Nihaluddin Vs Tej Pratap Singh and Others

Court: Allahabad High Court

Date of Decision: Jan. 17, 1966

Acts Referred: Contempt of Courts Act, 1971 â€" Section 3
Uttar Pradesh Consolidation of Holdings Act, 1953 â€" Section 12, 37

Citation: AIR 1968 All 157

Hon'ble Judges: G. Kumar, J

Bench: Single Bench

Advocate: A.D. Giri, for the Appellant; T. Rathore, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Kumar, J.
The facts giving rise to this application are that a case u/s 145 Cr. P.C. was pending between Nihaluddin on the one hand

and Ahmadi Begum etc. on the other, in the Court of the S.D.M. Sadar, Gorakhpur. During the pendency of the case the disputed properties

consisting of agricultural holdings, groves, trees and bazars etc. were attached and were placed under the supurdgi of one Ram Rekha. By his

order dated 3-5-1965 the S.D.M. found that Smt. Ahmadi Begum was in peaceful possession of the disputed properties. Accordingly he ordered

the release of the attach-pd properties in her favour.

2. Admittedly a case under the U.P. Consolidation of Holdings Act (as it stood before its amendment by U.P. Act No. 38 of 1958) was pending

between the parties in which there was a dispute of title pertaining to the properties in question. Accordingly the Consolidation Officer had referred

the question of title for determination to the Civil Judge, Gorakhpur, who, in his turn, had referred it to the Judicial Officer, Bangaon, at Gorakhpur,

who was the Arbitrator appointed by the State Government in accordance with the provisions of Section 37 of the U.P. Consolidation of Holdings

Act. Hence the present applicant obtained an order of injunction on 3-5-1965 from the said Arbitrator to the effect that Ram Rekha Supurdar shall

continue as such and would not deliver possession of the attached properties to any party. The above order bearing the seal and signature of the

Arbitrator was received by Ram Rekha Supurdar at Gorakhpur in the afternoon of 3-5-65 (Ext. Ka. 1). The said Supurdar reached back his

village at about 5 P. M. the same evening (3-5-65). It appears that armed with a copy of the order of release dated 3-5-65 passed by the S.D.M.

Sadar in favour of Smt. Ahmadi Begum, her Pairokar went straight to the police station on the evening of 3-5-1965 and took with him S.I. Tej

Pratap Singh (opposite party No. 1) to the village in order to obtain delivery of possession of the properties on behalf of the lady. It is noteworthy

that the robkar of release had fixed 10-5-1965 for its return to the S.D.M. after compliance. The Sub-Inspector had also taken with him constable

Mohar Dutt Pandey, when he went to village Karmoha Buzurg, where the disputed properties are situate. The party reached the village at about 7

p.m. The Sub-Inspector stopped in a grove at the outskirts of the village and sent his constable to the house of Ram Rekha Supurdar situate in the

neighbouring Khuthan.

3. From this stage there is considerable difference between the versions of the petitioner and the opposite party. According to the petitioner, Ram

Rekha Supurdar had shown the injunction order of the Arbitrator (Ex. Ka. 1) to constable Mohar Dutt Pandey but had expressed his inability to

hand over possession of the properties to anybody. The Supurdar is alleged to have shown the said order to S.I. Tej Pratap Singh as well about

two hours later, when he met the Sub-Inspector in the grove where he was camping. The case of petitioner further is that in spite of the restraint

order of the Arbitrator having been shown to the constable and the Sub-Inspector, the latter proceeded with the paper transaction of delivering the

properties to the Pairokar of Smt. Ahmadi Begum, though in point of fact no actual possession was delivered to him. The allegation of the

petitioner, therefore, is that S. I. Tej Pratap Singh (opposite party No. 1) had committed contempt of the court of the Judicial Officer, Bansgaon

(Arbitrator) by flouting his order of injunction dated 3-5-1965.

4. On the other hand, the case of opposite party No. 1 is that when his constable Mohar Dutt Pandey met Ram Rekha Supurdar at his house, the

latter did not show him any order of the Judicial Officer (Arbitrator), nor orally informed him about it, nor met him in the grove or any where else

that evening. The respondent''s case further is that when constable Mohar Dutt Pandey returned to the grove and informed the Sub-Inspector that

Ram Rekha Superdar had refused to accompany him, the Sub-Inspector followed by his constable Mohar Dutt Pandey, reached Ram Rekha''s

house at about 7.45 P.M. when they were told that Ram Rekha aforesaid had lust gone out. In spite of search being made, Ram Rekha could not

be found; so they both returned to the grove at about 8 P.M. and then delivered possession of the properties to the Pairokar of Smt. Ahmadi

Begum by beat of drum.

