

(1945) 12 CAL CK 0008
In the Calcutta High Court
Case No : Civil Rule No. 1745 of 1945

Prafulla Chandra Karmakar and another	APPELLANT
Vs	
Panchanan Karmakar, Plaintiff and others	RESPONDENT

Date of Decision : 18-12-1945

Acts Referred:

Citation : (1945) 12 CAL CK 0008

Judgement

Akram, J.—The facts out of which this rule arises are shortly these: pending a partition suit No. 12 of 1944 before the Second Subordinate Judge, Pabna, the parties thereto put in a joint petition on 20th December 1914, for reference of their dispute to certain arbitrators. The order for reference to the arbitrators was made on 23rd January 1945, soon after that, the plaintiff and defendant 3, on 16th April 1945, applied for supersession of the reference; the arbitrators, however, submitted their award on 20th April 1945; the plaintiff and defendant 3 thereupon filed objections against the award on 21st April 1945, the matter was then adjourned; later, on 21st May 1945, both parties applied for time for effecting a compromise, time was granted till 28th May 1945, but no compromise could be arrived at, subsequently on 17th July 1945, the plaintiff filed a petition embodying certain terms of compromise said to have been arrived at between the parties on 16th July 1945, and prayed for a decree in terms thereof. Defendants 1 and 2 thereupon, on 24th July 1945, filed a petition denying the alleged compromise and stating that the objections to the award not having been disposed of, the compromise could not be recorded.

2. The learned Subordinate Judge, however, by his order dated 4th August 1945, overruled the contention of defendants 1 and 2 and adjourned the case for deciding the factum and validity etc. of the compromise.

3. Against that order that defendants 1 and 2 obtained the present rule. It is contended by the learned advocate for the petitioners that the Court below acted erroneously in taking up the question of the factum and validity of the alleged compromise during the pendency of the arbitration proceedings.

4. It seems to me that this contention is well founded. Once the dispute goes to arbitration the authority of the Court to proceed with the suit is suspended and it cannot deal with the subject-matter of the reference as long as the reference stands; it is only when the arbitration is superseded that the suit, as it were, revives and the matters in dispute can be dealt with by the Court. What is sought to be done in the present case, is to embark upon an inquiry and to determine whether in fact there has been a compromise, which one of the parties disputes. Such an inquiry in my opinion will necessitate dealing with the subject-matter of the reference and that would be contrary to S. 23, cl. (2) and S. 25, proviso to the Arbitration Act. I am therefore of opinion that so long as the reference subsists the present inquiry in pursuance of the order dated 4th August 1945 cannot go on. Reference to this connection may be made to the case in 51 Cal. 432 Dooly Chand Srimaly Vs. Mohanlal Srimali and Another, .

5. Upon the question whether an arbitration can be set aside by mere consent of parties I do not think it necessary to express any opinion as that question does not arise on the facts and circumstances of the present case and in this connection all that I would point out is that consent by parties, is not included in the grounds specified under S. 30 under which an award can be set aside, and that under S. 32 an award cannot be in any way affected otherwise than as provided in the Act.

6. For the reasons stated above, I set aside the order dated 4th August 1945 and send back the case to the learned Subordinate Judge so that the petition dated 16th April 1945, relating to revocation of the reference and the petition dated 21st April 1945, relating to the objections to the award may be dealt with, in reference to the grounds specified in those petitions, and disposed of in accordance with law. The rule is made absolute with costs. Hearing fee is assessed at two gold mohurs.

Chakravartti, J.

7. I agree in the order proposed by my learned brother, but as the question raised by the rule is one of some importance, I would like to add a few observations of my own.

8. All the facts need not be repeated by me. It will be enough to recall that on 20th August 1942, which was some time after a joint written statement had been filed, an application was made by the parties for a reference of the dispute to the arbitration of three gentlemen. Pursuant to that application, a reference was made on 23rd January 1945. On 16th April, however, the opposite parties tiled an application before the Court whereby they prayed that the reference might be superseded, since they suspected the arbitrators of partiality for the petitioners and could not expect a fair award. The hearing of this application was adjourned till 18th April and thereafter till 21st, but it does not appear that it was ever heard on the merits. In the meantime, on 20th April, the arbitrators filed their award. On the next day, the opposite parties filed their objections to the award,

