

(1923) 11 CAL CK 0031
In the Calcutta High Court

Mahmud Sheikh and Another

APPELLANT

Vs

Kankinarah Co., Ltd.

RESPONDENT

Date of Decision : 21-11-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 5(2)

Citation : AIR 1924 Cal 665

Hon'ble Judges : Walmsley, J;Suhrawardy, J

Bench : Full Bench

Judgement

Walmsley, J.—These two appeals arise from two suits for ejectment. After some adjournments the parties came to an agreement that the defendants should vacate the lands in suit, on compensation being paid to them for building, and that the sum to be paid by way of compensation should be fixed by three independent gentlemen mentioned in the petition of compromise. The trial Court thereupon referred the question of compensation to the arbitration of these gentlemen. One of them, however, refused to act and the other two co-opted another member, and those three proceeded to make an award. On receipt of the award, the learned Munsif made a decree in accordance therewith, in spite of objections by the defendants. The objections were four in number and they have been set out in the Munsif's judgment. Nothing has been said to us about the 1st and 2nd, so I do not refer to them. The third related to the fact that when Babu Ramgopal Bhattacharja refused to act, the other two co-opted Dr. Brojo Raj Ghosh without the intervention of the Court. The fourth was that the arbitrators were to make a valuation for the consideration of the Court along with other evidence.

2. Against the Munsif's decrees the defendants preferred appeals, and the learned Judge has held that no appeal lay. The only argument addressed to him on behalf of the defendants was that the so called arbitrators were merely to submit to the Munsif their estimate of the proper value of the building. The learned Judge overruled this argument and I think he was right in doing so. The

terms of the compromise and of the reference are quite clear.

3. Before us, emphasis was laid on the third objection. It is admitted that the objection was not specifically set out in the grounds of appeal to the District Court and in this Court, but it is said that the general grounds that the decree was not in accordance with the provisions of the Code is wide enough to cover it. It is also admitted that the objection does not appear to have been pressed before the Judge, but again it is said that the objection raises a pure question of law and can, be taken at this stage of the case.

4. I do not think it necessary to attach weight to technical objections against the consideration of the defendants' argument.

5. It is undoubtedly true that one gentleman was in the petition of compromise and the reference, but that another gentleman, actually served on the Board of Arbitrators and joined in making the award. From the Munsif's judgment it appears-that the defendants did not at first say that the substitution of Dr. Brojo Raj Ghosh was made without their consent. They confined themselves to the technical ground that the substitution had not been made by the Court. At a later stage they said it had been made without their consent, and the Munsif said that he did not believe them, That finding of fact was not challenged in the Court of Appeal, and it must stand.

6. The position then is that a change in the personnel of the arbitrators was made with the approval of the defendants, but without the intervention of the Court. It is urged that this is a defect which strikes at the root of arbitration. I cannot accede to this proposition. The foundation of proceedings by arbitration is the consent of the parties to a decision by an extra-judicial tribunal, and I am satisfied that there was such consent. I cannot adopt the view that the omission to move the Court u/s 5(2) of the Second Schedule to the CPC rendered the award a nullity. As an award it could be set aside only on one or more of the grounds mentioned in Section 15 and it is not alleged that any of those grounds exist. I hold therefore that, the Munsif's decrees on the award were good decrees, and the lower Appellate Court was right in holding that no appeal lay against the decrees. No appeal lies to this Court, and therefore these appeals must be dismissed with costs.

7. Applications u/s 115 of the Code were presented by way of alternative and Rules were issued on them. The facts I have mentioned, show that there is no reason for us to make use of our discretionary powers for the benefit of the defendants. The Rules are also dismissed, but without any order as to costs.

Suhrawardy, J.

8. I agree.