
(1923) 12 BOM CK 0013
In the Bombay High Court
Case No : Letters Patent Appeal No. 2 of 1923

Mahomed Valli Asmal

APPELLANT

Vs

Valli Asmal

RESPONDENT

Date of Decision : 13-12-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104(1)(f)

Citation : AIR 1924 Bom 324 : (1924) 26 BOMLR 171 : 79 Ind. Cas. 723

Hon'ble Judges : Pratt, J;Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pratt, J.—This appeal under the Letters Patent arises under the following circumstances:--

2. The appellant who is the plaintiff filed a suit against the defendants in the Court of the First Class Subordinate Judge at Broach, and that suit was determined by the judgment given in terms of an award between the parties. An appeal was filed against the decree made on this judgment, and that appeal was summarily dismissed by Macleod C.J. on the ground that no appeal lay. From that summary dismissal this appeal under the Letters Patent was admitted by us and being conscious of the fact that the decree appealed against was not in excess of the award we directed that the appeal should be admitted as an appeal against an order either u/s 104(1)(f) of the CPC or under Order XLIII Rule 1 (m) of the same Code. That order was evidently made under the impression that the award had been made without the intervention of the Court. It now appears that the order was made on a reference through the Court under Schedule II to the Code of Civil Procedure. It follows therefore that the award cannot be treated either as a compromise under Rule 3 of Order XXIII, or an order appealable u/s 104(1)(f) of the Civil Procedure Code.

3. On what ground then is the appeal maintainable? Mr. Koyajee argues that an

appeal lies because the award in terms of which the judgment was given was not in fact an award. He contends that there was no reference as one of the parties did not sign the submission paper himself, his signature being affixed on his behalf by his pleader. In other words Mr. Koyajee's contention is that an appeal will lie against the decree made, in terms of the award, if he can show that that award was an invalid award or an award made without jurisdiction. This was the ground on which appeals were admitted under the old Code in the cases of *Indur Subbarami Reddy v. Kandadai Rejamannar Ayyangar* ILR (1902) Mad. 47 and *Shib Lal v. Chaturbhuj*. ILR (1909) 31 All 450. But the effect of the introduction of the words "or being otherwise invalid" in paragraph 15 of the Schedule II of Civil Procedure Code, is that any objection to the award on the ground that it is not an award or on the ground of its invalidity should be made at the time when the award is filed. If that objection is not made then, or if that objection is then made and is disallowed., it is not open to the party objecting, to reagitate the matter by way of appeal against the decree. The object, of that change in paragraph 15 of the arbitration Schedule was, as pointed out by Mulla J. in his notes on the subject, to give full effect to the principle of finality MS laid down by the Privy Council in *Ghulam Jilani v. Muhammad. Hussain*. (1901) IndAp 51, 4 Bom. L.R. 161. The appeal was therefore rightly dismissed as not competent.

4. I should observe that no objection on this ground was made by the appellant either at the time when the award was filed or in his memorandum of appeal from the decree of the Subordinate Judge. Even if it were suggested that the first appeal should be treated as an application for revision of the decree, following the recent decision of this Court in the very extreme case *Merali Visram v. Sheriff Dewji* ILR (1911) 36 Bom. 105, 13 Bom. L.R. 1017, the appellant would be in no better position for an order in revision is not subject to appeal under the Letters Patent.

5. We, therefore, uphold the preliminary objection and dismiss this appeal with costs.