
(1876) 03 AHC CK 0001
In the Allahabad High Court

Mohsin Khan

APPELLANT

Vs

Hussaini Bibi

RESPONDENT

Date of Decision : 13-03-1876

Acts Referred:

Citation : (1875) ILR (All) 156

Hon'ble Judges : Spankie, J;Oldfield, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Spankie, J.—The prayer of the plaintiff in this case was to he allowed to file a private award of arbitrators in Court and for the enforcement of the award. The defendant (since deceased) denied that he bad authorised his agent to refer any matter to arbitration and repudiated the whole transaction. The Munsif after going into the merits admitted the award in the following terms: "I therefore decree the plaintiff's claim to file the arbitration award u/s 327, Civil Procedure Code, with costs and interest at 6 per cent. to be paid by the answering defendant (the widow of the original defendant deceased)." It does not appear that he made any decree enforcing the award under the provisions of ch. vi. of the Act.

2. The defendant appealed. The Subordinate Judge treating the order as a judgment u/s 325 of Act VIII of 1859 held that it was final, and that there was no appeal. The Subordinate Judge cites as his authority the Full Bench decision of this Court in the case of Jokhun Rai H.C. It., N.W.P., 1868, p. 353 and others, appellants.

3. It is contended in special appeal that as it was urged in both the lower Courts that the original defendant was no party to the award, the Subordinate Judge was bound to determine whether this was so or not.

4. For respondents the Full Bench ruling of this Court H.C.R. N.W.P. 1868, p. 353 and other precedents of the Presidency Court are cited as ruling that there was

no appeal.

5. I am of opinion that we are bound by the decision of the Full Bench of this Court H.C.R. N.W.P. 1868, p. 353, and that we must hold that there is no appeal from the order of the Munsif allowing an award to be filed. At the same time, it appears to me that Section 327 intended to provide for those cases only in which a reference to arbitration is admitted, and in which an award has been made. Where one of the parties denies that he had referred any dispute to arbitration, or that an award had been made between himself and the other party, it seems to me that sufficient cause has been shown why the award should not be filed. The applicant for its admission should be left to bring a regular suit for the enforcement of the award. Such, I may add, would appear to be the opinion of the dissenting Judge in one case decided by the Full Bench of the Presidency Court on the 23rd May 1871 8 C.L.R. 315 : S.C. 15 W.R., F.B. 9. Two of the other Judges in that case expressed opinions to the same effect.) But the Full Bench judgment of this Court I.C.R. N.W.P. 1868, p. 353 must, I think, be followed by us as being applicable to this case, and I would therefore dismiss this appeal with costs.

Oldfield, J.

6. I concur in dismissing the appeal with costs. I think we are bound by the Full Bench riding of this Court H.C.R., N.W.P., 1868, p. 353), and must hold that the order of the Munsiff u/s 327, Act VIII of 1859, for filing the award, does not operate as a decree, and is not appealable.