

(1926) 03 MAD CK 0082
In the Madras High Court

O.K. Ramaswami Aiyar and Sons

APPELLANT

Vs

C.K.K. Subbier and Brothers

RESPONDENT

Date of Decision : 08-03-1926

Acts Referred:

Citation : AIR 1926 Mad 1158 : (1926) 24 LW 482

Judgement

1. This is an appeal against an order refusing to file an award on the ground of misconduct on the part of the arbitrators. The misconduct found is that the arbitrators examined the parties on different dates as admitted by one of the arbitrators himself. The reference is a somewhat peculiar one, for the parties had been parties in a suit in Court and a decree had been obtained by the plaintiff. Instead of preferring an appeal from that decree, the parties agreed to refer the matter to two arbitrators in the following words:

As we have represented to you to decide the matter in dispute in the judgment given by the 1st Additional Sub-Court, Madura, in O.S. No. 21 of 1922, so that we may not appeal against it we have executed this muchilika with our tree will agreeing to abide by the decision that you may give in the aforesaid suit as panchayatdars.

2. This in fact makes the arbitrators a sort of an appellate tribunal in the suit and this was done in order to save the trouble and expenses of an appeal. In the award no reference is made to the examination of the parties, the arbitrators merely stating "we have considered the points in favour and against them on either side." The plaintiff (respondent) did not take objection to the award on the ground that the parties were examined on different dates. When one of the arbitrators, Venkatramier, was examined he said:

We sent for defendant and questioned him about the facts of the case. We sent for the plaintiff. He came and represented his case.

3. In cross-examination he said:

In a week after examining the defendant we examined the plaintiff.

4. On this bare admission the Subordinate Judge has held that the arbitrators-were guilty of misconduct. The principle to be observed is laid down in *Cursetji Jehanqir Khambatta v. W. Crowder* [1894] 18 Bom. 299 as follows:

An arbitrator ought not to hear or receive evidence from one side in the absence of the other side without if he does giving the side affected by such evidence the opportunity of meeting and answering it.

5. Apart from the question as to whether the parties were really examined by the arbitrators or were merely asked to put forward their respective cases, it would appear that the mere fact of questioning them on different dates would not amount to misconduct so long as the parties were given an opportunity of meeting the representations made by the other side. In this case it is the plaintiff that now complains of want of opportunity, but inasmuch as he was examined after the defendant there is nothing to show that he was not told the case of the defendant which he had to meet. The misconduct, therefore, is not proved beyond doubt and in fact, inasmuch as the question was not in issue during the trial of the case, there can no finding of misconduct and consequently the Court was certainly not justified in raising a point which had not been raised by the parties. If misconduct has been conclusively proved, the Court may take notice of it, even when the misconduct has not been alleged by a party, and act accordingly, but when it has not been conclusively proved, and the other party has not been given an opportunity of disproving it, the Court certainly went beyond its functions in taking the objection.

6. We must, therefore, allow this appeal, set aside the order of the Subordinate Judge and direct that the amount in Court be paid to the plaintiff and satisfaction of the decree recorded. The plaintiff will pay costs throughout.