ALLAHABAD HIGH COURT

Sarju Prasad

Vs.

Civil Judge of Farrukhabad

Special Appeal No. 69 of 1959, against order and judgment of J. Sahai, J. in Civil Misc. Writ No. 1935 of 1958

(O.H. Mootham, C.J. and A.P. Srivastava, J.)

29.07.1958. 03.02.1959

JUDGMENT

Srivastava, J.

1. This is an appeal against an order of Mr. Justice Jagdish Sahai by which he rejected a petition filed by the appellant under Article 226 of the Constitution.
2. It appears that prior to the coming into force of the Zamindari Abolition and Land Reforms Act the appellant was an occupancy tenant of plot No. 208 of village Atrajpur, Tahsil Chaibramau, District Farrukhabad. The respondent No. 3 was the subtenant of the plot on behalf of the appellant and was entered in the papers as bila tasfia lagan. A dispute arose between the parties in respect of possession over the plot, and after proceedings under Section 145 of the Code of Criminal Procedure had been started, the dispute was referred to arbitration. The arbitrator decided that the appellant should have possession over half of the plot and the respondent No. 3 should have the other half, and that respondent No. 3 should be treated as a tenant on behalf of the appellant in respect of that half. In spite of the award the dispute between the parties continued. Though the appellant claimed that respondent No. 3 had removed his possession from his half of the plot the respondent No. 3 denied that fact. He claimed to have become the tenant of the entire plot on the ground that he had not actually been ejected from any portion of it and the suit for his ejectment from the appellant's half share had become time-barred. He filed a civil suit in the court of the Munsif claiming a declaration of his tenancy rights in respect of the plot. This suit was decreed by the trial court. While an appeal against the decree was pending consolidation proceedings were started in the village. An objection under Section 12 of the Consolidation of Holdings Act was filed in respect of the plot and both the appellant and respondent No. 3 claimed to be entitled to it. This dispute was referred by the Assistant Consolidation Officer to the Civil Judge. The Civil Judge referred the matter to an Arbitrator for decision. The reference was made under Section 12 of the Consolidation of Holdings Act. The

Arbitrator submitted an award. It was remitted by the Civil Judge to him again as he had left one point undecided. The arbitrator submitted a modified award and that respondent No. 3 had become the sirdar of the plot and the appellant was therefore not entitled to any portion of it.
The appellant filed an objection against the award before the Civil Judge and wanted the award to be set aside. The Civil Judge, however, found that the award was a good one and therefore confirmed it and declared respondent No. 3 to be the sirdar of the plot. The appellant then filed the writ petition out of which this appeal has arisen and wanted the award as well as the order of the Civil fudge refusing to set it aside to be quashed by a writ of certiorari. The learned Judge before whom the petition came up for hearing took the view that, because the decision of the Civil Judge was an appealable one, the appellant had an alternative remedy of filing an appeal against the decision before the District Judge. As he had no pursued that remedy, he could not, it was held, have recourse to Article 226 of the Constitution. On that ground the learned Judge refused to interfere and dismissed the petition.

3. The appellant has now come up in special appeal, and it is contended on his behalf that the learned Judge was not justified in his opinion that the decision of the Civil Judge was an appealable one. In fact, it is urged, the appellant had no alternative remedy against that decision of the Civil Judge and could therefore apply under Article 226 of the Constitution for the quashing of that order.

4. The only question that is to be decided in this appeal, therefore, is whether the order of the Civil judge was really an appealable order.

5. It is stressed on behalf of the appellant that under clause (6) of Section 12 of the Consolidation of Holdings Act the award of the Arbitrator was final and if it was final there was no question of is being challenged in appeal. If the award was final, the decision of the Civil Judge upholding it was also final, and it was therefore, not open to the appellant to challenge that order in appeal.

6. Clause (6) of Section 12 of the Consolidation of Holdings Act cannot however be considered in isolation from the other Provisions of the act and the rules framed there under. It is true that by that clause the award of the Arbitrator is declared to be final, but it cannot be said on that ground that the award cannot be challenged in any manner. The obvious meaning of the word 'final' as used in (6) of Section 12 of the Consolidation of Holdings Act appears to be that the award will not be directly open to appeal or revision. If a reference is made to Section 37 if the Act it will be found the that section clearly provides :

> "Where any matter is, by or under this Act, directed to be referred to an Arbitrator for determination, the Arbitrator will be appointed by the State Government from amongst Civil Judicial Officer or Assistant Collector of the 1st class of not less than five years' standing "and in all other respect the marker shall be determined in accordance with the provisions of the Arbitration Act. 1940." Rules have also been framed under the

Consolidation of Holdings Act and R. 63 of the Rules provides in its sub-rule (7) that the Arbitrator shall after signing the award give notice in writing to the parties of the making and signing thereof The record of the case shall thereafter be transmitted to the Civil Judge concerned after giving an intimation of the date on which the parties should appear before him. Then sub-rule (8) lays down-

"On the date so fixed, or any subsequent date to which the proceedings might be adjourned, the Civil Judge shall, with or without modifications made by him in accordance with the provisions of Section 15 of the Indian Arbitration Act, 1940, pronounce judgment in terms of he award, where he does not consider it necessary to remit the award under Section 16, or to set aside, the same under Section 30, of the aforesaid Act."

This rule has apparently been framed with reference to Section 37 of the Act, and, in spite of the fact that it was provided in clause (6) of Section 12 of the Act that the award was final, the rule provides that the award will be liable to be modified remitted or set aside under the various provisions of the Arbitration Act. It was therefore contemplated that objections could be filed against the award and could be considered by the Civil Judge. The Civil Judge could remit, modify or set aside the award under the provisions of the Arbitration Act only, on such objections being filed, as provided in Section 37 of the Act. In all other respects the matter was to be determined in accordance with the provisions of the Arbitration Act. The whole of the Arbitration Act including Section 39 therefore became applicable. According to Sub-Section (1) of that section an appeal could be filed against various orders of the court including an order setting aside or refusing to set aside an award. In the present case the Civil Judge, when an objection was made before him against the award, refused to set it aside. Under Section 39 this order of his could be challenged in appeal. Learned counsel has not been able to satisfy us that Section 39 of the Arbitration Act not applicable to the case. The learned Judge dealing with the petition of the appellant was therefore quite justified in his view that the order of the Civil Judge which was sought to be impugned was an appealable order. The appellant thus had an alternative remedy. For reasons best known to him he did not pursue that remedy. On account of that omission he could not expect this Court to exercise ii his favor its discretion under Article 226 of the Constitution. It is true that the existence of an alternative remedy is not by itself an absolute bar to the exercise of its jurisdiction by this Court under Article 225. It is however, a matter to be taken in consideration while deciding whether the powers under the Article are to be exercised in a particular case. In the present case keening in view the fact that an alternative remedy was open to the appellant but had not been followed by him the learned Judge derived to interfere. We do not think he was unjustified in doing so.

7. We, therefore, find no merits in this appeal. It is accordingly dismissed.
Appeal dismissed.