

CALCUTTA HIGH COURT

Firm Tolaram-Nathmull

Vs

Firm Mahomed Valli Patel

(Panckridge ,J.)

09.05.1939

JUDGMENT

Panckridge, J.

1. This is an application under Order 21, Rule 50(2). There is a firm of the name of Mahomed Valli Patel, to which I shall refer as the buyers. There is another firm of the name of Tolaram Nathmull, to which I shall refer as the sellers. These two firms entered into a contract for the sale and purchase of jute on 15th July 1935. Eventually there were disputes, and the sellers referred the matter to the Bengal Chamber of Commerce in terms of the arbitration clause contained in the contract. The Chamber made their award by which they directed that the buyers should pay the sellers Rs. 2625 as compensation, and. Rs. 270 as the costs of the arbitration. The award has been filed in Court, and is therefore liable to be executed as if it were a decree, The sellers have now taken out this summons against three persons, Mahomed Valli Patel, Amiji Valli Patel and Abdul Rahman Habib, Patel, asking for leave to execute, the award, against them as partners in the buyer's firm.

2. Mahomed Valli Patel and Amaji Valli Patel do not appear to show cause, and leave to execute the award as against them will be granted. Abdul Rahman Habib Patel however has appeared to show cause. He admits that he was a partner of the firm of Mahomed Valli Patel at the date of the contract between the buyers and sellers. Mr. Chowdhury for the sellers maintains that this admission concludes the matter. Mr. S.N. Banerjee for Abdul Rahman contends that his client should be given an opportunity of disputing his liability by establishing that the contract of sale was beyond the scope of the partnership. He says that contracts for sale or purchase of jute were not within the scope of the partnership, and he also says that the individual partners had no authority on behalf of the partnership to refer disputes between the firm and persons with whom the firm had dealings to arbitration. That Mr. Banerjee is entitled to resist the application on these grounds is supported by the authority of *Bhagwan Manaji v. Hiraji Premaji*'

3. Having considered that case and the language of Order 21, Rule 50(2), I have come to the conclusion that Mr. Banerjee's submission must prevail. The sub-rule says that the Court may grant leave to execute where the liability is not disputed, or, where such liability is disputed, may order the liability of such persons to be tried and determined. This language is sufficiently wide to permit a person desiring to dispute his liability as a partner to do so, not only on the ground that he is not a partner, but on other grounds as well. I should be disinclined to hold that the sub-

rule entitles a person to dispute liability on grounds such as denial of the contract, or limitation, or accord and satisfaction, which go to the root of the suit, but as Mr. Banerjee does not propose to press his submission that the contract was a gaming and wagering contract, I need not decide that point. I think however that Mr. Banerjee is entitled to raise all questions which affect his client's liability qua partner. I therefore direct that the issue be tried whether Abdul Rahman has no liability under the award on the ground that the contract was beyond the scope of the partnership because it was a contract for the sale and purchase of jute, and in so far as it contained an arbitration clause. In his affidavit in reply, Mr. Chowdhury has asserted that Abdul Rahman took an active part in the arbitration, and on that basis an issue will also be tried whether, if the contract was beyond the scope of the partnership in respect of the matters to which I have referred, Abdul Rahman subsequently ratified it, and is liable on the basis of such ratification. Any documents that the parties desire to disclose will be disclosed by letter within the course of the next week. I set down the matter for trial of these issues a fortnight hence.

Cases Referred.

¹(1932) 19 A.I.R. Bom. 516