

(1890) 05 CAL CK 0004
In the Calcutta High Court

Nursing Chunder Dawn

APPELLANT

Vs

Nuffer Chunder Dutt and Another

RESPONDENT

Date of Decision : 26-05-1890

Acts Referred:

Citation : (1890) ILR (Cal) 832

Hon'ble Judges : Wilson, J

Bench : Single Bench

Judgement

Wilson, J.—The defendants have applied for an order directing that the arbitrators appointed to decide the matter in difference in this suit should give up certain documents which came to their hands as arbitrators.

2. The order of reference was made on the 6th December 1888. It prescribed a time, with a limited power of extension by the arbitrators, for the arbitrators to make and file their award, "together with all proceedings, depositions and exhibits." The Registrar was by the same order directed to deliver over to the arbitrators the original records of the suit. By another order of the Court the time for making an award was extended beyond the period to which the arbitrators could have extended it. Ultimately the extended period expired without any award being made, and the parties have since settled their differences amicably. There remain in the hands of the arbitrators certain documents filed as exhibits while the arbitration proceedings were pending. They do not and could not claim any lien upon the documents or any right to them of any kind. The only question raised is whether the Court has jurisdiction to order the arbitrators to give up the documents.

3. After an order has been made referring the subject-matter of a suit to arbitration, the Court, by Section 508 of the Procedure Code, is precluded from itself dealing with the matter which has been so referred, except in the contingencies and in the modes provided by the Code. But the suit nevertheless continues to be a pending suit; it may in certain events have to be heard by the Court itself; and, while the arbitration proceeds, the Court may have to make

orders of various kinds in furtherance of the proceedings.

4. The arbitrator cannot be compelled by the Court to undertake the reference or to proceed with it or to make an award. But if, and so far as, he acts as arbitrator, he takes upon himself, not only a duty towards the parties, but also, as was pointed out in the case of *Maharajah Sir Joy Mungul Singh v. Mohun Ram Marwaree* 12 W.R. 397, a duty to the Court, and this is distinctly the case with respect to documents. Section 516 expressly requires arbitrators who have made an award to file it, together with any depositions and documents which have been taken and proved before them. With regard to documents transmitted by the Court to the arbitrator as part of the record, it was said, in the case already referred to: "" The documents were entrusted to him by the Court, and it was his plain and simple duty to return them to the Court." As to documents entrusted directly by the Court to an arbitrator, such as the records of the suit, I think it clear that he is bound to return them when his right to keep them as arbitrator comes to an end, whether by the making of his award or by the making of an award becoming impossible; and I see no solid distinction between such documents and exhibits with which he is entrusted by reason of the order appointing him arbitrator and directing exhibits to be filed. This being the duty of the arbitrator, and a duty towards the Court, it follows, in my opinion, that that duty can be enforced by order made upon the arbitrator.

5. There will be an order directing the arbitrators to deliver up to the Court the documents mentioned in the notice served upon them with costs against Abdul Haniff, who opposed the application.