Lachmi Narain Vs Sheonath Pande and Others

Court: Allahabad High Court

Date of Decision: Nov. 22, 1919

Citation: (1920) ILR (All) 185

Hon'ble Judges: Lindsay, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Lindsay, J.
This application has reference to an order passed in appeal in certain arbitration proceedings. It appears that the plaintiff

petitioner applied to the court of a Munsif to have an award made a rule of court. This application was made under paragraph 20 of the second

schedule to the Code of Civil Procedure. The Munsif followed the procedure laid down in this paragraph and eventually wrote an order directing

the award to be filed, and thereafter a decree was prepared on the basis of the award in accordance with the provisions of paragraph 21 (2) of the

schedule. The defendants went in appeal to the lower appellate court against the order directing the filing of the award. The lower appellate court

entertained the appeal, set; aside the order of the court of first instance and directed that the application for the filing of the award should be

dismissed. The plaintiff now comes here in revision, and the first ground taken is that the court below acted without jurisdiction in entertaining the

appeal. The learned Counsel for the petitioner and to admit that Section 104 (f) of the CPC clearly lays down that an appeal does lie against an

order filing or refusing to file an award in an arbitration made without the intervention of the court. But according to the ground taken in the first

paragraph of the memorandum no appeal lay because the order of the first court directing the award to be filed had become merged in a decree,

and admittedly no appeal lies against the decree, It is only necessary to say that the law and the cases seem to be against this contention of the

applicant and I am referred in this connection to the case of Soudamini Ghosh v. Gopal Chandra Ghosh 19 C.W.N. 949. For a further authority

see Hari Kunwar v. Lachmi Ram Jaini I.L.R.(1916) All. 380. of the report the Judges dealing with this very matter point out that the bare fact that

a decree has been drawn up after the passing of the order cannot take away the right of appeal against the order.

2. The first ground, therefore, fails. The other point which has been argued is that the court below acted with material irregularity in discussing

certain pleas of misconduct which, it is said were not raised in the court of first instance. It is true that in the first court the defendants by way of

answer to the application made general allegations of misconduct against the arbitrator. However this may be, it is certain that one definite

allegation of misconduct was raised in the first court, namely, that the arbitrator had decided the case of his own knowledge and without taking any

evidence from the parties. The learned Judge of the court) below finds that this was the case, and accordingly he has held that the arbitration is null

and void. It is argued here that the mere fact that the arbitrator decided the case of his own knowledge and without taking any evidence does not

amount to misconduct. This matter has to be determined in the light of the language of the agreement by which the dispute was referred to

arbitration. If the parties agreed that the arbitrator should decide the dispute between them on. his own knowledge, and further agreed that there

was no need for him to take any evidence, no misconduct can he imputed. But there is nothing in the language of the agreement to suggest that it

was the intention of the parties that the arbitrator should act solely upon his own knowledge of the facts. That he has done so is fatal to the award

in which ho expressly says that he has decided the , case upon the basis of his own knowledge. I am satisfied, therefore, that the order of the court

below is correct, and there is no ground on which I can interfere. The application is dismiss ed with costs.