5. Tej Pratap Singh respondent. Constable Mohar Dutt Pandey and Ram Rekha Supurdar have been examined by me in Court. The first two

naturally support the version of the respondent, while Ram Rekha supports the petitioner"s case and definitely deposes that he had shown the

injunction order of the Judicial Officer (Arbitrator) to the Constable as well as to the Sub-Inspector. However he states that he met the Sub-

Inspector at about 9 P.M. when he reached the grove and it was then that he had shown the order (Ext. Ka. 1) to the Sub-Inspector, who

informed him (Ram Rekha) that he had already delivered formal possession of the properties to the Pairokar of Smt. Ahmadi Begum.

6. I have not been impressed by the deposition of the opposite party (Tej Pratap Singh) and his constable Mohar Dutt Pandey, who have not

come forward with the truth, when they state that the Supurdar had not shown them the aforesaid order of the Judicial Officer and that he had not

met the Sub-Inspector at all on the evening in question. On this point the statement of Ram Rekha Supurdar is reliable. I have also been impressed

by his demeanour in court. To me he appeared to be a truthful and impartial witness. He is admittedly the Pradhan of Village Khuthan The

Magistrate had obviously considered Ram Rekha to be an independent and reliable person, when he had appointed him as Supurdar of the

properties in question, which were of appreciable value. Even Mohar Dutt Pandey constable admitted that Ram Rekha was the Pradhan of village

Khuthan and was a respectable zamindar. I believe the deposition of Ram Rekha Supurdar to the effect that he had shown the injunction order of

the Judicial Officer to the constable, when he had first met him at his house and also to the Sub-Inspector when he had later on met him in the

grove at about 9 P.M.

7. The circumstances of the case also show that Ram Rekha had really shown the injunction order of the Judicial Officer to the constable and the

Sub-Inspector when they had gone to deliver possession of the disputed properties. It has not been challenged by the respondent that the Judicial

Officer had passed the injunction order on 3-5-65, which had been received by Ram Rekha Supurdar in the court at Gorakhpur and that he had

returned to his house before the Sub-Inspector and his constable arrived in village Karmoha Buzurg to deliver possession to Smt. Ahmadi Begum

in compliance with the order of the Sub-Divisional Magistrate. Constable Mohar Dutt Pandey actually admits that he had met Ram Rekha on the

evening of 3-5-1965 and had had a talk with him, but the Supurdai refused to accompany him to the grove where the Sub-Inspector was camping.

It is, therefore, but natural that when the constable met Ram Rekha in connection with the delivery of the properties to Smt. Ahmadi Begum, the

Supurdar must have shown him the order of the Judicial Officer (Ex. Ka. 1), which he had already received earlier in the day from the court of the

Judicial Officer, Bansgaon. The Supurdar admittedly did not go with the constable to the grove where the S.I. was camping. This also indicates

that the Supurdar had shown the injunction order to the constable and that is why he did not consider it necessary to go with the constable to

deliver possession of the properties in question.

8. it has been strenuously argued on behalf of the respondent that even if it is believed that the Supurdar had shown the restraint order of the

Judicial Officer to the constable and the Sub-Inspector, the latter would not be guilty of contempt, inasmuch as (1) the Judicial Officer who had

issued the injunction order in question was not a ''court'' within the meaning of Section 3 of the Contempt of Courts Act but was merely an

Arbitrator; (2) being an Arbitrator he had no jurisdiction to issue the order of injunction (Ex. Ka. 1); and (3) in any case, there is no evidence on

record to show that the constable was a lawful agent of the Sub-Inspector or that he had really informed the S.I. that the Supurdar had shown him

the aforesaid injunction order, before the possession of the properties delivered to Smt. Abmadi Begum in compliance with the directions of the

Sub-Divisional Magistrate. It is remarkable that these pleas were put forward for the first time at the stage of arguments.

