
(1934) 10 PAT CK 0005
In the Patna High Court
Case No : Civil Revn. No. 247 of 1934

Kanhaiya Lal Kishori Lal

APPELLANT

Vs

Shoa Lal Chowth Mall

RESPONDENT

Date of Decision : 06-10-1934

Acts Referred:

Citation : (1934) 10 PAT CK 0005

Final Decision : Dismissed

Judgement

Agarwala, J.—The plaintiff petitioner instituted a suit against the defendants alleging that money was due from them to him on the basis of certain accounts. By a petition signed by the plaintiff and the pleader of the defendants the matter was referred to arbitration. The arbitrator made his award having found that nothing was due from the defendants to the plaintiff. Thereupon the plaintiff under paragraph 15 (1)(a) Sch. 2. Civil P.C. objected to the award on the ground of misconduct of the arbitrator, and challenged the validity of the reference. The objection was over-ruled and the court then proceeded under para. 16 to pronounce judgment in accordance with the award. The plaintiff appealed to the Judicial Commissioner of Ranchi who held that under (2) of para. 16 the appeal was incompetent. The plaintiff prefers this application in civil revision and contends that the appeal should have been heard by the Court below and disposed of on its merits.

2. The question therefore is whether an appeal lay to the Court below from the order of the first Court under para. 16 (1). The second clause of that paragraph is as follows:

Upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with the award.

3. It is quite clear from this sub-section that the only grounds on which a decree passed on an award can be challenged are on the grounds of the decree being in

excess of or not in accordance, with the award, that is to say, what is open to challenge is not the award, but the decree. It is argued however that if the decree is based on an award which has been made on, an invalid reference the decree and the award and the reference all being invalid an appeal lies. Cases on this points have been cited, but it is not necessary to discuss those in view of the facts of the present case. Even accepting the contention of the applicant, for the purposes of this reference, it is obvious that no appeal would lie if the reference to arbitration in the present case was a valid reference. The only ground on which the validity of the reference is challenged is that the agreement for reference was not signed by all the defendants. There were three defendants; one of these was a firm and the other defendants were partners in the firm. A pleader had been appointed to defend the suit on behalf of all the defendants and his vakalatnama conferred upon him a power to compromise the suit. That pleader signed the agreement to refer, as pleader. It is contended that he did not state whether he was signing on behalf of one or on behalf of all the defendants and therefore it must not be assumed that he was signing on behalf of all the defendants. I am unable to agree with this contention. There was only one pleader acting for the defendants and he was acting for all of them and he had power to enter into a compromise. In signing the agreement to refer he did not state that he was signing on behalf of only some of the defendants, and none of the defendants took any exception to the arbitration proceedings. In the circumstances of the case it must be held that all the defendants were parties to the agreement to refer. There is therefore no ground on which the validity of the agreement to refer, or the award, can be challenged and accordingly there was no right of appeal from the decree on the award even if it be assumed that the applicant's contention that an appeal lies in the case of a decree passed after an invalid reference.

4. The next contention was that the arbitrator misconducted himself inasmuch as he appears to have asked a person certain question relating to the accounts in the absence of the parties. An arbitrator should, of course, proceed in a proper manner in his investigation and should take the evidence in the presence of the parties. But whether his conduct in the present case amounted to such misconduct as to vitiate the award was a question which had to be decided by the Court which had considered it under para. 15. The Court had jurisdiction to decide whether the arbitrator's conduct amounted to misconduct or not. Whatever view is taken of the matter it does not help the present applicant in revision for no question of jurisdiction arises in respect of this aspect of the matter. The application is accordingly dismissed with costs.