

(1921) 08 MAD CK 0011
In the Madras High Court

Peddapalayam Bodachari alias Venkatraya Chari	APPELLANT
Vs	
Peddappalayam Muniyachari	RESPONDENT

Date of Decision : 17-08-1921

Acts Referred:

Citation : AIR 1921 Mad 709 : 65 Ind. Cas. 92 : (1921) 14 LW 666

Hon'ble Judges : Odgers, J; Krishnan, J

Bench : Division Bench

Judgement

1. On the first point taken we agree with the lower Court that the Court's jurisdiction to refer to arbitration is confined to matters in difference in

the suit itself and does" not extend to all matters in dispute between the parties. Though the wording of paragraph 1, Clause (1) of the Second

Schedule, Civil Procedure Code, is not free from ambiguity when taken by itself, the matter is made clear by a reference to forms Nos. 1 and 2 of

the Schedule, particularly the latter. Under the old Code the corresponding Section 506 clearly referred to matters in difference in the suit. We

think no change in the law was intended by the change in the wording of the rule in the new Code; but it was only a verbal change. Furthermore, on

principle, it is difficult to hold that the Legislature intended that a Court which has no jurisdiction over the subject matter in dispute should have

power to refer it to arbitration. Such a result would follow if we give to the words ""any matter in difference between them"" in paragraph 1(1),

Schedule II, Civil Procedure Code, an extended meaning to include all matters in dispute between the parties and not included in the suit. We

consider, therefore, the reference in this case was not a valid reference and the award on such a reference cannot be treated as a valid award and

it was rightly rejected by the lower Court, cf. *Polita Pavana Panda v. Narasinga Panda* 51 Ind. Cas. 155 .

2. It is next urged that the award should have been accepted as a lawful agreement or compromise of the suit claim under Order XXIII, Rule 3,

Civil Procedure Code, and a decree passed in accordance with it so far as it related to the suit. Now it does not appear from the records that such

an application was made to the lower Court and it is doubtful if the point should be allowed to be taken before us. However, as the petitioner's

Vakil says the point was taken, we have not refused to, hear, it.

3. We are, however, inclined to think that an award under an invalid reference, being itself invalid, gives no rights either as an award or as a

compromise,

4. We are further inclined to follow the view taken by Macleod, J., (now Chief Justice) in *Shavaksha Dinsha Davar v. Tyab Hai Ayub* 37 Ind.

Cas. 140 that Section 89, Civil Procedure Code, is a bar to the present contention, but it is not necessary to express a final opinion on the point.

5. The civil revision petition fails and is dismissed with costs.