9. Unfortunately the words ''Court'' on ''the court subordinate to the High Court'' have not been defined in the Contempt of Courts Act or the Civil

Procedure Code. Learned counsel for the respondent has however, urged that the word ''court'' as defined ''in Section 3 of the Evidence Act,

should be accepted for the purposes of proceedings u/s 3 of the Contempt of Courts Act. u/s 3 of the Evidence Act ""court includes all Judges and

Magistrates and all persons, except arbitrators, legally authorised to take evidence"". This argument is wholly fallacious because the word ''court'' as

defined in the Evidence Act is only for the purposes of that Act, as held by the Supreme Court in the cases to be mentioned instantly. For the

purpose of Contempt of Courts Act, broadly speaking: (a) a Court is that person. Tribunal or authority which has been permanently constituted by

the State for the administration of Justice; (b) the pronouncement of such person, Tribunal or authority must be a decisive judgment binding on the

parties; (c) such person, authority or Tribunal must arrive at its decision on the evidence which the parties have a right to adduce; (d) he or it must

possess authority to summon parties and then witnesses to compel production of documents and to take evidence; and (e) he or it must possess

power to have his or its judgment, decree or order enforced against the parties.

10. in this connection the following authorities have been cited at the Bar:

1. Brajnandan Sinha Vs. Jyoti Narain,

2. Shri Virindar Kumar Satyawadi Vs. The State of Punjab,

3. Hanskumar Kishanchand Vs. The Union of India (UOI),

4. Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others,

5. The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd.,

Bombay,

6. Ram Saran Tewari Vs. Raj Bahadur Varma and Others,

11. in Brajnandan Sinha Vs. Jyoti Narain, while dealing with the question as to whether a Commissioner appointed under Public Servants

(Inquiries) Act 37 of 1950, is a court for the purposes" of the Contempt of Courts Act, their Lordships of the Supreme Court observed as under;

Section 3, Evidence Act (I of 1872) defines "court" as including all Judges and Magistrates, and all persons, except arbitrators, legally authorised

to take evidence. This definition, however, has been held to be not exhaustive but framed only for the purpose of Evidence Act .....

The pronouncement of a definitive judgment is thus considered the essential "sine qua non" of a Court and unless and until a binding and

authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court ..... Both

finality and authoritativeness were the essential tests of a judicial pronouncement.

Likewise in Shri Virindar Kumar Satyawadi Vs. The State of Punjab, reported in the same volume, while dealing with the question whether a

Returning Officer appointed under the Representation of the People Act was a Court, the Supreme Court laid down:--

..... it may be stated broadly that what distinguishes a Court from a quasi-judicial Tribunal is that it is charged with a duty to decide disputes in a

judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a

matter of right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance

with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial Tribunal,

what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

We have now to decide whether in view of the principles above stated and the functions and powers entrusted to the Returning Officer under the

Act, he is a court .....the Returning Officer has to examine the nomination paper and decide all objections which may be made thereto. This power

is undoubtedly judicial in character. But in exercising this power, he is authorised to come to a decision ""after such summary enquiry, if any, as he

thinks necessary."" That means that the parties have no right to insist on producing evidence which they may desire to adduce in support of their

case.

There is no machinery provided for summoning of witnesses, or of compelling production of documents in an enquiry u/s 36. The Returning Officer

is entitled to act "suo motu" in the matter , in other words, the function of the Returning Officer acting u/s 36 is judicial in character, but he is not to

act judicially in discharging it. We are of opinion that the Returning Officer deciding on the validity of a nomination paper is not a court.. . . . .

12. in the 1958 case of Hanskumar Kishanchand Vs. The Union of India (UOI), the Supreme Court was concerned with the status of an

Arbitrator appointed u/s 19(1)(b) of the Defence of India Act. In this connection their Lordships held:--

There is thus a sharp distinction between a decision which is pronounced by a Court in a cause which it hears on merits, and one which is given by

it in a proceeding for the filing of an award. The former is a judgment, decree or order rendered in the exercise of its normal jurisdiction as a civil

court, . . The latter is an adjudication of a private Tribunal with the imprimatur of the Court ""stamped on it, and to the extent that the award is

within the terms of the reference, it is final . . . The position in law is the same when the reference to arbitration is made not under agreement of

parties but under provision of a statute. The result of those provisions again is to withdraw the dispute from the jurisdiction of the ordinary courts

and to refer it for the decision of a private Tribunal. That decision is an award, and stands on the same footing as an award made on reference

under agreement of parties.

