

(1920) 06 AHC CK 0017
In the Allahabad High Court

Kanhaiya Lal and Lachmi Narain

APPELLANT

Vs

Basdor Mal and Gobind Prasad

RESPONDENT

Date of Decision : 30-06-1920

Acts Referred:

Citation : (1921) ILR (All) 101

Hon'ble Judges : Sulaiman, J;Kanhaiya Lal, J

Bench : Division Bench

Judgement

Sulaiman and Kanhaiya Lal, JJ.—This revision arises out of two cross suits. It appears that on the 2nd of January, 1919, the parties referred their dispute to an arbitrator, and on the 21st of January, 1919, the arbitrator made a partial award and returned the papers saying that there were not sufficient materials before him to come to a finding on the other issues. The finding on the issue decided by him was adverse to the present applicants. The court sent the papers back to the arbitrator directing him to proceed with the case and decide it on the evidence. The applicants sent a registered notice to the arbitrator prohibiting him from proceeding with the case and requesting him to send the papers to the court. The arbitrator asked for instructions from the court, and the learned Munsif directed him to proceed with the case regardless of the notice. After this an application seems to have been made by the present applicants in the court below withdrawing from the arbitration. That application was also rejected. The date fixed for the submission of the award was the 29th of March, but no award was submitted till then. Time was extended up to the 5th of April, but no award was submitted even then. A further extension was, therefore, granted till the 16th of April, 1919, and a reminder was sent to the arbitrator. Neither any award nor any reply to the reminder was received by the 16th of April, 1919. The court passed an order that, inasmuch as neither the arbitration award nor any application for extension of time had been received, a registered letter should be sent to the arbitrator calling upon him to send his award by the 30th of April, 1919, or to explain or show cause why he should not be charged with contempt of court. On the 30th of April, 1919, the arbitrator made his award. Objections

were taken to the award, but the learned Munsif overruled them and passed a decree in terms of the award. The applicants have come up in revision to this Court, and on their behalf it is contended, (1) that the court below had no jurisdiction to force the arbitrator to act, he having returned the papers to the court, (2) that the court had acted without jurisdiction and with material irregularity in extending the time for filing the award from time to time without any application, (3) that the applicants having given notice to the court and the arbitrator that they did not wish to have the case decided, the court has acted without jurisdiction in accepting the award. As to the last two grounds mentioned above, we think there is no force in them. The court under the CPC had jurisdiction to extend time to the arbitrator to submit his award, and we are unable to see any want of jurisdiction or material irregularity in the act of the court in ordering such extensions. Once the applicants had agreed to submit their dispute to an arbitrator, who had made a partial award and recorded some evidence, it was not open to the applicants to withdraw from the arbitration, and the court below was justified in rejecting their application. It has, however, been strongly urged that in view of the order, dated the 16th of April, 1919, the arbitrator was forced to act in the matter. We have examined the record and we find that there is nothing to show that previous to the order of the 16th of April, 1919, the arbitrator had declined to act and that he was forced to make his award by the threat contained in the order of the 16th of April, 1919. Under these circumstances we find ourselves unable to set aside that order. Further, this objection was not taken in the court below but has been raised for the first time in revision.

2. At the same time we cannot refrain from remarking that the language used by the learned Munsif in his order, dated the 16th of April, 1919, was wholly improper and objectionable. The court, has no authority to compel a private arbitrator to arbitrate against his own will. If it had been a fact that the arbitrator had refused to arbitrate and that he was subsequently forced by the court to arbitrate, we would have had no hesitation in setting aside the order of the court below. As was pointed out in the case of *Shib Chirain v. Rati Ram* X ILR (1920) All. 20, it is one of the most essential principles of the law of arbitration that the adjudication of disputes by arbitration should be the result of the free consent of the arbitrator to undertake the duties of arbitrating between the contending parties who have agreed to repose confidence in his judgment. The court below was, therefore, not justified in sending a notice to the arbitrator to show cause why he should not be charged with contempt of court. At the same time, as we have remarked above, there being nothing to show that the arbitrator had previously refused to act in the matter and that he was forced to arbitrate by the threatening language used in the order of the 16th of April, 1919, we find ourselves unable to interfere. The two applications are, therefore, dismissed with costs.