

(1955) 06 CAL CK 0018

In the Calcutta High Court

Case No : Appeal from Original Decree No. 28 of 1948

Soorajmull Nagurmull

APPELLANT

Vs

Province of West Bengal

RESPONDENT

Date of Decision : 27-06-1955

Acts Referred:

Defence of India Act, 1971 — Section 19
Defence of India Rules, 1962 — Rule 19

Citation : (1957) 2 ILR (Cal) 440

Hon'ble Judges : P.N. Mookerjee, J;Mookerjee, J

Bench : Division Bench

Advocate : Atul Chandra Gupta and Pravat Kumar Sen Gupta, for the Appellant; Hemendra Kumar Das, Janeswar Majumdar and Shambhunath Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—This appeal arises out of the requisition of Shamnagar Jute Godowns, of which Hanuman Seva Trust was the owner and the present claimant Surajmall Nagarmal was the lessee in occupation at the relevant time. By agreement between the parties concerned the monthly compensation for requisition of the parties has been awarded to the owner Hanuman Seva Trust (vide F.A. No. 29 of 1948, decided by us on April 29, 1955,) and, in the present proceedings, we are concerned with the lessee Surajmall Nagarmal's claim for compensation for loss of business. Under this head nothing was offered or allowed by the Collector and the Arbitrator also rejected this claim of the lessee in its entirety. From this "nil" award of the learned Arbitrator, the present appeal has been preferred by the claimant lessee Surajmall Nagarmal.

2. A preliminary objection has been raised by the Respondent State to the maintainability of the present appeal, and, in support thereof, reliance has been placed by the learned Senior Government Pleader on the second proviso to Rule 19 framed under the substantive Section 19 of the Defence of India Act. That

proviso runs as follows:

Provided further that no appeal shall lie against any award made under these rules where the amount of compensation awarded does not exceed Rs. 5,000 in lump or Rs. 250 per mensem.

3. The Respondent contends that, as the amount of compensation, awarded in the present case, is nil, the appeal is hit by the above proviso.

4. In these requisition proceedings, the right of appeal from the Arbitrator's award is given by Section 19 of the Defence of India Act which provides that an appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.

5. The relevant rule is Rule 19, of which the second proviso has been quoted in the preceding paragraph. Reading the section and the rule together, it becomes fairly obvious that no right of appeal was intended to be given in cases where the amount of the award did not exceed Rs. 5,000 in lump or Rs. 250 per mensem.

6. An appeal is a creature of statute. It does not exist in the nature of things. An appeal, therefore, from the Arbitrator's award in requisition proceedings must be supportable u/s 19, read with Rule 19, including the relevant proviso, as quoted above. If then the particular case falls within the exception, mentioned in the section, in the light of the Rule and the relevant proviso, no appeal would lie from the Arbitrator's award, whatever other remedies may be open to the aggrieved party.

7. The first or the immediate enquiry in this appeal is thus of a limited character, namely, whether the present case is one under the quoted proviso to Rule 19. Prima facie, that appears to be the position as the "nil" award cannot be said to be one, the amount whereof exceeds the relative minimum, mentioned in the proviso. Mr. Gupta, however, contends that the reference to the amount of the award in the exception, mentioned in Section 19 of the D.I. Act, is really a reference to the subject matter of the appeal and the section and the Rule should be interpreted in that light. Mr. Gupta has further argued that, on the above view of the section, the proviso to the Rule would be ultra vires, if it really seems to bar appeals by reference to the amount of compensation awarded. Two other submissions were made by Mr. Gupta, namely, that where a question of principle is involved, the appeal should not be held barred or incompetent merely because the compensation awarded is below a particular figure and that the exception in the section and the proviso to the Rule contemplate cases where some compensation, however small, has been awarded and would not apply to cases of "nil" award.

8. Despite the most anxious consideration and an inclination to hold in favour of the competency of the appeal, we have been unable to accept Mr. Gupta's submissions or any of them in the face of the positive words of the statute. The

amount of the award must mean the compensation awarded and, if it is "nil" it is certainly less than the minimum, prescribed in the relevant proviso. A "nil" award, therefore, would not be appealable in law. We are unable to hold that the amount of the award would refer to the subject matter of the appeal or that a "nil" award would not come within the section or the Rule and would not be within the contemplation thereof. We do not also think that, in the face of the clear words of the statute, forbidding appeals in cases where the compensation awarded does not exceed a particular figure or figures a right of appeal can be claimed merely because some question of principle may be involved in the dispute between the parties. We, therefore, hold that the present appeal would fail on the preliminary ground of incompetency under the law and must be dismissed on that ground.

9. If we had been able to persuade ourselves that the appeal is maintainable in law, we would have probably felt little hesitation in setting aside the award and sending the matter back for fresh consideration as, in our view, the learned Arbitrator was not justified in referring to matters which are not on the records of this case, for reaching a decision on the rights of the claimant or in holding that the evidence was not sufficient for a verdict in the claimant's favour and, in any event, we would have been inclined to give a further opportunity to the claimant Appellant to adduce evidence as to the relevant state of things at or near the date of requisition. As matters stand, however, the appeal is incompetent and must fail on that ground and no further discussion or direction is necessary.

10. We accordingly, dismiss the appeal, though, in the circumstances, we would make no order as to costs in this Court.

Mookerjee, J.

11. I agree.