

**(1911) 08 MAD CK 0004**  
**In the Madras High Court**

T. Venkatachalla Reddi

APPELLANT

Vs

T. Rangiah Reddi and Others

RESPONDENT

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**Date of Decision :** 03-08-1911

**Acts Referred:**

**Citation :** (1913) ILR (Mad) 353 : (1911) 21 MLJ 990

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**Judgement**

1. This is an appeal against an order of the District Judge of North Arcot under Schedule II, aragraph 17, Civil Procedure Code, filing an

agreement to arbitrate presented by certain parties to O.S. 8 of 1907 on its file and making an order of reference thereon.

2. The learned vakil for the respondent took the preliminary objection that under the old C.P.C., no appeal lay against such an order and that,

although the order was passed after the new code came into force, jet in as much as the application to file was presented under the old code

Section 104(d) of the new code cannot be given retrospective effect.

3. It is unnecessary to discuss the somewhat knotty point involved in the latter part of this contention, in as much as we are clearly of opinion that

there was a right of appeal even under the old code. This is laid down by their Lordships of the Privy Council in Gulam Khan v. Muhammad

Hussan ILR (1902) C. 167, which has been followed by a full bench of this Court in Suriyanarayana v. Sarabiah (1909) 21 M.L.J. 263, and also

in Tiruvangadathiengar v. Vaithinatha Aiyar ILR (1905) M. 303. This latter case deals with an order filing an award u/s 525 of the old CPC

(paragraph 20 of Schedule II) but orders on such an application and an application u/s 523 (paragraph 17 of Schedule II) are dealt with on the

same footing by the Privy Council in Gulam Khan v. Muhammad Hussan ILR

(1902) C. 167, and the opinions expressed that the order in each case is a decree. If a decree, it is indisputably appealable. This disposes of the preliminary, objection.

4. Passing to the merits of the appeal, the chief objection taken to the order of the District Judge is that as the proposed arbitration related to the subject-matter of the suit then pending between the parties to the agreement, the latter does not come within the scope of paragraph 17 and should not have been ordered to be filed. This objection was taken before the District Judge but overruled.

5. It should be stated that the application cannot be treated as one under paragraph 1 (old Code of C.P., Section 506) inasmuch as the plaintiff did not join in it. We have simply to determine whether it is covered by paragraph 17.

6. As pointed out by the learned District Judge there has been a direct difference of opinion on this point between the Allahabad and the Bombay

High Courts on the one hand and the Calcutta High Court on the other, but all doubt as to which view should prevail is dispelled by the decision of

the Privy Council in *Gulam Khan v. Mahommed Hassan* ILR (1902) C. 167 (which has been already quoted in another connection). We cannot

follow the District Judge in his statement that the Privy Council gives no distinct opinion as to the applicability of Section 523 when there is a

pending litigation. Their Lordships of the Privy Council in their judgment very carefully analysis the provisions relating to arbitration and classify

arbitrations under 3 heads numbered I, II, and III. A comparison of this analysis with the words of the old code leaves no doubt whatever that

these three heads correspond to arbitrations initiated by applications under Sections 506, 523 and 525 respectively. Head II is defined to cover

cases where parties without having recourse to litigation agree to refer their differences to arbitration. \* \* \* It is not suggested that paragraph 17 is

any way wider in scope than Section 523.

7. We think there can be no doubt whatever of the meaning of the Privy Council's exposition of the law and it has been interpreted in precisely the

same way by the Calcutta High Court in *Tincowry Dey v. Fakir Chand Dey* ILR (1902) C. 218. It is just as applicable to the new Schedule II as

to the provisions of the old code and is in our opinion conclusive of the question.

8. It is suggested on behalf of the respondent that even if paragraph 17 of

Schedule II be held inapplicable, the application of agreement may be dealt with under Order 23, Rule 3, and treated as an adjustment of the suit. This is entirely a new suggestion and it is clear that neither the parties to the petition nor the court itself in disposing of it ever contemplated that it should be dealt with under the rule in question or u/s 375 of the old code which corresponds to it. Respondent's vakil relies on the rulings reported in *Pragdas v. Girdar Das* ILR (1907) B. 76, *Projodar Lal Sinha v. Ramanath Ghoss* ILR (1897) C. 908 and *Lakshmana Chetty v. Chinna Thambi* ILR (1900) M. 326. The Calcutta case deals with an ordinary agreement to settle the matter in dispute without reference to arbitration. In both the other cases the basis of their adjustment was not only an agreement to refer to arbitration but also an award of arbitration consequent thereon. No doubt an agreement to refer coupled with the award resulting from the reference may be treated as an adjustment, but can a simple agreement to refer be so treated? We are of opinion that it cannot. This is the view taken by Maclean C.J. in *Tincowry Dey v. Fakir Chand Dey* ILR (1902) C. 218. It is true that the other two judges in that case hesitated to concur in the opinion of Maclean C.J. that a simple agreement to refer could under no circumstances be treated as an adjustment u/s 375. They did not, however, express an adverse opinion and the reasoning of Hill J. (in which Stevens J. concurred) for refusing to accept the agreement in that case as an adjustment applies with equal force to the present case. In *Rukma Bai v. Adamji* ILR (1902) B. 69, Beaman J. took the same view as Maclean C.J. in *Tincowry Dey v. Fakir Chand Dey* ILR (1902) C. 218 observing that mere submission to arbitration was not an adjustment of a suit but only a step towards it. We are clearly of opinion that the agreement to refer in this case cannot be treated as an adjustment under Order 23, Rule 3.

9. The order of the District Judge will be set aside with costs in both courts.