but on 21st May following an application, purporting to be an application by both the parties and signed by their pleaders, was filed and thereby a month's adjournment was asked for on the ground that the parties were trying to effect a compromise. The adjournment was granted and on 9th July another application, also purporting to be on behalf of both the parties, was filed, asking for further time. A week's adjournment was granted and 16th July was fixed for the filing of the terms of compromise. No such terms were filed on 16th, but on 17th July an application was filed by the opposite parties, alleging that terms of compromise had been settled on 16th July and asking for a decree in accordance therewith. To this application the petitioners replied by stating that they had never agreed to any terms of compromise and they raised the further objection that the dispute between the parties having been referred to arbitration and an award having been duly made and filed, the matter could only be dealt with under the Arbitration Act and under that statute no compromise by the parties was permissible in law or could be recognised.

9. By his order dated 4th August 1945, the learned Judge overruled this plea in bar. He held that even after the dispute involved in a suit had been referred to arbitration through the Court, it was within the rights of the parties to adjust their differences amicably and agree that the award should be superseded; and that when they thus superseded the award by consent, it was open to and possible for the Court to dispose of the suit in accordance with the compromise. In this view, the learned Judge fixed a date for hearing as regards the factum and validity of the alleged compromise. It is against this order that the present rule was obtained.

10. Mr. Sarkar who appeared on behalf of the petitioners contended that the learned Judge had acted wrongly and without jurisdiction in deciding to embark upon an enquiry as to the factum and validity of the compromise. He referred to Ss. 17, 23 (2), 30 and 32, Arbitration Act and submitted that after a reference had been made to arbitration, the Court could deal with the matter referred only in the manner provided for in the Act and had to go on with the reference until and unless it superseded it on one of the grounds which the Act recognised. A compromise between the parties, he pointed out, was not one of the grounds of supersession recognised by the Act, with respect to either the reference or the award, and he pointed out further that in this case the reference had not in fact been superseded at all.

11. Mr. Roy who appeared on behalf of the opposite parties referred to S. 41 of the Act and contended that since by virtue of that provision the CPC applied to proceedings before the Court under the Act, O. 23, R. 3 necessarily applied and, therefore, a proceeding arising out of a dispute regarding the award could lawfully be compromised under the provisions of the Arbitration Act itself. Such a proceeding, it was said, had arisen in this case upon the objections filed to the award by the opposite parties and it was a proceeding before the Court under the Act. Mr. Roy also relied on S. 30 (c) which, according to him, would authorise the

Court to set aside an award on the ground that it had been invalidated by a compromise. He did not, however, challenge the contention of Mr. Sarkar that the reference had not yet been superseded in the present case and conceded that so far as the learned Judge had proceeded to enquire into the compromise without first superseding the arbitration, he was in error.

12. Now, whether or not the Court can at all take notice of a compromise and give effect to it, after a reference to arbitration has been made, it is quite clear that it cannot do so until the reference is superseded. This was pointed out in 51 Cal. 432 Dooly Chand Srimaly Vs. Mohanlal Srimali and Another, , a decision to which the learned Judge has himself referred. Though the decision was given with reference to the Arbitration Act of 1899, the principle laid down there is all the more applicable to a case under the present Act which enjoins by more than one section that after there has been a reference and till that reference subsists, further proceedings can only be by way of the reference being worked out. Apart from statutory provisions, the principle seems to be warranted by the very nature of a reference to arbitration. Such a reference is itself an adjustment or compromise and so long as it is pending, there cannot possibly be room for another and a different compromise. Two compromises cannot co-exist at the same time, nor can two authorities have simultaneous seizin of the matter in dispute, viz., the Court and the arbitrators.

13. In the present case, the learned Judge has not superseded the compromise yet, at least expressly, and the rule might perhaps be disposed of on the simple ground that even assuming a compromise could be entertained after a reference to arbitration, the learned Judge, not having superseded the reference, had no jurisdiction to take up the matter of the compromise, at the present stage. But to do so would be to leave the learned Judge without any guidance as to the next step to be taken. The meaning of his decision appears to be that in law it is competent to the parties to supersede a reference or an award by consent, but in this particular case the consent is to be found not in any agreement outside the compromise but in the fact that the parties have compromised, if any compromise has been concluded at all. It follows that even if he has to supersede the reference before he can entertain the compromise, the ground on which he is asked to do so and which he considers a valid ground being consent, and such consent being embodied in the alleged compromise itself, he must first find a valid compromise before he can supersede the reference. The enquiry into the existence of a valid compromise must on the facts of this case come first in order, but, quite obviously, such enquiry would be pointless if as a matter of law parties cannot supersede a reference or an award by a compromise, nor can the Court supersede either on the ground that the parties have composed their differences. The question whether the assumption of law made by the learned Judge is correct has therefore to be examined.

