

(1922) 12 AHC CK 0024
In the Allahabad High Court

Jhinku Singh

APPELLANT

Vs

Sital Singh

RESPONDENT

Date of Decision : 05-12-1922

Acts Referred:

Citation : (1923) ILR (All) 263 : 74 Ind. Cas. 134

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

Piggott, J.—As the order we propose to pass at present will not finally dispose of this application, we need not say more than is absolutely necessary to make our order clear to the lower court. In a suit, in which certain minor plaintiffs were suing through their next friend, there was a reference to arbitration. An award was returned in favour of the plaintiffs. The contesting defendant filed an affidavit of objections, assailing the-award upon a great variety of grounds. The court had fixed a certain date for hearing these objections. Before that date arrived, an application was made orally to the court to the effect; that the parties were agreed together that the arbitration award, in favour of the plaintiffs, should be set aside and a fresh reference made to the arbitration of two persons who were counsel a appearing for the respective parties. We have it from a subsequent order of the trial court that the learned Subordinate Judge thought that he had no option, upon such an application having been made, but to set aside the award and submit the dispute to what we may call the second set of arbitrators. He refers to a reported decision of this Court in the case of Lutawan v. Lachya ILR (1913) All. 69 in which it was held that the next friend or guardian ad litem of a minor litigant can refer the case to arbitration without obtaining the leave of the court. The learned Subordinate Judge has altogether overlooked the fact that he had before him an arbitration award, which was valid and binding upon the parties unless set aside for any of the reasons started in the schedule dealing with references to arbitration. The question which he had to consider was whether the next friend of the minor plaintiffs, in whose favour an award had been made, could so compromise the dispute as to the validity of that award as

to give the court no option but to accept the compromise and, therefore, to preclude the court altogether from considering whether it was one which, in the interests of the minors, ought to have been entered into. A peculiar feature of the present case is that one of the arbitrators named in this second submission was the counsel appearing for the minor plaintiffs who, we find, actually obtained a fee of Rs. 100 for his services as arbitrator. If he had advised his clients to throw up the first award, which was in their favour, we think his conduct in consenting to act as one "of the second set of arbitrators was improper, because he put himself in such a position that his interests and his duty were, in conflict. However, as the record now stands, we think the most suitable orders for us to pass are that there should be an inquiry into the objections taken by the contesting defendants to the first award and that the result of the inquiry should be certified to us, before we pass any final orders on this application. The said application will, therefore, remain on the pending file of this Court but the record will be sent down to the court below with the request that the said court should inquire into, after proper notice to the parties concerned, the objections filed by the contesting defendants to the first award and should report to this Court the result of which inquiry. The case will then be put up again for hearing is soon as possible after the receipt of the lower court's report.

Walsh, J.

2. I entirely agree in everything that has been said. I only want to add one word on a matter of principle about which I am satisfied that some Judges in the lower courts inquire serious warning. In the order under revision the learned Judge has used this language: "The award was set aside with the free consent of the parties and the court had no option in the matter but to set it aside." That is a total misunderstanding. One need not feel surprised. Judges in the lower courts are not trained in equitable jurisdiction, but nonetheless they have sometimes to exercise it. The jurisdiction of equity courts over the interests of a minor has always been considered parental, and of very solemn obligation, and a Judge sitting in an ordinary common law suit, or in a civil suit of any kind, has to exercise that jurisdiction when the facts arise and the question of a minor's consent is involved. No contract or consent order amounting to an apparent surrender or variation of an infant's rights ought to be sanctioned or listened to for one moment by any court without requiring some material calculated to satisfy its mind, and without being satisfied, as far as it can be, on materials which are necessarily imperfect, that the proposed arrangement is bond fide intended for the benefit of the infant. In this case the learned Judge has not only utterly failed to consider that question but has used language showing that he was not aware of the duty imposed upon him.