
(1943) 03 AHC CK 0018
In the Allahabad High Court

Sheikh Sajjad

APPELLANT

Vs

Ramlagan Ahir

RESPONDENT

Date of Decision : 18-03-1943

Acts Referred:

Citation : AIR 1943 All 284

Hon'ble Judges : Mulla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mulla, J.—This is a defendant's application in revision u/s 25, Small Cause Courts Act. The opposite party, Bam Lagan who is a minor, brought a suit for recovering a certain amount as his wages due from the defendant applicant. This suit was brought under the guardianship of his own father, Sadaphal. During the pendency of that suit, an application was made to the Court signed by the defendant-applicant and Sadaphal in his capacity as the guardian of the minor plaintiff Ram Lagan. In this application Sadaphal agreed to appoint one Mr. Man Bahadur Singh as an arbitrator for the purpose of deciding the matter in dispute in the suit and he further agreed that Mr. Man Bahadur Singh will have the power to base his decision either upon a public inquiry or upon a private inquiry. It may be noted here that Mr. Man Bahadur Singh was at that time representing the defendant-applicant as his counsel. It is really surprising that this glaring fact should not have been noticed by the learned Small Cause Court Judge either when he considered the application made to him or even in his judgment later on which has given rise to this application in revision. Armed with this authority Mr. Man Bahadur Singh gave his award by which he found that the plaintiff was entitled only to a sum of Rs. 2, though his claim was for Rs. 92. Mr. Man Bahadur Singh has appeared in Court and has stated that in the course of his inquiry preceding the award he did examine a witness named Suraj Kumar Singh in the absence of the parties. He has also suggested that there was some talk about the case between him and a police officer who was interested in the parties. It

has to be noted here that Suraj Kumar Singh had originally been summoned by the defendant applicant as his witness in the case. When this award was submitted to the Court, an objection was taken on behalf of the plaintiff opposite party and the learned Small Cause Court Judge allowed that objection to prevail and set aside the award; hence the present application in revision.

2. Upon the facts stated above the legal position under the general law would be quite simple. But for the authority conferred upon Mr. Man Bahadur Singh by the application to which Sadaphal, the guardian of the plaintiff-minor, was a party, his conduct in examining Suraj Kumar Singh behind the back of the parties would undoubtedly have amounted to legal misconduct. In this connexion we have also to bear in mind that Suraj Kumar Singh had previously been summoned by the defendant-applicant as his witness. Mr. Man Bahadur Singh, however, has stated in his evidence that he was not aware of that fact and I see no reason to disbelieve him. The fact, however, remains that he examined a witness in the absence of the parties and it cannot be denied that his award must have been influenced to a certain extent by the evidence which he so recorded. The question for consideration in this case really is whether Sadaphal, the guardian of the plaintiff minor, had authority not merely to refer the dispute to arbitration but also to arm the arbitrator with the power to decide the matter upon private information or upon evidence recorded behind the back of the parties, This question has been answered in the negative by the learned Small Cause Court Judge upon the authority of Chintalapudi Sanyasirao, minor by next friend Venapalli Atchayya Vs. Chintalapudi Venkatrao, minor by guardian ad litem Chintalapudi Chinnayya, . In that case a minor's mother and guardian had consented to an arbitrator deciding the minor's claim upon information and evidence however obtained and the arbitrator acted on information obtained by him behind the back of the parties. Upon these facts, it was held by the learned Judges of the Madras High Court that the guardian's consent amounted to a surrender of the minor's rights and that the arbitrator's eventual decision against the minor was vitiated by his misconduct and was invalid within Section 15 of Schedule 2, Civil P. C, and was not binding on the minor. Upon a very careful consideration of this case I am inclined to agree with it entirely if I may say so with respect.

3. In my judgment, it is quite evident that when the guardian of a minor gives power to an arbitrator to decide the matter not in accordance with the generally recognised rules governing arbitration proceedings but upon private information obtained behind the back of the parties he travels far beyond the conduct of litigation which is placed in his hands. I am further of the opinion that the giving of such wide power to an arbitrator can hardly ever be beneficial to the interests of a minor. It may prove beneficial to the minor in some cases but the danger of the decision going against the minor is always present and I am, therefore, inclined to hold that where a guardian arms the arbitrator with the power to decide the dispute upon private information obtained by him behind the back of the parties he is not acting in the interests of the minor and his act cannot,

therefore, bind the minor. In the present case, it is evident that the guardian of the minor plaintiff was grossly negligent in agreeing to appoint Mr. Man Bahadur Singh as the arbitrator, even though Mr. Man Bahadur Singh had been acting as counsel on behalf of the defendant-applicant. Where the parties are sui juris, it is open to them to agree to the appointment of the counsel of any one party as an arbitrator and they can further agree to arm the arbitrator with the power to decide the dispute upon private information; but that principle can never be applied to the case of a guardian acting on behalf of a minor. In my judgment the award in the present case was undoubtedly vitiated by legal misconduct and was, therefore, rightly set aside by the Court below. I wish to make it clear that there is no suggestion against the integrity of Mr. Man Bahadur Singh. He might well have acted in good faith but upon the facts it is clear that the award which he gave was vitiated by legal misconduct. The result, therefore, is that I dismiss this application with costs.