

(1923) 01 AHC CK 0049
In the Allahabad High Court

Parsotam Dass

APPELLANT

Vs

Shiam Lal

RESPONDENT

Date of Decision : 29-01-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Judicature Act, 1873 — Section 24

Citation : 82 Ind. Cas. 513

Hon'ble Judges : Walsh, J; Ryves, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Walsh, J.—In our opinion there is no substance in this appeal. Questions of form have been so entangled in the argument with questions of substance that it is really difficult to say what question of principle, if any, is intended to be raised by the appeal. On the face of it the matter appears extremely simple. Such difficulties as have been created have been rather due to the absence of material from the record of the Court below, due in its turn to the objection raised in the Court below to this application having taken a very much narrower form than it has taken in the discussion before us.

2. The original parties to the dispute, being related, went to arbitration and the Arbitrator passed an award which left certain matters outstanding for subsequent division, such as had to be provided for by machinery created for the purpose, but not such as involved the determination of any substantial controverted question. It was agreed that a decree should be drawn, or rather that the award should be filed in the form of a decree, and the parties by their Pleaders also agreed that a certain relative, who happened also to be a Vakil in the High Court, should make division or partition of the outstanding matters in accordance with the award, and should make it without any delay, that is to say, that very day, and the parties were to have no objection to it, The appointment of this gentleman was obviously a mere piece of machinery to carry out the outstanding

details which the award had left open. I attach importance to the expression in the order of the Court which was finally drawn up, as expressing the agreement of the parties; "and the parties will have no objection to it". I think what that means is, that the parties mutually agreed to waive any question which up to that time or thereafter might conceivably be raised, as to the competency of the Court to pass a decree at all, or as to the matter being considered a suit, or as to the various provisions relating to awards which differ in India according as the arbitration is undertaken with or without the intervention of the Court or as to any other matters of that kind, and have come together in a formal document with the intention, which they have carried out as fully as it was possible for any parties to do, of terminating all their mutual disputes, and have agreed that the Court shall enforce the agreement against either of them who attempts to repudiate it. That order was passed on the 13th of January 1921, and here are we in 1923 supposed to be trying to ascertain what it means. It was obviously intended to be carried out immediately, so that there should be, if possible, an end of the dispute within a few days. Unfortunately the Vakil selected for the purpose, either from misfortune or other unavoidable cause, was unable to carry out the task which he had accepted on behalf of the parties, and the present appellant seems to have taken advantage of that accident to try and render the whole compromise a nullity. Eventually the respondent applied to the Subordinate Judge to enforce the compromise or rather that, part of it which was still unperformed. We are unable to see what else he could have done. The appellant's objection was that the appointment of Mr. Dang was merely a personal matter, which, failed by his refusal to act, and that not only could no substitute be appointed, but the order itself could not be executed, and even the Court could not carry out its own order. In my opinion the Subordinate Judge was quite right in rejecting this view. When Mr. Dang was appointed and refused to act, it was open to the party objecting to offer a reasonable substitute, and if the parties could have agreed upon a reasonable substitute, in the same way as they had agreed about Mr. Dang no trouble ought to have occurred. He did not even do that. He objected to the Court taking any steps in the matter at all. The Court below was clearly right in holding that it had power in the absence of an agreement between the parties to appoint what it calls a Commissioner in the place of Mr. Dang. There is no virtue in the word "Commissioner". The object of the parties would be just as much achieved by saying that they had selected an Arbitrator, or some one to report.

3. A great deal of argument has been addressed to us directed to showing that there is no decree in this case, that there is nothing that can be executed, and that the appointment of Mr. Dang was no part of any executable decree, and, therefore, beyond the reach of the Court. It seems to me that such a view, if sound, would turn the law as an engine for the administration of justice for the settlement of disputes, into an absurdity. I do not think it can be contended for a moment that there is not abundant provision to be found in the Code apart from Section 151 applicable to this order. But even if there were none, it would not

create any difficulty to my mind, because every Court obviously has the power to enforce its own orders, and to vary a matter of detail in an order made by the consent of parties, when by the accident of circumstances the carrying out of such detail according to the agreement can no longer be achieved. In my view it is sufficient for this purpose to refer to Section 151 of the Code of Civil Procedure. I cannot imagine a state of circumstances to which that section can apply, if this is not one. Before that section was enacted the Courts in India always held themselves invested with inherent powers to do what was necessary for the ends of justice. That section preserves the right which had already been recognised by the Courts. It corresponds to some extent (in my opinion the difference is so small as not to be worth consideration) to Sub-section 7 of Section 24 of the Judicature Act of 1873 in England. It recognises the natural power of the Court to do all things necessary to determine matters in controversy and to prevent the ends of justice being defeated. It would be a lamentable thing indeed if, in a matter of this kind the gentleman, either from sudden illness, or other inability to fulfil his task, had to retire, a compromise accepted in substance by everybody as being the best method of settling the dispute should be wrecked at the will of one obstinate party. In my view the Judge took the only view possible and this appeal must be dismissed with costs including fees on the higher scale.

Ryves, J.

4. I agree. I only wish to add that the parties agreed to settle the dispute between them by arbitration out of Court. The Arbitrator made his award and this was filed in Court and made a decree. The parties applied that when the award became a decree of Court, Mr. Dang should carry out the award and the Court so directed. Subsequently Mr. Dang refused to act. Some one clearly had to do what Mr. Dang refused to do to give full effect to the award. If the parties do not agree to nominate some one agreeable to both, the Court must, it seems to me, give effect to its own order and appoint some one to carry out the award, or if no one suitable can be found, proceed to carry it out itself. What the person appointed should do or should not do, does not concern us now. That depends entirely on the terms, of the award which are not before us. The order under appeal shows I think that the elaborate and technical objections taken here were not pressed, even if raised, in the Court below. There the main objection was that as the parties had agreed to the appointment of Mr. Dang personally because he was related to both, no one else could be appointed. I agree in the order proposed.

5. The order of the Court is that this appeal is dismissed with costs including fees on the higher scale.

6. Of course the Commissioner now to be appointed by the Court on the application of the respondent, or the Court itself, if no such person can be found, must be guided in carrying out the task which it is called upon to perform by the terms of the award which have become part of the decree by the compromise.