
(1940) 04 MAD CK 0064
In the Madras High Court

Kodali Ramakoteswara Rao

APPELLANT

Vs

Kodali Suryanarayana and Another

RESPONDENT

Date of Decision : 15-04-1940

Acts Referred:

Citation : AIR 1940 Mad 905 : (1940) 52 LW 373 : (1940) 2 MLJ 356

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—During the trial of O.S. No. 462 of 1937 on the file of the District Munsif's, Court of Ellore, the matter in dispute was referred to arbitration. The arbitrator was given full power to examine or not to examine witnesses and after he had given his decision largely in favour of the respondents, the matter came before the District Munsif for hearing objections. A number of points were raised which were all decided against the petitioner. The two objections that are reasserted in this revision petition are (1) that the award was void because the first respondent was a minor (an award not binding a minor) and (2) that the arbitrator acted improperly in examining the plaintiff's next friend in the absence of the first defendant.

2. There is nothing in the first point; because an arbitration to which a minor is a party, is not in itself void; but is voidable at the instance of the minor. The minor in the present case (or rather his next friend), far from attempting to set aside the award, supports it. It is not open to the first defendant, who is a major, to have an award which was made at his instance set aside, merely on the ground that the first respondent was a minor.

3. The main complaint in this petition is that the respondents - the next friend of the plaintiff and the second defendant - were examined in the absence of the first defendant. These persons are parties to the suit; and I can see no principle of equity or justice which requires the examination of a party in the presence of all the other parties. It is clearly necessary for an arbitrator to enquire of the parties what their case is and on what basis they found their claims. I can see no

reason why, in making these enquiries, it is necessary for the other parties to be present. It is otherwise of course with regard to the examination of other persons, whose testimony might be impugned for some reason or other.

4. The learned advocate for the petitioner relies on the decision of Madhavan Nair, J., in (Peddibhotla) Venkata Subbayya and Another Vs. (Bhamidipati) Venkataramanayya (dead) and Others, , in which the binding nature of an award was discussed. He seems to have been of opinion, following Sanyasi Rao v. Venkata Rao (1922) 44 M.L.J. 263 : ILR 47 Mad. 30, without giving any reasons of his own, that the examination of a party in the absence of another party amounted to improper conduct which would vitiate an award. He did not however find that there was any such improper conduct as alleged and he did not find it necessary to remand the suit for a finding on that point; because he had already found that the award on some other ground was void and not binding on the parties, Sanyasi Rao v. Venkata Rao (1922) 44 M.L.J. 263 : ILR 47 Mad. 30, which was followed by Madhavan Nair, J., without discussion, was a case in which a minor sought to set aside an award, in which case it might be argued that special care should be taken to protect the minor's interests. Both these cases may however be distinguished from the present case; for it was impossible to examine the second defendant and the next friend of the plaintiff in the presence of the first defendant because the first defendant was in jail. The arbitrator visited the first defendant in jail and there is no reason to think that he did not ask the first defendant about his case and the grounds on which he supported it. The plaintiff's next friend and the second defendant could not have been present at the examination of the first defendant and the, first defendant therefore knew that if the plaintiff's next friend and the second defendant were examined, he could not be present there. It might perhaps be argued in a case where these special circumstances did not exist that the parties would take it for granted that the arbitrator would not examine the opposite party in their absence and that if the arbitrator did so, it would amount to misconduct; but there can be no such ground for setting aside the award in the present case, where the incarceration of the first defendant was an obstacle known to all the parties concerned to the examination of one party in the presence of the other parties.

5. I therefore find no ground for disagreeing with the lower Court, The petition is accordingly dismissed with the costs of the first respondent.