

(1917) 04 CAL CK 0005
In the Calcutta High Court

Kunjo Behari Bardhan

APPELLANT

Vs

Gosto Behari Bardhan of Ramkrishnapur

RESPONDENT

Date of Decision : 26-04-1917

Acts Referred:

Citation : 42 Ind. Cas. 590

Hon'ble Judges : Walmsley, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. We are invited in this Rule to set aside a decree of dismissal made by the Judge of a Court of Small Causes in a suit for recovery of money due under an award. The petitioner and the opposite party are brothers. On the 24th September 1912, the petitioner instituted a suit against his brother for contribution, in respect of sums alleged to have been paid as municipal rates on account of joint properties. During the pendency of this suit, the parties agreed to refer the matters in dispute to arbitrators. On the 14th March 1913 they filed their submission in Court, whereby three men were nominated arbitrators to settle all disputes between them as regards their joint properties and to effect a partition thereof. On the 30th June 1913 the arbitrators made an elaborate award, which contained a scheme for division of the joint properties, and gave directions for payment of sums of money by one of the parties to the other. On the 14th July 1913 the Court proceeded to make a decree on the basis of the award, to the effect that the suit be dismissed in accordance therewith. There was also a clause that the award be treated as part of the decree, but it is plain that the Court did not enforce the terms relating to Immovable property beyond its jurisdiction. The true effect of the order was that the award was recited in the decree, which thereupon became judicial evidence of its terms. On the 23rd June 1916 the petitioner instituted the present suit in the Court of Small Causes for recovery of a sum of money from the defendant in accordance with the award. Objection was forthwith taken that the award could not be enforced piecemeal. The Small Cause Court Judge has dismissed the suit and we are now invited to hold that his view is erroneous in law. The first question for consideration is,

whether a suit of this description for enforcement of an award is cognizable in a Court of Small Causes. The petitioner has argued, on the authority of the decisions in *Simson v. McMaster* 13 M. 344: 4 Ind. Dec. (n. s.) 952, and *Sukar Hajam v. Ali Mohammad* 25 Int. Cas. 826., that the answer should be in the affirmative; but we are not prepared to accept this contention as sound in principle.

2. The Second Schedule to the Small Cause Courts Act specifies the classes of suits which are excluded from the cognizance of a Court of Small Causes. Article 15 and Article 24 exclude respectively suits for specific performance of contracts and suits to contest awards. The petitioner argues that as Article 24 excludes specifically a suit to contest an award, the implication is that a suit to enforce an award is cognizable by a Court of Small Causes. We are of opinion that this contention is not well founded, because a suit to enforce an award is in essence a suit for specific performance of a contract.

3. The nature of an award of arbitrators which has not been enforced judicially was explained by this Court in the case of *Bhajahari Saha Banikya v. Behari Lal Basak* 33 C. 881: 4 C. L. J. 162. A suit for specific performance of an award is in essence a suit for specific performance of a contract, for as the parties have contracted to do what the arbitrator should direct, when the latter has given his decision, the award may be considered in equity as an agreement by the parties, on the terms set out by him and may be enforced against a party as his own agreement. This view is supported by the opinion of Lord Eldon, L. C., in *Wood v. Griffith* (1818) 1 S. 43 : 1 Wils. Ch. 34: 36 E. R. 291: 18 R. R. 18.: That a bill will lie for specific performance of an award is clear, because the award supposes an agreement between the parties, and contains no more than the term? of that agreement ascertained by a third person; and then the bill calls only for a specific performance of an agreement in another shape." Thus when X and Y refer matters in dispute between them to the arbitration of A and agree to abide by his decision as soon as the award has been given, there is a contract between the parties to abide by its terms, in other words, from that moment, there is an agreement between the parties that their rights and liabilities would be regulated by the terms previously ascertained by the arbitrator. If, in these circumstances, one of the parties seeks enforcement of the terms of the award, he seeks in reality the enforcement of a contract between the parties. If this view were not taken, the position would be obviously anomalous. A brings a suit against B to enforce an award. According to the petitioner the suit is cognizable in a Court of Small Causes, although B may contest the validity of the award and urge that it was made under circumstances which render its enforcement impossible in a Court of Justice. On the other hand, if B comes into Court first and sues to contest the award, the suit is admittedly not cognizable by a Court of Small Causes. This shows clearly that Articles 15 and 24 should be read together and if they are so interpreted, a suit for enforcement of an award is excluded from the cognizance of a Court of Small Causes because it is in its essence a suit for specific performance of a contract. We are not unmindful that a contrary view

was taken in the oases of Simson v. McMaster 13 M. 344: 4 Ind. Dec. (n. s.) 952. Chimandas v. Manghoomal Hemraj 16 Ind. Cas. 868: 6 S. L. R. 85, and Sukar Hajam v. Ali Mohammad 25 Ind. Cas. 826., where, however, the question does not appear to have been fully argued in its various aspects. We hold accordingly that this suit was not. maintainable in a Court of Small Causes. We are further of opinion that the suit as framed must fail on the merits. The plaintiff seeks in essence to enforce a part of an award", in fact that part alone which is favourable to him. He has not carried out what he is directed to perform under the award, which cannot be enforced in its entirety in a Small Cause Court, as it involves the partition of Immovable property. In such circumstances, the plaintiff should not be allowed to proceed with the suit and obtain relief against the defendant, thereby to compel the latter to bring another suit in a Court of competent jurisdiction to enforce the award so far as it benefits him.

4. The result is that this Rule is discharged with costs---one gold mohur.