
(1968) 07 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 4267 of 1967 in Civil Original No. 1 of 1967

Maresh Chand

APPELLANT

Vs

Puran Chand and Another

RESPONDENT

Date of Decision : 30-07-1968

Acts Referred:

Arbitration Act, 1940 — Section 17

Citation : AIR 1969 P&H 159 : (1969) 1 ILR (P&H) 613

Hon'ble Judges : P.C. Jain, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : R.N. Mittal and S.K. Syal, for the Appellant; H.L. Soni and Puran Chand, for the Respondent

Judgement

D. K. Mahahan, J.—This case was referred by me to a larger Bench in View of the importance of the question involved.

2. The precise question, that requires determination, is whether a suit, in which there is a reference to arbitration and a decree follows on the award and is made a rule of the Court u/s 17 of the Arbitration Act, would be governed by the Provisions of Section 11 of the Court-fees Act ?

3. This question has arisen in the following circumstances. The decree-holder filed a suit for dissolution of partnership and rendition of accounts against the judgment-debtor . This suit was pending in the Court of Subordinate Judge, Ambala, and was brought to this Court by transfer. The dispute in the suit, with the agreement of the parties was referred to arbitration. The arbitrator gave his award and after hearing the objections of the parties, the award was made a rule of the Court u/s 17 of the Arbitration Act.

4. The office, however, did not draw up the decree in view of the provisions of Section 11 of the Court -fees Act. The plaintiff-decree-holder and one of the defendants, in whose favour the award has gone, have made an application for execution of the recovery of amount awarded to them. The judgment-debtors

have raised the objection that there is no decree and that none could be drawn till the provisions of Sections 11 of the Court -fees Act were complied with, namely, the difference in the Court -fees paid and the requisite Court -fees on the relief granted is made good. It is this objection that falls for determination in these proceedings. When the matter was posted before me on the 29th of March, 1968, I was doubtful whether the provisions of Section 1 would apply to such a decree. It was for that reason that I referred that case to a larger Bench; and that is how the matter has been placed before us.

5. After hearing the learned Counsel for the parties at length, I am of the view that the objection of the Judgment-debtors is well founded and must prevail. There is no provision in the Arbitration Act which, either by necessary implication or specifically, overrides the provision of Section 11. Mr. R. N. Mittal, who appears for the decree-holder, contends that inasmuch as a decree u/s 11 in a reference outside Court does not a decree in a suit does not require Court-fees when it is an award-decree an is passed under Sec 17 of the Arbitration Act . I am unable to agree with this contention. Section 11 of the Court -fees Act reads thus:---

"In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decided are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be drawn up until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed."

and it only covers the cases specifically mentioned therein and those too in a suit. The present decree undoubtedly was passed in a suit. The only difference was that instead of the Court determining the controversy, by agreement, of the parties, the forum was changed; and an award was made a rule of the Court u/s 17 of the Arbitration Act, and in terms of that provision a decree had to follow. It cannot, therefore, be held that a decree within the terms of section 11 of the Court-fees Act. The view, I have taken of the matter, finds support from the observations of Mr. Justice Straight in *Nath Prtasad v. Ram Paltan Ram* ILR (1882) All 218 though the decision does not relate to the matter of the Court - fees. The observations of the learned Judge are quoted below:

" * * * The agreement to refer a suit to arbitration does not close the litigation; on the contrary, the parties continue before the arbitrators in the adverse positions of plaintiff and defendants, the one seeking to fix liability on the other,

and the other to avoid that liability . Even if the award is subsequently made upon the consent of the parties, it does not occur to me that it stands in any respects in a different position to a confession of judgment in the suit itself, and the decree that is passed in either case would seemingly stand upon the same footing.* * * * " Therefore, the approach has to be whether the decree, that followed, was a decree in a suit; and it cannot be denied that the decree, that followed, was in a suit. It is the decree that put an end to the suit; and ,therefore, the provisions of section 11 of the Court -fees Act come into play.

6. For the reasons recorded above, the objections prevails and is allowed. The plaintiff is allowed one month"s time to make good the Court -fees. There will be no order as to costs.

7. P. C. Jain.

I agree

7. Appeal allowed.