Nor does it make any difference in the legal position that the reference under the statute is to a Court as arbitrator. in that case, the Court hears the

matter not as a civil court but as persona designate and its decision will be an award not open to appeal under the ordinary law applicable to

decisions of Courts. A statute, however, might provide for the decision of a dispute by a Court as Court and not as Arbitrator in which case its

decision will be a decree or order of Court in its ordinary civil jurisdiction and that will attract the normal procedure governing the decision of that

Court, and a right of appeal will be comprehended therein. ..... The decision of the Arbitrator appointed u/s 19(1) (b) is expressly referred to in

section 19(1)(f) as an award ..... In our view, a proceeding which is at the inception an arbitration proceeding must retain its character as

arbitration, even when it is taken up in appeal, where that is provided by the statute,

13. In Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, of 1961, the Supreme Court was dealing with the question as to

what is a "court" or a "tribunal" within the meaning of Article 136 of the Constitution of India. It was held by the Supreme Court: ""The definition in

the Indian Evidence Act is not exhaustive, and it is for purposes of that Act ..... All Tribunals are not courts, though all courts are Tribunals. The

word "court" is used to designate those Tribunals which are set up in an organised State for the administration of justice. By "administration of

justice" is meant exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs".

With the growth of civilization and problems of modern life, a large number of administrative Tribunals have come into existence. These Tribunals

have the authority of law to pronounce upon valuable rights; they act in judicial manner and even on evidence on oath, but they are not part of the

ordinary courts of civil judicature. They share the exercise of judicial powers of the State, but they are brought into existence to implement some

administrative policy or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts .....

By ""courts"" is meant courts of civil judicature and by ""Tribunals,"" those bodies of men who are appointed to decide controversies arising under

certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes

of the State and is aptly called the judicial power of the State. In the exercise of this power a clear division is thus noticeable. Broadly speaking,

certain special matters go before Tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedure may differ, but the

functions are not essentially different What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is

that courts have ""an air of detachment"". But this is more a matter of age and tradition and is not of the essence.

Hidayatullah. J.. expressed himself thus:--

In my opinion, a court is in the strict sense a Tribunal which is a part of the ordinary hierarchy of courts of civil judicature maintained by the State

under its Constitution to exercise the judicial power of the State. These courts perform all the judicial functions of the State except those that are

excluded by law from their jurisdiction in the term "court" are included the ordinary and permanent Tribunals and in the term "Tribunal" are

included all others, which are not so included.

14. in The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd.,

Bombay, of 1963, the Supreme Court was concerned with the question whether an ''Arbitrator'' acting u/s 10A of the Industrial Disputes Act,

1947, was a Tribunal. It was observed :--

..... The Arbitrator u/s 10A is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is

given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be

possible to describe such an Arbitrator, as in a loose sense, a statutory Arbitrator ..... But the fact that the Arbitrator u/s 10A is not exactly in the

same position as a private Arbitrator, does not mean that he is a Tribunal under Article 136 (of the Constitution). Even if some of the trappings of a

court are present in his case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State''s

inherent judicial power. As we will presently point out, he is appointed by the parties and the power to decide the dispute between the parties who

appoint him is derived by him from the agreement of the parties and from no other source. The fact, that his appointment once made by the parties

is recognised by Section 10A and after his appointment he is clothed with certain powers and has thus, no doubt, some of the trappings of a court,

does not mean that the power of adjudication which he is exercising is derived from the State and so, the main test which this Court has evolved in

determining the question about the character of an adjudicating body is not satisfied. He is not a Tribunal because the State has not invested him

with its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement of the parties.

15. in the Full Bench decision of Ram Saran Tewari Vs. Raj Bahadur Varma and Others, the question was whether the Nayaya Panchayat

established under the U.P. Panchayat Raj Act was a court subordinate to the High Court within the meaning of Section 3 of the Contempt of

Courts Act The majority view was that the Nayaya Panchayats established under the U.P. Panchayat Raj Act, 1947, were ''courts'' and that they

were also ''courts subordinate to the ''High Court'' within the meaning of Section 3 of the Contempt of Courts Act, inasmuch as supervisory

jurisdiction of the High Court under Article 227 of the Constitution of India was sufficient test of judicial subordination. In his final order Broome,

J., also laid down :--

Nayaya Panchayats .... art; part of the hierarchy of courts established by law in this country and so long as they continue to function they must be

held to be entitled to the privilege that all courts enjoy of being immune from attacks that tend to scandalise them or undermine their dignity and

prestige.

