

Mahesh and Another Vs Ramadhin and Others

None

Court: Allahabad High Court

Date of Decision: Nov. 17, 1879

Citation: (1880) ILR (All) 471

Hon'ble Judges: Robert Stuart, C.J; Oldfield, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Robert Stuart, C.J.

A preliminary objection is taken by the plaintiffs, respondents, that the present appeal does not lie, seeing that it is an

appeal from an order which, taken in connection with the relief asked for in the plaint, is simply an order directing the award to be filed as provided

by Section 526, * Act X of 1877, and that such an order is not one of those made appealable by Section 588. This objection must be allowed.

The award in the present case was made in a private arbitration, but the effect of Section 526 is to place it on the same footing as an award made

in an arbitration made before the Court, and the procedure to be followed for enforcing the award must be precisely the same in both cases.

Instead, therefore, of the Subordinate Judge recording the order he has made, by which he appears to decree the plaintiffs' claim on its merits, he

should have proceeded as directed by Section 526, read in connection with Section 522 $\frac{1}{2}$ of Act X of 1877, and given a formal judgment

according to the award and a decree following upon such judgment. And this he ought to do still. The present appeal is an incompetent

proceeding; we cannot hear it but must disallow it with costs.

Oldfield, J.

2. The suit before us was brought for filing an award u/s 525, Act X of 1877. The Subordinate Judge has decreed the claim, and the first question

we have to determine is whether the appeal now preferred by the defendants is maintainable. By Section 525 the application made under that

section has to be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants, and it is incumbent on the

Court to determine if any such grounds as are mentioned in Sections 520 and 521 are shown against the award, and if not, it is provided by

Section 526 that ""the Court shall order the award to be filed, and such award shall then take effect as an award made under the provisions of this

chapter,"" i.e., chapter xxxvii. I understand this to mean that the Court, after ordering the award to be filed, shall proceed to do as directed in

Section 522, i.e., give judgment according to the award and follow the judgment so given by a decree (Sahib Ram Jha v. Kashee Nath Jha 21

W.R. 295), and that the decree will then be enforced in the manner provided for the execution of decrees, and no appeal will lie from such a

decree except in so far as the decree is in excess of or not in accordance with the award. In the suit before us the, Subordinate Judge has

determined questions under Sections 520, 521, * but his final order is merely that the claim be decreed, and looking to the plaint and the nature of

the claim this amounts only to an order for filing the award; no judgment according to the award followed by a decree required by Section 522 can

be said to have been given, and the question does not arise whether there is an appeal with reference to the provisions of Section 522.

3. Nor do I consider that there is any appeal from the order that has been made, It is not one of those orders from which an appeal is allowed by

Section 588, and it cannot be held to be a decree as the Word is defined in Section 2, Apt X of 1877 so as to give a right of appeal as from a

decree, as has been urged before us, for the order is not the formal order of the Court in which the result of the suit (and the proceeding is a suit) is

embodied; the order for filing an award is but an, interlocutory order a step in the decision of the suit, the result of which is embodied in the final

decree which the law, (Section 522) directs shall follow judgment. The, Court below should be moved to give judgment in accordance with the

award and a decree to follow it. There may or may not be an appeal from that decree according to circumstances, but this appeal must I think be

dismissed with costs.

*Filing and enforcement of such award.

[Section 526:--If no ground such as is mentioned or referred to in Section 520 or 521 be shown against the award, the Court shall order it to be

filed, and such award shall then take effect as an award made under the provisions of this chapter.]

~ Judgment to be according to award.

[Section 522:--If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid,

and if no application has been made to set aside the award, or if the Court has refused such application, the Court shall, after the time for making

such application has expired, proceed to give judgment according to the award, or, if the award has been submitted to it in the form of a special

case, according to its own opinion on such case:

Decree to follow.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Court for the execution of decrees. No appeal

shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.]

*Grounds for setting aside award.

[Section 521:--An award remitted u/s 520 becomes void on¹ the refusal of the arbitrators or umpire to reconsider it. But no award shall be set

aside except on one of the following grounds (namely),--

(a) Corruption or misconduct of the arbitrator or umpire.

(b) Either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving

the arbitrator or umpire;

(c) The award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit; and no award shall be

valid, unless made within the period allowed by the Court.]