14. The precise question raised by this rule was not decided in the case reported in 51 Cal. 432 Dooly Chand Srimaly Vs. Mohanlal Srimali and Another, . All that

was said there is that the parties could not be allowed to compromise before the reference had been superseded, but nothing was said as to whether a reference could or could not be superseded on the ground that the parties wanted to compromise or had compromised. In considering this question, it would be useful to bear it in mind that the present case is one of a reference to arbitration through the intervention of the Court in a pending suit. What the position would be in a case of a reference without the intervention of the Court, it is not necessary to consider.

15. It would also be useful to bear in mind a distinction which perhaps was not fully appreciated in the Court below or during the argument before us. The learned Judge has, more than once, used the expression "supersede the arbitration or award by consent." That language is far too general and would cover a case where the parties, after a reference had been made or an award given, simply agreed between themselves that the arbitration should be abandoned and the suit proceeded with in the ordinary way or that there should be a fresh submission. The question whether the parties could terminate an arbitration in this manner, revoking the reference at their will and asking the Court to resume the trial or make another reference, is not within the ambit of the present case. Here the question is a narrower one and it is whether, after a reference has been made to arbitration, the parties may be allowed to settle the dispute altogether between themselves and ask the Court for a decree in terms of the settlement or whether the law requires them to adhere to the reference made, unless the same fails by reason of one of the causes mentioned in the Arbitration Act.

16. No case covering the point and decided under the Act of 1940 was cited before us and as far as I have been able to investigate, none can be found in the books. The learned Judge has relied upon the case in 23 I. C. 591 *Mt. Sohamari Bai v. Chatta Ram* ("14) 1 AIR 1914 Lah. 313 : 23 I. C. 591 but I do not think that decision is of any assistance. There on the evidence of the arbitrators who were examined in Court, the award was modified so as to bring out their real intention and the parties having consented to the award as so modified, a decree was passed in accordance therewith. The case was one under para. 17 of Sch. 2 to the Code and in upholding the decree in revision, a learned Judge of the Punjab Chief Court, sitting singly, observed that the decree was really based upon a compromise and was a good decree, since proceedings under para. 17 could be compromised as much as proceedings under para. 20 of the Code. This decision does not cover the present point, for in the first place it dealt with a reference without intervention of the Court and, secondly, what happened was that the arbitrators themselves explained their award and the parties having refrained from raising any objections to the award as it finally turned out to be, a decree was passed, not in supersession or modification of the award but in accordance with its terms. Two other cases were cited before us from the Bar. The first was the decision in AIR 1915 Cal. 101 *Sri Lal v. Arjun Das* ("15) 2 AIR 1915 Cal. 101 : 27 I. C. 233 where Chitty J., sitting singly, had to deal with a

case where an award was filed out of time and the parties, having seen the award before it was filed, entered into an agreement not to question its validity "whether on the ground of expiry of time or otherwise howsoever." Referring to an objection that the time for filing the award could not be extended on an application presented after the award had been filed, the learned Judge observed that it could be met in various ways, one of which might be that the agreement was an adjustment of the suit which could be enforced by a decree under the provisions of O. 23, R. 3 of the Code. This observation, apart from the fact that it was made with reference to an arbitration under the Code, does not represent any decision. The second case cited was that in AIR 1927 Lah. 156 Mt. Aisham v. Abdulla ("27) 14 AIR 1927 Lah. 156 : 99 I. C. 1002, decided by a Judge of the Lahore High Court, sitting singly. There the validity of a compromise decree passed by a revenue Court was assailed on the ground that before passing it, the Court had not cancelled a reference to arbitration which was pending. Actually, what happened was that after the reference had been made, a razinama signed by the parties and attested by the arbitrator, was filed in Court and a decree was passed in accordance with its terms. Dealing with the objection to the decree, Zafar Ali J. observed that

even after the reference to arbitration, the parties were not precluded from settling the dispute amicably by mutual agreement and it was therefore not necessary to cancel the reference before accepting the compromise.

