

(1961) 12 MP CK 0009

In the Madhya Pradesh High Court

Case No : First Appeal No's. 17 to 19 of 1959

Raja Brijendra Singh

APPELLANT

Vs

Buti Saha and Others

RESPONDENT

Date of Decision : 15-12-1961

Acts Referred:

Arbitration Act, 1940 — Section 17, 30, 39

Citation : AIR 1962 MP 377 : (1962) JLJ 195 : (1962) 7 MPLJ 1044 : (1962) MPLJ 1044

Hon'ble Judges : T.P. Naik, J;A.H. Khan, J

Bench : Division Bench

Advocate : Patankar, for the Appellant; B.D. Gupta and Mungre, for the Respondent

Final Decision : Dismissed

Judgement

These three First Appeals (Appeals Nos. 17, 18 and 19 of 1959) are directed against the judgment and decree of the Additional District Judge, Guna, While rejecting the application of the plaintiff for setting aside the award, the Additional District Judge, disposed of the whole case by pronouncing judgment, and, passing a decree according to the terms of the award. Our decision will go yern all the three appeals.

In short the facts of this case are that the plaintiff filed three suits in the District Court, Guna, against the defendant on the basis of some Hundis executed by the defendant in favour of the plaintiff, the suits were resisted on the ground that the matter in dispute had been referred to an arbitration, consisting of three persons, that the award had been given and the defendant prayed that the award may be directed to be filed and decree passed in terms of it.

The trial Court directed the award to be fided and gave an opportunity to parties (the award was in favour of the defendant) to file objections. The plaintiff objected to the award on various grounds and prayed to the Court that it be set

aside. The trial Court rejected the application for setting it aside, and, holding that the award was Valid, pronounced judgment u/s 17 of the Arbitration Act (hereafter referred to as "the Act") according to the award. These appeals are filed against the judgment and decree of trial Court, in which objections are also taken to the refusal of the Court to set aside the award.

Mr. Bhagwan Das Gupta, learned counsel for the respondent has raised a preliminary objection that Section 17 of the Act bars an appeal and on this short ground, the appeals must be rejected. This objection to a certain extent is correct. If these appeals are treated merely as appeals against the judgment and decree passed on the award, then there is no doubt that Section 17 of the Act bars these appeals. But the order of the trial Court is composite in nature. It refused to set aside the award and at the same time passed a decree u/s 17 of the Act. An order refusing to set aside an award is appealable u/s 39 of the Act, but a decree based on the award is not.

Thus it will appear that while the first part of the order (refusing to set aside the award) is appealable, the latter part of it in so far as it relates to the pronouncement of a judgment on the basis of the award is not appealable. In Jagat Pande Vs. Sarawan Pande and Others, , it has been held that where an order, directing an award to be filed (which is appealable) and a decree in accordance with the award were not separately passed, but the court disposed of the whole case by a single order, then in substance the appeal was from an order (which is appealable) and was competent. This view appears to have been followed by other High Courts as well. See Veeraswamy Chetty v. Varadiah Chetty AIR 1957 Andh Pra 493, Amarchand v. Moosabhai AIR 1955 Hyd 213, Bholanath Chatterjee and Another Vs. Chandra Shekhar Bhattacharjee, .

The settled position of law now is that where the order of a court is composite, which on one hand dismisses the objections of a party to the award, and, on the other, pronounces judgment on the basis of the award, then such an order should be treated as an order falling u/s 39 of the Act and an appeal is maintainable against it. In this view of the matter, treating the order under consideration as being one u/s 39(vi) of the Act, we hold that the appeal is competent.

Mr. Patankar, learned counsel for the appellant, attacks the order, refusing to set aside the award, on three grounds. First, that out of the three arbitrators that were appointed by the parties, one arbitrator resigned and that in the circumstances the other two were not competent to give the award; two, that the last clause in the agreement (Ex. D.2) to refer the matter to arbitration has been inserted subsequent to the agreement by way of interpolation; three, that the arbitrators in giving the award exceeded their powers.

The first and the second contentions, namely, that on the resignation of one of the Panchas, the arbitration proceedings could not continue and that there was interpolation in the agreement deed are being considered together, because they

are related to each other.

