LAHORE HIGH COURT

Hafiz Qamar Din

Vs

Nur Din

(Agha Haidar, J.)

15.10.1935

ORDER

Agha Haidar, J.

1. This is an application in. revision. It arises out of the following circumstances : Nur Din is the author of a certain book called Lama' at-i-Nur. Qamar Din is a publisher. The author and the publisher entered into an agreement on 25th July 1924. That agreement is on the record. The publisher had agreed to print 3,000 copies and this publication was to constitute the first edition of the work. He was at liberty to publish these 3,000 copies at once or by instalments. It is admitted that the publisher-published only 1,000 copies during the ten years that elapsed between the date of the partnership and the dispute which arose between the parties subsequently in 1934. The book, it may be mentioned, was in existence on the date on which the deed of partnership was executed. Differences arose between the parties and on 2nd February 1934 they referred them to the arbitration of Mr. Fazal Din, a, Vakil. It is recited in the reference that the parties are desirous of ending the partnership and appoint Mr. Fazal Din, Vakil, as their arbitrator, empowering him to dissolve the partnership and that his decision in respect of all matters in dispute, arising out of the partnership shall be accepted by the partners who would have no right to raise any objection. On 29th June 1934 the award was delivered by the arbitrator. Under this award a sum of ₹ 1,500 was allowed as damages to Nur Din, the author, on the ground that Qamar Din has not published the remaining 2,000 copies. There were two minor items which were not pressed and which may be left out of consideration. On the delivery of this award an application was made on 27th August 1934 by Nur Din in the Court of the Subordinate Judge under the provisions of Schedule 2, Para. 20, Civil P. C, for filing the award with a prayer that the Court may grant a decree in terms of the award. Various objections were filed by Qamar Din, but it is necessary to consider only two of these objections:

(1) That the applicant, namely Nur Din, was precluded under the provisions of Section 69, Partnership Act 9 of 1932, from taking proceedings under Schedule 2, Para. 20 ;
(2) that the arbitrator had exceeded his authority inasmuch as no power was given to him

to assess damages, and in spite of the absence of such a power being conferred upon him, he gave a substantial sum of ₹ 1,500 as damages against the respondent Qamar Din ;

(3) the judicial misconduct of the arbitrator was also pleaded.

2. The trial Court accepted the first two of these objections and setting aside the award, dismissed the application of the applicant, Nur Din. Nur Din went up in appeal to the learned District Judge under the provisions of Section 104 (1)(f), Civil Procedure Code The learned Judge has held that the proceedings taken by Nur Din, applicant, under Schedule 2, Para. 20, were not obnoxious to the provisions of Section 69, Partnership Act, and further held that under the circumstances of the case the arbitrator could award damages to the applicant against the publisher, Hafiz Qamar Din. As the question of misconduct had not been decided by the trial Court, the learned Judge remanded the case for the decision of that question. Qamar Din has come up to this Court in revision under Section 115, Civil Procedure Code Mr. Akbar Ali, his learned Counsel, has argued this application at considerable length, and, I must say, with considerable ability. His case is that under the provisions of Section 69, Partnership Act, Act 9 of 1932 no suit was entertainable by or on behalf of any person suing as a partner in a firm against any person who is alleged to be a partner in the firm unless the firm is registered and the person suing is or has-been shown in the Register of firms as a partner in the firm. The partnership in the present case had not admittedly been registered and therefore the applicant could not have recourse to the civil Court by initiating proceedings under Para. 20, Schedule 2, Civil Procedure Code This is a highly technical objection and a technical answer can be given to it.

3. The word used in Section 69 (1), Partnership Act is "suit", and under Schedule 2, Para. 20, the party is authorised to apply to any Court having jurisdiction and the application shall be in writing and shall be numbered and registered as a suit between the applicant-plaintiff and the opposite party as defendant. It follows therefore that only a "suit" as understood in forensic language was excluded and not an application such as is contemplated in para. 20, Schedule 2. The word "suit" has not been defined, but it has been described in various authorities. One indicia of a suit is that it begins with a plaint. Now it is perfectly clear that an application under Schedule 2, Para. 20, is not a plaint. The language of the paragraph is entirely against the contention that the application is a plaint. The proceedings may be treated as a suit for certain purposes, but they are not a suit properly so called. No direct authority has been pointed out to me contrary to this view and in the absence of such authority I overrule this contention of the learned Counsel. I may also point out that under Section 69, Sub-section 3 (a), the provisions of Sub-section 1 are not to affect the enforcing of any right to sue for the dissolution of partnership. The arbitration proceedings were on the face of them taken for the purposes of the dissolution of partnership and. on that ground too the proceedings under Schedule 2, Para. 20, would be protected.

4. As regards the second point, it is true that there is no specific provision either in the deed of partnership of 25th July 1924 or in the agreement to refer to arbitration dated 2nd February 1934

about the assessment of damages ; but Clause 4 of the deed of partnership is comprehensive enough to cover the awarding of damages. It runs as follows:

> The present partnership is confined only to the first edition and the number of copies printed in the first edition is 3,000. Deponent 2 has the option to print the full number of the first edition at once or in two installments....

5. Admittedly this was not done and during the ten years that passed between the date of the deed of partnership and the dispute between the parties only 1,000 copies were printed. Before the arbitrator the following statement was made by the publisher Hafiz Qamar Din on 14th March 1934:

> Condition 4 of the deed of partnership is correct. I am ready to publish 2,000 copies according to condition 4 and to sell them if I am given reasonable time. If within the time given I fail to print that number or if I do not print that number at all, then I shall be liable to pay such compensation as the arbitrator might award.

6. From this it would appear that the publisher admitted the breach and wanted time to make good the breach by supplying the deficiency and publishing the total number. The arbitrator did not give him time. The breach therefore remained and the arbitrator assessed damages for the breach at ₹ 1,500. The sum appears to be somewhat excessive, but an arbitrator has full power and jurisdiction to make his own award and it does not lie in the mouth of the applicant in this Court to challenge the award of the arbitrator on this point. In my opinion the order of the. Court below was correct. The question of the judicial misconduct will have to be decided by the proper Tribunal and at the proper time with which I am not concerned ; but, on a consideration of the whole case I have no hesitation in accepting the decision of the two Courts below on. the points raised. 'The application therefore is dismissed. I make no order as to costs.

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