The second part of this observation is opposed to the view taken by the Calcutta High Court in the case already referred to and the first part, being supported by no reasons, is of little assistance. Reference was also made to the decision of this High Court in 35 C. W. N. 537 Rabindra Nath Chakravarthi Vs. Jnanendra, Mohan Bhaduri and Others, , but that case is of even less assistance. What was held there was that a decree passed in accordance with certain terms of settlement, varying an award made under the Arbitration Act of 1899, was a nullity and not executable and what was executable was the original award, subject to the terms of settlement being pleaded as a bar to execution. The reason given was that under the Arbitration Act of 1899, no decree had to be or could be passed on an award and therefore the decree was without jurisdiction. That decision has no bearing whatsoever on the present question.

17. That an agreement to refer to arbitration, placed under the direction of the Court, cannot be treated as an ordinary contract, revocable at the will of the parties by consent, or by one of them on pain of damages, is intelligible - for the Court cannot be allowed to be trifled with nor the course of litigation to be confused by repeated changes of procedure at the behest of litigants. To that extent the statutes relating to arbitration have certainly abrogated the old common law rule that an arbitration agreement is revocable at will. It may therefore be conceded at once that the parties cannot merely abandon an arbitration by consent. But it would seem strange if the law also were that once a reference has been made to arbitration, the parties can no longer even settle

their dispute or bring the settlement before the Court, but must continue the strife till a decree on the basis of the award is made and compromise, if at all, thereafter. A suit is but a dispute; the function of the Court is but to decide it; and an arbitration is but an alternative machinery of decision. That a statute should, because a reference has been made to arbitration, forbid the parties to terminate the dispute by mutual agreement and to obtain from the Court an agreed decree, would certainly seem extraordinary, specially since no question of public policy can possibly be involved; but if the Arbitration Act contains provisions to that effect, they must of course be enforced. The provisions of the Act may therefore be examined.

18. The sections relied on on behalf of the petitioner are Ss. 23 (2) and the latter part of S. 32. The first provides, as did Para. 3 (2) of Sch. 2 to the Code, that where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in the Act, deal with such matter in the suit. The second provides that notwithstanding any law for the time being in force, no arbitration agreement or award shall be set aside, amended, modified or in any way affected otherwise than as provided in the Act. The cases in which an arbitration agreement can be ordered to cease to have effect are provided for, first, in S. 12 (2) (b) which by S. 25 is made applicable to arbitration through the intervention of the Court, and secondly, in S. 19. The grounds on which an award can be set aside are set out in S. 30. A compromise between the parties is not mentioned in the Act as one of the grounds on which a reference can be superseded or an award set aside.

19. On behalf of the opposite parties, reliance is placed upon Ss. 41 and 30 (c). The former provides that subject to the provisions of the Act and the rules framed thereunder, the CPC shall apply to all proceedings before the Court under the Act. The latter provides that an award can be set aside on the ground that it has been improperly procured or is otherwise invalid. To take up first the contentions of the opposite parties, the argument based on S. 41 of the Act does not appear to me to be sound. It would appear that the argument, even if sound, would not apply to all cases, although if sound, it might be sufficient for the purposes of the present case. The argument was that since objections had been filed to the award and a proceeding started thereon, to such proceeding the Civil Procedure Code, including O. 23, R. 3 would apply and therefore such proceeding could lawfully be compromised. This argument can have no application where no award has been filed or no objections raised thereto and does not answer the general question as to whether the parties can settle their dispute by agreement, after a reference has been made to arbitration.

20. Be that as it may, the argument, in my opinion, is unsound for three reasons. In the first place, the operative part of S. 41 is prefaced by the words "subject to the provisions of the Act" and therefore the CPC can apply only subject to the provisions of Ss. 23 (2) and 32. Since those provisions forbid interference with the reference and the award except as provided for in the Act, to that extent the

CPC is excluded. Indeed, it seems to me that the scope of S. 41, is limited to attracting the procedural rules of the Code to proceedings before the Court under the Arbitration Act.

21. In the second place, O. 23, R. 3 speaks of adjustment or compromise of the suit where as S. 41 attracts the Code only to proceedings under the Act which are very different from the suit itself. It follows that S. 41 cannot make applicable to such proceedings the provisions of O. 23, R. 3 which by their very terms are inapplicable to anything but a suit. Nor can S. 141 of the Code make them applicable, since a proceeding arising out of objections to an award is not a proceeding, original in character.

