

(1919) 11 AHC CK 0018

Allahabad High Court

Case No: None

Lachmi Narain

APPELLANT

Vs

Sheonath Pande and
Others

RESPONDENT

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 be 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 he 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 dismissed with costs.