16. in the light of the above weighty pronouncements, let us find out whether an Arbitrator appointed by the State u/s 37 read with Section 12 of

the U P. Consolidation of Holdings Act, 1953 (hereinafter called "the Act") and the rules framed thereunder is a "court subordinate to the High

Court" within the meaning of Section 3 of the Contempt of Courts Act. For this purpose it would be necessary to examine some of the sections of

the Act and the rules framed thereunder, as also certain provisions of the Arbitration Act. Section 37 of the Act runs as under :--

(1) ""Where any matter is, by or under this Act directed to be referred to an Arbitrator for determination, the Arbitrator shall be appointed by the

State Government from amongst Civil Judicial Officers or Assistant Collectors of the First Class of not less than five years" standing and in all other

respect the matter shall be determined in accordance with the provisions of the Arbitration Act, 1940.

(2) The appointment of an Arbitrator under Sub-section (1) may be made either generally or in respect of any particular case or class of cases or

in respect of any specified area or areas.

17. The very name and object of the Act shows that it is only a temporary or transitory Act and is not a permanent enactment. The object of the

Act is to consolidate small holdings into compact blocks in order to afford various facilities and better control thereof. Once this object is attained

by consolidation of the holdings, the Act may cease to be operative. For the same reason the various persons, authorities or Tribunals appointed to

work the Act are also of temporary nature i.e., to be effective only during the continuance of the Act. Therefore, even though an Arbitrator is

appointed by the State u/s 37 of the Act, he cannot be considered to be permanently constituted by the State for the administration of justice nor

can he be called a part of the ordinary hierarchy of courts of civil judicature maintained by the State"" as envisaged by their Lordships of the

Supreme Court in Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, particularly when subsection (2) of Section 37 itself

provides that the appointment of an Arbitrator may be made either generally or in respect of any particular case or class of cases or in respect of

any particular case or class of cases or in respect of any specified area or areas. Such an Arbitrator obviously is not a "court" but is merely a

statutory arbitrator.

18. Under Sec. 12(4) of the Act, the question of title between the parties is referred by the Consolidation Officers to the Civil Judge having

jurisdiction and the Civil Judge, in his turn, refers it for decision to the arbitrator. It is true, that under Sub-section (6) of Section 12 ""The decision

of the arbitrator under Sub-section (4) shall be final"". ""But the finality of the arbitrator''s decision suffers from all the infirmities of an award by a

private arbitrator. Section 37 of the Act itself provides that in all other respects the matter shall be determined in accordance with the provisions of

the Arbitration Act, 1940. The powers of the Arbitrator and the procedure to be followed by him are laid down in Rule 63 of the U.P.

Consolidation of Holdings Rules, the relevant portions whereof are quoted as under:--

(4): On receipt of the record, the Civil Judge shall frame such issues as may be necessary and refer them to the Arbitrator appointed in

accordance with the provisions of Section 37, for making the award within a specified period, and intimate the parties of the date on which they

should appear before the Arbitrator and obtain their signatures or thumb impressions in token of the information.

6. On receipt of the reference, the Arbitrator shall afford the parties an opportunity to produce oral evidence such further documentary evidence as

may be necessary, before making the award.

7. Where the Arbitrator has made the award, he shall sign it and give notice in writing to the parties of the making and signing thereof. The record

of the case shall thereafter be transmitted by him to the Civil Judge concerned after intimation of the date on which the parties should appear before

him.

8. On the date so fixed, or any subsequent date to which 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 the award,

where he does not consider it necessary to remit the award u/s 16, or to set aside the same u/s 30 of the aforesaid Act.

10. After the judgment has been pronounced, the Civil Judge shall issue direction to the Consolidation Officer concerned for making necessary

correction in the records. The file shall, thereafter, be consigned to the record room.

Similar are the provisions in the Arbitration Act, which has been made applicable to proceedings before the Arbitration by Section 37 of the Act.

Section 46 of the Arbitration Act itself lays down:

The provisions of this Act .....shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were

pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with

that other enactment or with any rules made thereunder"".

19. Likewise Section 47 of the Arbitration Act lays down:

Subject to the provisions of Section 46, and save is so far as is otherwise provided by any law for the time being in force, the provisions of this

Act shall apply to all arbitrations and to all proceedings thereunder.

