

## SUPREME COURT OF INDIA

Gobardhan Das

Vs.

Lachhmi Ram

C.A.No.203 of 1952

(B. K. Mukherjea, Vivian Bose, Ghulam Hasan and T. L. Venkatarama Ayyar, JJ.)

24.03.1954

### JUDGEMENT

#### **GHULAM HASAN, J.:**

1. This appeal arises out of arbitration proceedings and is filed against the Judgment and order dated November 8, 1949, of a Division Bench (Reuben and Sinha JJ.) of the High Court at Patna affirming the decision of the Additional Subordinate Judge, Motihari in the District of Champaran. The appeal has been filed on a certificate under Article 133(1) of the Constitution and arises in the following circumstances.

2. The appellant entered into a partnership business with respondents 1 and 2 to carry on grain business. The appellant, who furnished the entire capital, was to have eight annas share in the profits, while respondents 1 and 2 were to get four annas each on the ground of contributing labour and skill. There was a dispute between the partners, the appellant alleging misappropriation of funds against respondents 1 and 2 to the tune of Rs. 35,000. By an agreement dated September 29, 1945, the dispute was referred to the arbitration of respondents 3 to 5, one of whom died during the pendency of the application for leave in the Patna High Court.

3. The arbitrators made the award on January 29, 1946, whereby they awarded Rs. 3,500 to the appellant against respondent 1 to be paid in certain instalments in default of which the appellant was entitled to realize the entire amount in lump sum. They also held that the money which was found due from respondent 1 under the "bahi khata" account in addition to Rs. 3,500 was remitted having regard to his "labour and poverty". They further held that whatever amount was found due against respondent 2 under the 'bahi khata' account, the arbitrators awarded the entire amount to the appellant.

4. The appellant filed an application on February 13, 1946, for setting aside the award although the same had not been filed in court. The two partners and the arbitrators were arrayed as opposite parties. Various allegations were made in the application against the arbitrators, the awards being characterised as illegal, arbitrary, dishonest and in excess of the power of the arbitrator. It was asserted that the respondents 1 and 2 were guilty of falsification of accounts and misappropriation of the funds of the business and that no proper taking of accounts an amount of Rs. 31,793/ 3/6 would be found payable by them to the appellant. The arbitrators filed a written statement in which they traversed all the allegation of the appellant and defended the award as being within the scope of the arbitration agreement. Respondent 1 also filed a written statement controverting the allegations of

the appellant and denied that he was guilty of any falsification of accounts or embezzlement of funds. He totally denied his liability for any amount. On August 3, 1946, the appellant filed an application for withdrawal of his petition on the ground that it was premature. The Subordinate Judge allowed the application. The respondent 1 on the same day applied that a decree be passed in terms of the award, but this application was refused on the ground that the award should have been filed within the period of limitation.

The respondent 1 filed a revision to the High Court of Patna against this order and the High Court set aside the order of the trial court and remanded the case to it with a direction to entertain the application of respondent 1 after giving a opportunity to the appellant to refile his objections to the award. Thereupon proceedings began afresh in the court of the Subordinate Judge and the appellant filed fresh objections on December 2, 1947, stating 'Inter alia' that the arbitrators had no power to remit any portion of the liability found against respondents 1 and 2. The case was fixed for March 13, 1948. The appellants' counsel asked for time but the application was refused and the court passed 'ex parte' order on the same date making the award a rule of the court. The appellant filed an application under order IX, Rule 13 for setting aside the 'ex parte' order but it was dismissed. The appellant thereupon filed two appeals in the High Court at Patna, one against the order pronouncing judgment in accordance with the award and the other against the order refusing to set aside the ex parte order. Both the appeals were dismissed by a common judgment dated the 8th November, 1949. Leave to appeal was granted to the appellant under Article 133(1) of the Constitution.

5. A preliminary objection has been taken on behalf of the respondents that the order was one of affirmance and no leave should have been granted unless the High Court certified that the appeal involves some substantial question of law. It may be pointed out that so far as the dismissal of the appeal against the order refusing to set aside the ex parte order is concerned, the matter is closed and no application was filed by the appellant to reopen the matter by way of any application for leave to appeal to this court. So far as the order directing the award to be made a rule of the Court is concerned, the order of the High Court is to the following effect :

" It is certified that as regards the value and nature of the case, it fulfils the requirements of Article 133(1) of the Constitution of India".

There is no dispute about the valuation and though the order does not in terms mention that the case involves a substantial question of law, we are of opinion that the certificate was granted on that ground. There is no defect in the certificate and the preliminary objection is overruled.

