

(1915) 12 AHC CK 0020

Allahabad High Court

Case No: None

The Ganges Sugar Works Limited

APPELLANT

Vs

Nuri Miah

RESPONDENT

Date of Decision: Dec. 22, 1915

Citation: (1916) ILR (All) 150

Hon'ble Judges: Henry Richards, C.J; Tudball, J; Muhammad Rafiq, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Henry Richards, C.J., Tudball and Muhammad Rafiq, JJ.

This is an application for leave to appeal to His Majesty in Council. The Granges Sugar Works Company made an application under schedule II, Rule 17, of the CPC to file an alleged contract to submit to arbitration. The court of first instance, without recording any evidence or in any way considering the merits of the case, dismissed the application on the sole ground that the alleged contract not being under the seal of the company was invalid as an agreement to submit to arbitration. The company appealed and this Court held that the agreement to submit to arbitration did not require to be under the seal of the company and made an order remanding the case for decision upon the merits. The decision of this Court will be found reported in ILR All. 273. It is contended on behalf of the applicant that the order of this Court is a "final order" passed on appeal within the meaning of Section 10D, Clause (a), of the Code of Civil Procedure. The meaning of the expression "final order" is by no means very clear. The authorities dealing with a similar expression in other enactments in England are very conflicting. There have been several cases in this Court and in other courts in India where the question as to what, is a "final order" has been discussed and decided. Here again there is a considerable conflict of authority. We propose to deal with the present application on its own circumstances.

2. No doubt, if the only issue between the parties was the validity of the contract (it not being under seal) the decision of this Court would have finally decided the only matter between the parties. The matter in dispute was whether or not this contract should be filed as a submission to arbitration. If this Court held that it was necessary that the contract should be under seal, the application of the company would be finally dismissed. If on the other hand it decided that it was not necessary that the document should be under the seal of the company, it would have ordered the contract to be filed. We find, however, that the alleged contract was challenged on several other grounds. It was challenged on the ground that it was invalid for vagueness, and that the agreement had been obtained by fraud and misrepresentation. The result was that, even if this Court decided in favour of the company on the question of the seal, it would not have finally disposed of the matters in dispute between the parties. It is conceivable that if the order of remand of this Court was appealed to the Privy Council, there might be one or more other appeals arising out of the other pleas in the same matter. No doubt the decision of this Court was upon a very important issue between the parties, but the very same thing might be said if this Court decided (overruling the court of first instance) that the loss of a document was sufficiently proved to admit of secondary evidence of its contents and remanded the case to take that evidence and decide the case upon the merits. The only distinction between such a case and the present would be that in the present case the question was one purely of law, while in the supposed case it would be a question of fact or partly of fact and partly of law. Again we may suppose the case of an objection taken to a deed of mortgage on the ground that it had not been properly registered. If this Court (overruling the decision of the court of first instance) held that the registration was sufficient and remanded the case for decision upon the merits, it could hardly be said that the order of remand was a "final order" within the meaning of Section 109, Clause (a), of the Code.

3. We could no doubt grant special leave to appeal under Clause (c) of Section 100 the point of law can hardly be said to be a question of "general importance" in view of the change that has been made in the new Companies Act. Furthermore, it appears that since the order of remand of this Court against which it is sought to appeal was passed, the court below has heard and determined the other issues in the case, and they are the subject matter of the pending appeal to this Court. Under these circumstances we do not think that there are sufficient grounds why we should grant the certificate under Clause (c).

4. The application fails and is dismissed with costs.