 1940, it is only in that circumstance that he could set aside the award and then proceed further with the suit. He has not done so and having proceeded on with the suit without examining the objections on merit, the decree passed by him, in my opinion, is vitiated and is against law. I think I have no option but to set aside the same.

10. For the reasons given above, I allow this appeal, set aside the decree of the learned Civil Judge and remand the case back to the Court of the learned Civil Judge. I direct that the suit be restored to its original number and the learned Civil Judge should proceed to consider the objections filed by the parties to the award in question on merits and then decide the suit according to law.

11. As the ground on which this appeal has been allowed was taken at a late stage, I think that the appellants should not be awarded costs. It is accordingly ordered that the parties will bear their own costs of this appeal.

12. The learned counsel for the appellants has prayed for an order for the refund of the court- fee paid by the appellants on the memorandum of appeal in this Court. I think the request is reasonable and I grant a certificate to the appellants authorising them to receive back from the Collector the full amount of court-fee they paid on the memorandum of appeal in this Court.