

(1951) 05 PAT CK 0013
In the Patna High Court
Case No : A.F.A.O. No. 158 of 1949

Raghunandan Rai and Others

APPELLANT

Vs

Sukhlal Rai

RESPONDENT

Date of Decision : 14-05-1951

Acts Referred:

Arbitration Act, 1940 — Section 47

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 115

Citation : AIR 1952 Patna 258

Hon'ble Judges : Jha, C.J.;Ahmad, J

Bench : Division Bench

Advocate : Prem Lall, for the Appellant; B.N. Mitter and Umesh Chandra Prasad Sinha, for the Respondent

Judgement

1. This appeal is directed against an appellate order of Mr. Naqui Imam, District Judge, Muzaffarpur, dated the 20th May, 1949, remanding the case to the Court of first instance for disposal after taking evidence in the case.

2. The plaintiff filed a suit on the 5th of December, 1947, for certain reliefs, and on the 7th of January, 1949, he filed a petition that the dispute had been settled out of Court by arbitrators with the consent of both parties and prayed that a decree be passed in terms of the award under Order 23, Rule 3, Code of Civil Procedure. The defendants denied the allegation of the plaintiff and contended that the award is illegal and fraudulent and that the Court had no jurisdiction to order the suit to be disposed of in terms of the award without their consent. The trial Court, without taking any evidence on the merits of the allegations of the parties, held that, as there was objection by the defendants to the recording of the compromise, it could not be given effect to in law. There was an appeal by the plaintiff, and the learned District Judge, without expressing any view as to the legality of the order and as to whether the Court had at all any jurisdiction to record the arbitration award as compromise under Order 23, Rule 3 of the CPC when the same is objected to by one or the other party, sent the case back to

the Court below with a direction that the parties be given opportunity to prove whether in fact consent was given by the defendants at the time when the reference was made. He held:

"These are facts that have to be determined on evidence. It is only when it knows what the facts are that the Court can go into the legal points that have been raised and see whether they have any substance in the light of the facts of the case as brought out through evidence. It will thus be clear that the evidence must be taken in this case."

Being dissatisfied with this order the defendants have come up in second appeal.

3. This second appeal is from an order of remand. It is, therefore, not maintainable, and it has been conceded on behalf of the appellants that no appeal lies and we have been asked to treat it as a civil revision. The contention of Mr. Prem Lall, for the defendants, is that the order of the learned District Judge is bad in that he has acted illegally and with material irregularity in remanding the case without recording his view on the question of law, and that he has failed to exercise the jurisdiction vested in him in law. There is much substance in the contention of Mr. Prem Lall, and, in our opinion, the order of the learned District Judge cannot be supported.

4. On the plaintiff's own allegation, the leave of the Court before which the suit was pending was not taken to make any reference to punches for the decision of the dispute which was the subject-matter of the suit. At the time when the Court was asked to dispose of the suit in terms of the award the defendants did not consent to the compromise or adjustment of the suit being recorded according to the award. Therefore even if the parties consented to the dispute being settled by arbitration without obtaining the sanction of the Court it had no jurisdiction under the proviso to Section 47 of the Indian Arbitration Act, 1940 to dispose of the suit in terms of the award under Order 23, Rule 3, CPC unless all the parties to the suit consented to the same. The proviso to Section 47 reads:

"Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending."

Therefore, apart from any authority, it is clear that under this proviso it is not open to the Court to record any arbitration award under Order 23, Rule 3, CPC if objection to the recording of it is made by any party. It was held in "BHIMRAJ KANAI LAL FIRM v. MUNIA SETHANI" 16 Pat LT 280

"If parties come to the Court with a cut and dry statement that the matters in dispute between them have been adjusted, then Order 23, Rule 3 applies; but if they come to the Court stating that it is true that they have referred their dispute to arbitration but that they do not agree actually to accept the decision which has been arrived at by another person, then the matter is no longer governed by Order 23, Rule 3."

A contrary view was taken in V.S.A. Arumuga Mudaliar Vs. V.S.P. Balasubramania Mudaliar and Others, but in view of the clear provision of the proviso to Section 47 and the decision in "BHIMRAJ KANAI LAL FIRM v. MUNIA SETHANI" 16 Pat LT 280 we do not think the learned District Judge was justified in making the order that he did. (5) The question, however, for our consideration is whether we can interfere with the order of the learned District Judge u/s 115, Code of Civil Procedure. This Court has no power to interfere with an order of a Court subordinate to it if it acts with jurisdiction even though its conclusions of law or fact may be wrong, because as pointed out in "MALKAR-JUN BIN SHIDRAMAPPA v. NARHARI BIN SHIVAPPA" 27 Ind App 216 "A Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken, the decision, however wrong, cannot be disturbed." Again, in "JOY CHAND LAL v. KAMALAK-SHA CHAUDHURY" 76 Ind App 131 the Privy Council reiterated the law thus: "a subordinate Court does not act illegally or with material irregularity because it decides wrongly a matter within its competence. A Court has jurisdiction to decide a case wrongly as well as rightly." Thus it is evident that Section 115 of the CPC applies to jurisdiction alone and it empowers this Court, as a Court of revision, to interfere with the final order of a Court subordinate to it if no appeal lies, (a) when the subordinate Court invests itself with a jurisdiction which in law it does not possess; (b) or having jurisdiction when it fails to act in the exercise of such jurisdiction; (c) or when it assumes or declines to assume jurisdiction on wrong interpretation of law or on refusal to interpret law; (d) or when in the exercise of its jurisdiction it follows a wrong procedure of law, which vitiates its ultimate decision. In "JOY CHAND LAL BABU'S CASE", 76 Ind App 131 at p. 142, already referred to, the Privy Council observed :

"Although error in decision of a Subordinate Court does not by itself involve that the Subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless, if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b), and Sub-section (c) can be ignored."

In "VBNKATAGIRI AYYANGAR v. HINDU RELIGIOUS ENDOWMENTS BOARD, MADRAS" 76 I A 67 the Privy Council, on a review of the decisions relevant to the point, interpreted the scope of Section 115, Code of Civil Procedure, and laid down the law thus:

"Section 115 applies only to cases in which no appeal lies, and where the Legislature has provided no right of appeal, the manifest intention is that the order of trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself upon three matters; (a) That the order of the subordinate Court is within its jurisdiction; (b) That the case is one in which the Court ought

to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision."

Their Lordships further said:

"the section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

6. We are satisfied that the learned District Judge committed an error of law in the exercise of his jurisdiction in making an order of remand without recording his views to the effect of the proviso of Section 47 of the Indian Arbitration Act. No useful purpose would be served by remanding the case to his Court for disposal according to law. Had he taken into consideration the effect of the proviso to Section 47 of the Indian Arbitration Act, he was bound to dismiss the application on the admitted fact alone that the award had not been filed with the consent of all the parties interested. His order is, therefore, set aside and the order of the trial Court restored. The Court will now proceed to hear the suit. The petitioner is entitled to his costs in this Court; hearing fee two gold mohurs.