22. In the third place, the argument, if closely examined, will be found to carry its own refutation. If a dispute has arisen over an award and a proceeding started thereon and if O. 23, R. 3 applies to such a proceeding as contended, only the proceeding can be compromised but not the suit itself. The whole scope of such a proceeding is the consideration of the validity or otherwise of the award and on this argument the objections to the award, as such, may be adjusted, leaving the award as it is or, say, modifying it as agreed to. But a compromise of the entire dispute between the parties, apart from and independently of the award cannot, it would seem, be within the scope of such adjustment. If it be said that it can be one of the terms, the answer would seem to be that a compromise of a dispute regarding an award, providing that the suit shall be disposed of in a certain manner, would certainly not be the award but something else and if the Court passes a decree in terms of such a compromise, it will be doing so in disregard of the award which under the statute it is not entitled to do.

23. In my opinion, the second argument advanced on behalf of the opposite parties by reference to S. 30 (c) is equally unsound. It is quite impossible to say that if after an award has been made on a reference, the parties compromise their dispute, the award is thereby rendered invalid.

24. Turning now to the sections relied on by the petitioner, they certainly lay it down that a matter under reference or an award shall not be dealt with by the Court except as provided in the Act. But these sections, in my view, all contemplate a pending reference or a subsisting award and merely provide how the parties and the Court are to conduct themselves within the sphere of an arbitration. Their whole object is to provide that there shall not be two tribunals to judge the merits of the matter or make orders thereon. Once a reference has been made to arbitration, the jurisdiction of the Court to deal with the matter in difference is, according to those sections, suspended till, if at all, it is revived on the reference being superseded or, to put it in another way, when the parties have by consent substituted a forum domesticum of their own choice in place of the Court, they must accept its decision and the Court cannot interfere except in the manner and to the extent provided in the Act. But these provisions, to my mind, do not amount to laying down that a reference to arbitration must have

the effect of destroying the fundamental right of the parties to compromise their dispute or of compelling them to go on with the dispute and ask for a decision, even if they themselves no longer want any. Parties can always compromise a suit before a Court and there seems to be no ground in reason why they should forfeit this right, simply because they have caused a reference to an arbitration to be made. But the argument is that although the parties may be free to settle their dispute as between themselves and abandon the strife, they cannot, by reason of the special provisions of the Act, have the machinery of the Court to register the compromise. The question to be considered therefore is whether the Arbitration Act leaves any room for a compromise and for a decree to be obtained thereon by any possible procedure.

25. In my opinion, such room is to be found in S. 5 of the Act. That section provides that the authority of an appointed arbitrator shall not be revocable except by leave of the Court, implying thereby that with such leave it may be revoked. At first sight it might seem that this provision applies only to the authority of a particular arbitrator or arbitrators and has no application to the reference itself. But the real scope of the section will appear if the meaning of the word "authority" is closely examined. In the corresponding provision in the English Arbitration Act of 1889, S. 1, the word used is "submission" and in criticising that section Brown L. J. pointed out in (1890) 25 Q. B. D. 545 In re Smith and (1890) 25 Q. B. D. 545 : 59 L. J. Q. B. 533 : 63 L. T. 475 : 39 W. R. 117, that the word "submission" had been used with some inexactitude, because the agreement to refer, which the term "submission" might seem to denote, was always irrevocable and it was only necessary to provide for the irrevocability of "the authority of the arbitrator." The agreement to refer is one thing, the actual submission, whether by act of the parties or by an order of the Court, that is to say, the reference, is another and the latter is nothing but the consignment of the case to particular arbitrators and the authority conferred on them. The Indian Legislature seems to have met the criticism of Brown L. J. by accepting the exact language suggested by him and when the section speaks of the authority of the arbitrator, it means the reference.

26. When can leave to revoke a reference be given ? Long ago, in the year 1868, the Judicial Committee dealing with a case under S. 326, Civil P. C. of 1859, observed that no party to an agreement to refer to Nelson. arbitration could revoke the submission without good cause : 12 M. I. A. 112 Pestonjee v. Manockjee & Co. ("67-69) 12 M. I. A. 112:2 Sar. 390 : 2 Suther 164 (P. C.). When the Code of 1882 came to be enacted, a provision was incorporated therein as sub-s. (2) of S. 508 which was practically in the same terms as para. 3 (2) of what was sch. 2 to the present Code and S. 23 (2), Arbitration Act of 1940. There was no provision in the Code corresponding to S. 5, Arbitration Acts of 1899 and 1940 regarding leave. A question arose as to whether the restrictive provision introduced in the Code deprived the Court of the power of superseding the arbitration, on good cause shown, in any case not covered by the specific provisions in the Code and in some decisions this Court answered the question in

the affirmative. But the ground for such decision has now disappeared. The present Arbitration Act amalgamates the provisions of sch. 2 to the Code and the Arbitration Act of 1899 and side by side with S. 23 (2) which reproduces para. 3 (2) of sch. 2 is now to be found S. 5, with the result that while the Act says that a matter under reference shall not be dealt with by the Court except as provided in the Act, it also says that a submission can be revoked by leave of the Court. The grounds of such leave are not specified.

