

(1920) 02 CAL CK 0056
In the Calcutta High Court

Jaharmal-Debi Dutta Firm

APPELLANT

Vs

Birinchi Bhusan Nandi

RESPONDENT

Date of Decision : 06-02-1920

Acts Referred:

Citation : 56 Ind. Cas. 941

Hon'ble Judges : Teunon, J;Beachcroft, J

Bench : Division Bench

Judgement

Teunon, J.—This appeal is directed against an order by which the Additional Subordinate Judge of Pabna, acting under the Second schedule, rule 12, of the CPC has modified an award made by an arbitrator.

2. The suit in which the award was made was one for dissolution of a partnership business and for accounts. It appears that the plaintiff's firm, who are primarily dealers in articles of various sorts, entered into an arrangement with the defendant for the purpose of carrying on building contracts. The firm was to supply the money and the defendant was to manage the business. The plaintiff's firm not only advanced the money for the business of their partnership contracts but also advanced money to the defendant for his own purposes. After the suit had proceeded for sometime the parties agreed to refer the matter in arbitration and five points were set out for the decision of the arbitrator selected. The 5th of those points is "whether the defendant is liable to the plaintiff for any money and" if so, what is its amount?" Having examined the documents and taking the evidence produced before him, the arbitrator came to the conclusion that the sum of Rs. 5,105-12-12 1/2 gds. was due from the defendant to the plaintiff's firm and made his award accordingly.

3. Against this award the defendant took a number of objections, alleging misconduct of various kinds against the arbitrator and also contending that in the sum awarded as due from the defendant to the plaintiff's firm the arbitrator had erroneously included a large sum as due by way of interest. All the allegations of misconduct were overruled by the Subordinate Judge and against his order, in so

far as these charges were concerned, no appeal has been preferred by the defend-ant. The learned Subordinate Judge was, however, of opinion that in including in the sum awarded the sum shown in the books of the two firms as due by way of interest the arbitrator had fallen into error. On this account he has reduced the sum awarded by the arbitrator from Rs. 5,105 to Rs. 1,426 and odd. It is against this portion of his order that the plaintiff has appealed.

4. The Subordinate Judge's reasons for think-mg that the arbitrator has erred in this matter of interest appear mainly to be that interest was not claimed in the plaint and that the arbitrator himself did not think it allowable to the plaintiff. Both those reasons appear to be erroneous. It is true that to the plaint the plaintiff did not append a detailed account showing how the sum claimed was arrived at, an account showing the principal and interest separately. But as a matter of fact in the plaint the sums he claimed are sums set out in the books upon which he based his claim, and those documents show that the total arrived at does include sums claimed by way of interest. That this was known to the defend-ant appears also from the 11th paragraph of his written statement, in which he says that "there was no agreement about paying interest for any money; the plaintiff cannot claim any interest; the debit entries appearing in the papers filed by the plaintiff of large sums of money as interest are wholly false and fraudulent." In his award the arbitrator has in reckoning the profits and losses of the partnership business included in his account, as he himself states, interests on the amount paid by the plaintiff firm to the contract firm as they are entered in the Bengali Jumma Kharaches and Khatians which have been proved to have been compiled by the parties concerned, that is to say, he reckoned the profits after allowing the interests claimed on advances made by the plaintiff's "firm. Having done this he next took account of the money advanced by the plaintiff to the defendant himself for his own purposes, and here also, as is shown in the statement which he has marked III he includes sums claimed by the plaintiff as interest on the sums advanced to the defendant personally. He further allows interest up to the date of suit and again interest from the time of the institution of the suit up to the date of his award. Though the defendant charged the arbitrator with serious misconduct, he yet examined him as his own witness and in the course of the examination elicited from the arbitrator that he had not himself calculated the amount due by way of interest, and he further elicited from him a statement to the effect that in the amount he awarded as due to the plaintiff's firm he had made the defendant liable for interest or had included interest, and at the same time he says, I do not know whether or not the defendant is liable for the same." But in another part of his deposition he further says, " I allowed interest as I find in the Khatas." It would rather seem that under examination the arbitrator had become confused and possibly-had forgotten what he had really done when coming to his award. The award, however, is quite clear on this as on other points. The books of the plaintiff's firm and the books of the contract firm were both produced before him. He found that the books were true and genuine, and he further found that the Bengali

Jumma Kharach books of the years 1322 and 1323 of the contract firm were compiled mainly from the defendant's note books, that the defendant was present when they were so compiled and that, moreover, they are in fact partly in his, the defendant's, writing. In these books he finds these sums entered as due on account of interest and he, therefore, allows them to the plaintiff. If then on the strength of the books which he finds to be true and compiled by the parties themselves, he thinks it right to include in his award certain sums by way of interest, we think that he has not committed any error which should necessitate modification of his award, and that his answers given in examination on this point should be disregarded. It being the case that the plaintiff did in fact claim interest in his plaint and it being also the fact that the defendant was aware of this and made nonliability to payment of interest part of his defence, we cannot but think that on the 5th issue which was framed for the arbitration of the arbitrator, namely, is the defendant liable to pay any money to the plaintiffs and if so, what is its amount, the arbitrator was well within the scope of the reference in allowing interest both on the sums advanced by the plaintiff to the contract firm, also on the sums advanced to the defendant for his own purposes and also further interest before and after suit up to the date of his award.

5. We, therefore, set aside the order of the Subordinate Judge and direct him to pronounce judgment in accordance with the award and make a decree thereon.

6. The plaintiff will have his costs both in the first Court and in this Court. We assess the hearing fee at three gold mohurs.

Beachcroft, J.

7. I agree.