
(1951) 08 AP CK 0009

In the Andhra Pradesh High Court

Case No : Second Appeal No. 326/4 of 1356 F

Gopaldas and others

APPELLANT

Vs

Dagduram and others

RESPONDENT

Date of Decision : 17-08-1951

Acts Referred:

Hyderabad Civil Procedure Code, 1323 — Section 8

Citation : AIR 1951 AP 39

Hon'ble Judges : Deshpande, J; Ahmed Mohiuddin Ansari, J

Bench : Division Bench

Advocate : Rashid Siddiq Hussain, for the Appellant; Syed Aneesuddin Ahmed, for the Respondent

Judgement

1. The plaintiffs, Gopaldas, S/o Punja, Purshotam S/o Jethabhai and Khatau S/o Khemji are traders conducting their business at Bombay, under the name of the firm "Khemji Ponja & Co., Bombay. The defendants, Dagduram alias Dagdulal S/o Shriram, Laxminarayan S/o Dagduram, Jagan Nath S/o Bagduram are also traders conducting their business at Kadirabad, Jalna, under the firm name of "Laxminarayan Jagannath. In connection With the business between these two firms the defendants owed some amount to the plaintiffs for which there was a dispute. The dispute was entrusted to the arbitration and an award was given by the arbitrators. This award was filed in the Bombay High Court on 25th April 1938, and proceedings were taken in execution of this award as a decree and the plaintiffs realised Rs. 329-2-7 in the execution, but &s the plaintiffs did not realise the whole sum under the award, the present suit was instituted on 1st Amardad, 1348, P., in the Munsiff Court at Jalna for Rs. 1,660/- The defendants in their written statements stated that the award given by the East India Cotton Association, Bombay, was an ex parte one and also it was collusive and partial and the association had no jurisdiction to pass any decree and the decree was invalid. The decree that has been filed cannot be a basis of a suit and cannot bind the defendants, as the defendants were the subjects of the Hyderabad State.

2. The original Court decreed the suit against defendants Nos. 1 and 2 and dismissed the suit against defendant No. 3, against which defendants Nos. 1 and 3 filed an appeal before the Additional District Judge who allowed the appeal holding that the decree upon which the suit has been based is not a foreign judgment u/s 8 of the Hyderabad Civil Procedure Code, therefore, he rejected the plaintiffs' plaint; against which the plaintiffs have filed this second appeal.

3. During the proceedings in the High Court the appeal came up for hearing before the Division Bench and the Division Bench on 2nd Azur, 1355 P., dismissed this appeal holding that as the advocate for the appellant admits that there is no decree or judgment in the record, no question arises u/s 8 of the Hyderabad Civil Procedure Code. Therefore, the judgment of the lower Court was upheld and the suit was dismissed.

4. The appellants filed a review petition and on 19-3-56 F the review application was allowed and the judgment dated the 2nd Azur, 1355 F., was set aside. In this judgment, allowing the review petition, it is observed by the learned Judges that they were satisfied that the record contains the judgment and decree of the foreign Court upon which the suit is based and as there was an obvious error, the review petition was allowed and the appeal was posted for hearing.

5. The Advocate for the appellant argued that the certified copy dated the 25th April 1938, received by his clients from the Bombay High Court is a decree and therefore the suit is maintainable. He tried to distinguish the case of "Jagannath v. Bhawanji", reported in "37 Deccan L R 33" and maintains that it is not in accordance with the law. He cited the rules framed by the Bombay High Court under which the award can be filed in the Court, under the Indian Arbitration Act. In support of his argument, that it is a decree and suit can be maintained, he relied upon "Russel on Arbitration", "Jnanendra Mohan v. Annapurna Debi", 102 IC 108; " B. Krishna Gopal Vs. Mt. Lakshmi Bai and " Anath Nath Bose Vs. Monmotha Nath Bose and Others, and "Brijlal Ramjidas v. Govindram Gordhandas", AIR 1947 P C 192.

6. On behalf of the respondents, it is argued that u/s 8 of the Hyderabad CPC there cannot be a suit unless and until there is a judgment of the foreign Court and as the judgment of the foreign Court is not filed, the suit is not maintainable. He relies upon "32 Dec-can L R 33" and also on "Deep Narain Singh v. Dietert", 31 Cal 274.

7. In our opinion, the appeal is not maintainable. The learned Advocate for the appellant could not show from the record that the file actually contains the judgment and decree of the Bombay High Court. Though in the judgment allowing the review petition it was observed that the Judges were satisfied that the record contained the judgment and decree of the Bombay High Court, but we do not find the same in the file.

8. As regards the contention that merely filing the award in the Court means a decree we do not agree with it and choose to follow the ruling reported in "37

Deccan L R 33." The learned Advocate for the appellant has not shown anything to distinguish the said ruling. In order that a foreign judgment should be the basis of a suit u/s 8 of the Hyderabad Civil Procedure Code, there must be a foreign judgment (foreign judgment by the way means judgment of a foreign Court.) As a matter of fact there is no judgment of a foreign Court in this case. The only document filed along with the plaint is the award which was filed in the Bombay High Court. It is not signed by any presiding Judge but is signed by a "Prothonotary." Such award is no doubt enforceable as a decree but is not a decree itself and there are cases in which it has been held that no decree need be passed, in such cases. In the circumstances, it cannot be said that this is a decree or a judgment or an order of the Court and we fully agree with the decision given by our High Court in the case of "Jagannath v. Bhawanji", reported in "37 Deccan L R 33. The Privy Council case cited by the appellant is distinguishable in this respect that there was a direct adjudication of a foreign Court in that case while here it is not the case.

9. In view of these facts we follow the rulings of our High Court reported in "37 Deccan L R 33", and hold that the plaintiffs are not entitled to bring this suit. Therefore, the appeal is dismissed with costs.