20. The Arbitrator has no power to summon or enforce the attendance of parties or other witnesses, nor to compel the production of the

documents which may be necessary to be examined, in order to give a proper award. u/s 43 of the Arbitration Act it is the Court (and not the

Arbitrator) who has authority to issue process to the parties and their witnesses whom they or the Arbitrator want or wants to examine. It is again

the Court which would enforce the production of documents before the Arbitrator. Thus the Arbitrator again lacks the power to enforce the

production of parties, their witnesses and documents, which is a distinguishing feature of Courts. However, u/s 13(d) of the Arbitration Act the

Arbitrator has authority to administer oath to the parties and witnesses produced before him. Likewise, under Sub-section (e) the Arbitrator has

authority to administer to any party to the arbitration such interrogatories as may in his opinion be necessary. In these respects the Arbitrator has a

power similar to that of a court. u/s 14, the Arbitrator, after signing the award, has to give notice in writing to the parties of the making and signing

thereof and has to file it in court. u/s 15 the Court may modify or correct an award on any of three grounds mentioned in this Section.

21. u/s 17 of the Arbitration Act it is provided:

''Where the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the

court shall. . .... proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no

appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

22. Thus the decision of an Arbitrator does not attain finality or become of binding nature till it merges into a judgment of the court and forms part

of its decree. Therefore it is the judgment or decree of the court (and not the award of the Arbitrator) which is really enforceable against the party

or parties concerned. Here again the Arbitrator lacks the qualification of a court.

23. u/s 18, it is again the court which can pass interim orders of stay or injunction where a party seeks to defeat, delay or obstruct the execution of

any decree that may finally be passed against him in terms of the award Here also the Arbitrator lacks the necessary power which distinguishing a

court.

24. u/s 30, the award can be set aside on three grounds mentioned in that section. Thus, although Section 12(6) of the Act makes the decision of

the Arbitrator final, its finality is of a very limited nature; inasmuch as, it cannot be executed or given effect to without the stamp of the Civil Judge

concerned. Its finality is only confined to the fact that no appeal directly lies against the award of the Arbitrator.

25. in Sayeed Ullah Khan Vs. The Temporary Civil Judge of Sultanpur and Others, Jagdish Sahai, J., had aptly held that the words ""The decision

of the Arbitrator shall be final"" u/s 12(6) of the U.P. Consolidation of Holdings Act mean that it shall be final subject to the provisions of the Indian

Arbitration Act, which has been made applicable to an arbitration under the U.P. Consolidation of Holdings Act; and that Sub-section (6) of

Section 12 must be read along with Section 37 of the Act. The learned Judge further observed that from the provisions of Section 12(4) of the Act

and Rule 63 of the U.P. Consolidation of Holdings Rules it was clear that the decision of the Arbitrator was final u/s 12(6) only after the award had

been made a rule of the Court and that the provisions of the Indian Arbitration Act had been made applicable to an award under the U.P.

Consolidation of Holdings Act, both by virtue of Sections 46 and 47 of the Arbitration Act and also by Section 37 of the U.P. Consolidation of

Holdings Act.

26. Similarly in Sarju Prasad Vs. The Civil Judge of Farrukhabad and Others, a Division Bench of this Court observed that Clause (6) of Section

12 of the Consolidation of Holdings Act could not be considered in isolation from the other provisions of the Act end the rules framed thereunder.

It is true that by Clause (6) of Section 12 of the Act the award of the Arbitrator is declared to be final, but the obvious meaning of the word ''final''

as used therein appears to be that the award will not be directly open to appeal or revision.

27. From the above discussion of the law and authorities it is abundantly clear that although the Judicial Officer, Bansgaon, who was acting as an

Arbitrator in the instant case, had some of the trappings of the court, yet he was really not a court in the true sense of the word, inasmuch as he

was not a tribunal or authority permanently constituted by the State for the administration of justice; his pronouncement was not decisive and of

binding nature on the parties; he did not possess authority to summon parties, their witnesses nor to compel production of documents, he also did

not possess the power to have his decision or judgment directly enforced against the parties: nor had he the authority to issue the injunction order

Ex, Ka. 1 The lack of all these distinguishing features initiates against the Arbitrator being described as ''court'' The Arbitrator not being a court,

not having authority to issue-- the order of stay or injunction in question, the opposite party could not be held guilty of contempt of court in having

overlooked his order, dated 3-5-1965 (Ex Ka. 1).

28. in the result, I dismiss this application and discharge the notice issued to opposite party Tej Pratap Singh. No further action against him is called

for. But in view of the fact that he had not come forward with a true case and had further withheld his pleas till the stage of argument, I direct him

to pay Rs. 100 as costs to the Government Advocate Shri J.R. Bhatt within two months from today.