27. If leave is granted to revoke a submission, the arbitration agreement, in my view, is not superseded, but simply dissolved or revoked. If it be supersession, then such supersession is authorised by S. 12 (2) (b) of the Act and S. 23 (2) is not violated. Nor is the award, if one has been made, set aside or affected by such revocation with leave, since it is only put aside and not considered. Section 32 is therefore not violated, for even if the award be affected, such affection of the award is authorised by S. 5.

28. It might be asked whether S. 5 was not limited to cases where an award had yet to be made. I can see no reason to so limit its meaning. Till an award is made a decree of the Court, the submission remains and it can, within the language of the section, be revoked with leave.

29. The only question which remains to be considered is whether a compromise effected by the parties can be good cause for granting leave to revoke a submission. It seems to me to be not only a good cause beyond argument, but on the face of it the best cause. An arbitration is but a machinery for deciding a dispute and if the parties have settled their differences and the dispute itself has disappeared, the reference has no reason to exist.

30. My conclusion therefore is that even after a reference has been made to arbitration or an award has been made therein, the parties have a right to compromise the dispute and on such a compromise being reported, the Court may, if, on considering the compromise it finds it to be valid, grant leave to revoke the submission. Thereafter the Court may formally supersede the arbitration agreement and pass a decree in accordance with the compromise.

31. But while saying this, I must at the same time say that the position seems to me to be far different when no admitted compromise is placed before the Court by all the parties, but there is only an allegation of a compromise by one party which is denied by the other. In such a case not only is the dispute not at an end but to the old dispute has been added a fresh one. The foundation on which the Court can grant leave to revoke the submission in the other case, viz., the end of the dispute, is in this case wanting. It would be contrary to the whole scheme of the Arbitration Act and to several of its specific provisions if the Court were, in such a case, to launch an enquiry as to whether there had been a compromise of the suit or not. By so doing, the Court would be clearly violating the provisions of S. 23 (2).

32. On general principles too, it is clear that when there is a reference to

arbitration pending which is capable of effectively deciding the dispute referred, a compromise of doubtful existence, fraught with not merely possibilities but a certainty of further contention, cannot be good cause for granting leave to revoke the reference and thereby undoing the arrangement made at the request of the parties for a simple and speedy termination of the dispute. In the result I would summarise my conclusions in the following manner : (1) After a reference to arbitration has been made in a suit through the Court, the parties cannot be allowed, by mere consent, to abandon the arbitration and go on with the suit or ask for a fresh reference. (2) But if a concluded compromise in undisputed terms be placed before the Court by all the parties, whether before an award has been made or after, the Court may grant leave to revoke the submission under S. 5, Arbitration Act and, on superseding the arbitration agreement thereafter under S. 12 (2) (b), pass a decree in terms of the compromise. But the compromise, before it is accepted, must be considered on its own account as to whether it is valid and cannot be accepted as a matter of course. (3) Where, however, a compromise is only alleged by one party but disputed by the other, the existence of such a disputed compromise cannot be a good ground for granting leave to revoke the submission and the Court has no power to entertain the question of such a compromise or to embark upon an enquiry as to its factum. (4) In no case can a compromise be given effect to by the Court without first superseding the reference.

33. In the present case, only the opposite parties alleged by their petition dated 17th July 1945, that a compromise had been effected, but the allegation was stoutly denied by the petitioners. In the circumstances, the Court had no jurisdiction to entertain the question of the compromise at all, far less to embark upon an enquiry as to its factum and validity. I therefore agree that the rule must be made absolute and the order complained of set aside. The learned Judge must proceed with the consideration of the objections to the award and the reference as directed by my learned brother, without any reference to the question of the disputed compromise which cannot be entertained as against the award so long as the reference is pending and which cannot be a ground for superseding the reference.