

(1910) 08 BOM CK 0008
In the Bombay High Court

T.K. Gajjar

APPELLANT

Vs

Lallubhai Dharamchand

RESPONDENT

Date of Decision : 06-08-1910

Acts Referred:

Arbitration Act, 1940 — Section 15
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29

Citation : (1910) 12 BOMLR 860

Hon'ble Judges : Basil Scott, J

Bench : Single Bench

Judgement

Basil Scott, Kt., C.J.—On the 1st of August 1910 a summons was obtained from the Sitting Judge in chambers headed: " In the matter of the Arbitration between Professor Tribhuwandas Kalliandas Gajjar and the firm of Messrs. Jivanchand Lallubhai & Co., and in the matter of the Indian Arbitration Act No. IX Of 1899- Professor Tribhuwandas Kalliandas Gajjar-Petitioner; and Lallubhai Dharamchand and the other partners in Jivanchand Lallubhai & Co.-Respondents," calling on the above-named petitioner to appear and show cause, if any, he hath why the execution of the award, dated the 19th January 1910, should not be stayed until the final disposal of Suit No. 8501 of 1909.

2. The award of the 19th January 1910 was an award made under the provisions of the Indian Arbitration Act IX of 1899, whereby the firm of Jivanchand Lallubhai & Co. were directed to pay to Tribhuwandas K. Gajjar the sum of Rs. 2,15,000, Rs. 1,00,000 being payable at once and Rs. 10,000 every sub sequent month. At the time of the summons there still remained payable by monthly instalments a sum of Rs. 65,000. Up to that time no steps had been taken to obtain the assistance of the Court in securing the payment of the amount of the award, but under the provisions of the Indian Arbitration Act the petitioner would be entitled to enforce the award as if it were a decree of the Court.

3. On the strength of that provision in Section 15 of the Indian Arbitration Act, the parties against whom the award has been made contend that this Court,

under Order XXI, Rule 29, of the Civil Procedure Code, should stay the execution of the award until the disposal of Suit No. 850 of 1909. That is a suit filed by Gulabchand Munlal against Kasturchand Daya, the firm of Jivanchand Lallubhai & Co., the present respondents, and the petitioner T. K. Gajjar, for the winding up of a partnership, in which, it is said, the petitioner was entitled to a share of profits although not liable for losses, and is liable to the partnership for monies withdrawn to the extent of Rs. 90,000.

4. Now, such an order for stay can only be made by the Court, if there is a suit pending on the part of a person against whom a decree has been passed, against the holder of a decree of the Court. It appears to me that the petitioner is not a holder of a decree of the Court, nor are the firm of Jivanchand Lallubhai & Co. persons against whom a decree has been passed; for the award, to which the applicants seek to give the force of a decree, is nothing more than an award, although it is enforceable as if it were a decree. In the words of Fletcher Moulton L. J., used with reference to Section 12 of the English Arbitration Act of 1889, that section " gives no power to turn such an award into a judgment. It gives to the award the same status as a judgment for the purpose of enforcement, but it leaves it what it was before, viz., an award. " See *In re a Bankruptcy Notice* (1)-

5. The application is, therefore, in my opinion, misconceived, and it is unnecessary to discuss the further question which might arise as to whether Suit No. 850 by Gulabchand Munlal is such a suit as is within the contemplation of Order XXI, Rule 29, of the Civil Procedure Code, even if we assume that the award is a decree within the meaning of that rule.

6. I, therefore, discharge the summons with costs.

Counsel certified.

By consent: petitioner to withdraw the sum of Rs. 10,000 lodged in Court by the respondents in satisfaction pro tanto of the instalment or instalments due under the award.