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**(1921) 07 AHC CK 0021**  
**In the Allahabad High Court**

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| Ram Lal | Vs | APPELLANT  |
| Deo Raj |    | RESPONDENT |

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**Date of Decision :** 26-07-1921

**Acts Referred:**

**Citation :** AIR 1922 All 173 : (1922) ILR (All) 91

**Hon'ble Judges :** Walsh, J;Wallach, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

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## Judgement

Walsh and Wallach, JJ.—We have no doubt as to what our answers to these questions should be.

2. To question (a) our answer is, to adopt a technical form, "No, it did not re-open it so as to confer jurisdiction to refer the matter to arbitration, but it did not, affect it and the Ajmer Court had original jurisdiction to refer the matter to arbitration up till the final disposal of the suit."

3. We will state our reasons to remove any possible misunderstanding. The position presents itself in this way. The courts at Ajmer having pro tanto disposed of the litigation, there still remained the right of the parties to obtain a reference to the High Court. As appears by the referring order of 1916, the parties were within their rights in asking for reference. The decision of the suit hinged, as is and in the referring order, upon the questions referred, and the Ajmer District Court expressed its own opinion as to what the answers of the questions should be. The Ajmer Act provides that the final decision shall be entered up in accordance with the decision of the High Court. In our view the beat analogy is that of a preliminary decree and a final decree, and pending the final order of the Ajmer court on receiving the answers of the High Court to the reference, the suit was still, to adopt the language of the arbitration schedule in the Code of Civil Procedure, "pending judgment." While it was so pending and the High Court had not given its answers the parties agreed to refer the matter to arbitration, We

are clearly of opinion that without the agreement of the parties the court could not have done so, because the court had already adopted the agreement of the parties to refer the matter to the Allahabad High Court, but it could allow the parties to override the reference on any terms they saw fit. It is no business of ours why they did so, but, as we have said, pending the final decision, while the matter was in the High Court, they agreed in the most explicit terms to settle the case amicably, to appoint a Barrister and a Pandit as arbitrators, to agree to what they decided and "never to go back upon it"--language which has a strange ring in 1921, though used as the foundation of an application to the court in 1916. The High Court was informed of this agreement and held its hand. On the 8th of August, 1916, in pursuance of the agreement, the District Judge ordered the matter to go to arbitration and directed the arbitrators to file their award by the 31st of August, 1916. In our opinion, in spite of the reference to the High Court, and not in any way because of the reference to the High Court, or because of anything which the High Court said, this was an arbitration in a suit in which the parties agreed that the matters between them should be referred to arbitration. By paragraph 1 of Schedule II of the CPC they were, at any time before judgment was pronounced, at liberty to apply to the court which ordered the order of reference. By paragraph 3(2) of the same schedule the court, from the date of that order, was unable to deal with the matter in suit. It follows from this that our answer to question (b) must be "yes." The court was prevented by law from dealing with the matter in the suit thereafter, and a fortiori from dealing with it in another suit.

4. It follows that) the answer to question (c) must be "No, no suit would lie."

5. Let the record go back to the Ajmer Court with this expression of our opinion.

6. u/s 20 of the Ajmer Courts Regulation the costs of this reference ought to be costs in the appeal out of which the reference arose. We recommend accordingly.