First, I propose to consider whether there has been any interpolation in the agreement to arbitrate. It is contended that the last clause has been inserted later on. The trial Court had framed issue No. 3 on the point and found that no interpolation was made. Apart from the reasons given by the court, with which we agree (and it is unnecessary to repeat those reasons) we had a look at the original of the agreement (Ex. D-1) itself. The last line of the agreement says that if for any reason, one of the Panch could not participate in the arbitration proceedings, the decision of the other two Panchas shall be binding on parties. This line could be said to have been inserted later on, because the spacing between this line and the one before it is rather narrower than the distances between other lines of the agreement, But this suspicion is dispelled by the fact that earlier in the agreement, it is provided that should any one Panch resign, then the unanimous decision of the other two Panchas shall be acceptable to the parties. Even if the last line is assumed to have been inserted later on, the other later provision referred to above, could not be said to have been interpolated.

Mr. Bhagwan Das Gupta, learned counsel for the respondent, has brought it to our notice that after the agreement had been given to the three Panchas, the defendant respondent asked them to furnish him with a copy of the agreement, which was given to him on the 2nd of April, 1951 and is marked as Ex. P.2. This copy was signed by Bhoopender Singh, the Panch who resigned and in whom the plaintiff obviously seems to have had so much confidence that on his resignation from the arbitration, the plaintiff wants to treat the award as invalid. This copy of the agreement under the signatures of the resigning arbitrator, contains the offending clause, which the plaintiff contends is an interpolation. Considering all the facts of the case, we are of the opinion that the plaintiff appellant has failed to prove interpolation as held by the trial Court.

In view of our decision on the second point discussed above, the first point, namely, whether after the resignation of one of the Panchas, the remaining two Panchas could give the award, presents no difficulty. The agreement Ex. D.2 contains a clause to the effect that should one Panch resign, the unanimous decision of the other two would be binding on the parties. It is admitted that award given by the remaining two Panchas is unanimous.

Thus it will be seen that the contention of the appellant that the award is not binding on him is void of substance.

The third point urged on behalf of the appellant is that in giving the award, the arbitrators exceeded their powers. It is submitted that the award decided matters which were not at all entrusted to the Panchas.

In considering this objection to the award, we find that the award is based on two agreements (Ex. P.10 dated 5-2-1951 and E. D. 1 dated 30-3-1951) to refer me disputes between the parties to three persons named in them.

On a perusal of Ex. P.10, it is clear that what was referred to the arbitration was a dispute about the boundary of the jungle and the amount of compensation. Through Ex. D.I, the parties further referred two disputes to the arbitrators. One was the determination of the period for which the jungle was given on lease, and, the other was the dispute about the payment of money due on Hundis, which the defendant had written in favour of the plaintiff.

Although in the grounds of appeal, it is stated that the agreements are vague and that they do not exactly specify what the disputes were, yet the learned counsel for the appellant has not pressed before us in a serious manner the contention regarding the vagueness of disputes between the parties. Suffice it to say that the two agreements do indicate the disputes between the parties with sufficient clarity to enable the arbitrators to adjudicate upon them.

In urging the contention that the arbitrators decided questions not referred to them, it is said that what was referred to them was how the payment of Hundis was to be made and not the fact whether the Hundis were with or without consideration and in holding that the Hundis were without consideration, the arbitrators exceeded their powers.

In examining this contention, on referring to Ex. D.1, we find that dispute about Hundis was referred to arbitrators in these words:

^ ^eqdfjZj gS fd tks gqfUM;ka ch- ,I- I;kjsyky us Jh jktk o`tnzflagth ds uke ij fy[kh gqbZ gS mu gqfUM;ksa dh vnk;xh o nksxj gj fdLe ds >xMksa dh fuiVkus ds fy, Hkh ge ijhdsu iap lkgoku dk lsok esa izkFkZuk dj ds bdxj djrs gS fd bu >xM+k dk Hkh iap lgcku etdwj tks fu.kZ; dljr jk;ls ;k dk;Z {kerk ls djsaxsA mlds ge ikoUn gksaxs**

Thus it will appear that not only the dispute with regard to the payment of the Hundis was referred, but all other disputes (which presumably implies disputes relating to Hundis) were also entrusted to arbitrators. The expression "dispute with regard to payment of the Hundis" is an expression of such wide amplitude, that it includes the question whether the Hundis were or were not without consideration, because the question of payment of money due on Hundis would only arise if the Hundis are for consideration. In the first place the reference to the dispute with regard to payment of Hundis clothed the arbitrators with authority to enquire into the question of their consideration. Secondly, the words in Ex. D.1 "Deeger har Kisam ke Jhagre", following the mention of dispute about the payment of money due on Hundis, leave no manner of doubt that the arbitrators were entitled to enquire into the genuineness of the Hundis and in doing so they acted within their powers,

For reasons stated above, we would disallow all the three appeals Nos. 17, 18 and 19 of 1959 and leave the parties to bear their own costs.