6. The only question which arises for consideration before us in the appeal is whether the arbitrators acted within the scope of the powers conferred upon them by the agreement to refer to arbitration. Having heard the learned counsel for both the parties, we are of opinion that the arbitrators exceeded the scope of their authority and their award cannot be allowed to stand. It cannot be doubted that the dispute between the parties related to the question whether on taking accounts between the parties the respondents 1 and 2 were liable to pay any amount to the appellant. It must be borne in mind that the appellant was claiming against the respondents 1 and 2 a sum of Rs. 35,000 on the basis of 'bahi khata' accounts. The arbitrators were appointed to adjudicate this dispute and to decide whether the respondents 1 and 2 were liable to the appellant for any amount and if so what?

The agreement recites that the dispute is of long standing and the parties being anxious to avoid loss by recourse to litigation consider it desirable to have the dispute decided by the arbitrators. The

original agreement which is in Hindi uses the words "Jo kuchh tai tasfiya faisala karenge Fricain ko qabul o manzur hoga'. It goes on to say

"that the arbitrators should sit together, take down the statements of the parties, hear and consider the arguments brought forward by the parties, inspect the documents of all descriptions and take other evidence and evidence of witnesses and whatever award they shall give, is and shall be, acceptable to the parties and whatever award the arbitrators may give unanimously or by majority of votes shall be treated as true and correct and valid in every court and shall be binding upon all of us executants parties".

Reuben J., who wrote the judgment with which Sinha J. agreed, construed the words "Tai tasfiya and faisals" as meaning that the intention of parties was to give the arbitrators power to make concessions where such concessions appeared to them to be fair.

7. Mr. Isaacs, the learned counsel for the appellant, has not questioned the motives or 'bona fides' of the arbitrators and has confined his arguments to the 'question that the arbitrators were appointed to settle and decide the dispute about the liability of respondents 1 and 2 to the appellant in a proper and judicial manner but instead of doing so they granted partial exemption from liability to respondent 1 and total exemption to respondent 2 on extraneous considerations with the result that they exceeded the scope of their authority and their award was liable to be set aside. As already stated the appellant was to contribute the entire capital in the business while respondents 1 and 2 were to contribute only their labour and skill. The former was to get eight annas share in the profits while the latter were given four annas each. The award shows that both the respondents were found liable upon the 'bahi khata' account but the exact amount was not determined and though Rs. 3,500 out of a larger sum found due were awarded against respondent 1, the liability of respondent 2 was remitted 'in toto'. It is obvious that the arbitrators in not finding a specific sum to be due from respondents 1 and 2 to the appellant failed to decide the dispute as contemplate by the agreement to refer to arbitration. On the other hand they went out of their way to declare that whatever amount in addition to Rs. 3,500 was found due from respondent 1 upon the 'bahi khata' account was remitted having regard to his 'labour and poverty' and the whole unspecified amount found due against respondent 2 upon the same 'bahi khata' account was remitted in full in view of "his labour and poverty".

It is contended on behalf of the respondents that the word 'remitted' should be read in the sense of 'rejected', and that the amount so rejected should be taken to represent the amount which was due to fair remuneration for labour to the two respondents. This contention has no force. The respondents were to get profits in lieu of the labour and skill contributed by them and there can, therefore, be no question of any separate remuneration to be granted to them for labour and skill. The contention is also inconsistent with the suggestion that the claim was rejected on the ground of poverty. Either the claim was due or it was not; if it was, then the arbitrators had no power to reject it on the ground that the respondents were too poor to pay it. If it was not due, then the ground of poverty had no bearing upon it. It seems to us that the arbitrators negated the appellant's claim against the respondents on the extraneous ground that they had contributed labour and were men in poor circumstances as against the appellant who was alleged to be a rich man. The award thus arrived at was anything but a settlement of the dispute which had arisen between the parties and which had necessitate the reference to arbitration.

We are in agreement with the High Court that the agreement for reference to arbitration should be liberally construed by the court so as to lean in favour of upholding the award given by arbitrators, but that is no ground for sustaining the award where the arbitrators have clearly misdirected themselves and have exceeded the scope of their authority. The words in the agreement "Jo kuchh tai tasfiya faissala karenge Ham ko Kabool-o-manzoor hoga" on a proper interpretation were obviously intended to mean that the arbitrators were to put an end to the dispute by deciding the question of liability once for all and the parties were to abide by their decision but that cannot lead to the inference that the arbitrators were to travel outside the powers conferred upon them by the reference and were to decide the dispute on considerations wholly extraneous to it. So long as the arbitrators Act within the scope of their authority there can be no doubt that their decision must be accepted as valid and binding. In the present case however we are of opinion that the arbitrators acted in excess of their authority and the award must therefore be set aside.

8. We accordingly allow the appeal and set aside the award with costs to the appellant against respondents 1 and 2. We are informed that a suit for dissolution of partnership and accounts and for realization of Rs. 35,000/- was filed by the appellant against the respondents 1 and 2 on August 7, 1946, but the suit was stayed by the High Court until the decision of the appeal. The stay order will now stand vacated the suit will proceed in the trial court and be disposed of according to law.

Appeal allowed.

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