

(1884) 07 AHC CK 0003

Allahabad High Court

Case No: None

Shibcharan

APPELLANT

Vs

Ratiram

RESPONDENT

Date of Decision: July 17, 1884

Citation: (1885) ILR (All) 20

Hon'ble Judges: Straight, O.C.J.; Mahmood, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Mahmood, J.

We are of opinion that this appeal must prevail on the first ground urged before us, if not also on the second ground. It appears that after the order of reference had reached the arbitrators, they all filed a joint application stating that they did not consent to arbitrate in the case, and with this refusal to act, they returned the papers which had been sent to them by the Court The Subordinate Judge, instead of accepting the refusal, passed an order directing that the record be sent back to them, and they should arbitrate and send the award within ten days from the date of the order their refusal cannot be admitted; when the arbitrators first took this record and agreed to hold arbitration, so much so that they even obtained time from the Court their refusal now is not free from suspicion." Upon this order being passed the arbitrators proceeded to make the award, the legality of which is now in question, as the judgments of both the lower Courts have upheld it.

2. Expression has recently been given by this Court to the view that one of the most essential principles of the law of arbitration is, that the adjudication of disputes by arbitration should be the result of the free consent of the arbitrator to undertake the duties of arbitrating between the contending parties who have agreed to repose confidence in his judgment. Indeed the finality of such award is based entirely upon the principle that the arbitrators are judges chosen by the parties themselves, and that such judges are willing to settle the disputes referred to them. This essential

characteristic of the effect of such adjudications is necessarily vitiated if compulsion is employed by the Court. Though the arbitrator has taken on himself the burden of the reference, and held several meetings, but not closed the case, he may decline to go on any further with the arbitration, and the Courts have no jurisdiction over him to compel him to proceed; nor can they order him to make his award according to a particular principle."--(Russell on Arbitration, 196) It seems that under the Civil Law, an arbitrator might be compelled to make an award But it was decided in equity, by Lord Chancellor Eldon, that if arbitrators refused to proceed with a suit referred to them, the suit might be prosecuted as if no reference had been made ; and, in giving judgment, Lord Eldon put it on the same footing as a case where one of the arbitrators had died"--(Russell on Arbitration 156). This principle, and not the rule of the Civil Law appears to have been adopted by Section 510 of our Civil Procedure Code, and therefore the learned District Judge was wrong in holding that "as the agreement to refer the dispute to arbitration was uncanceled, the Court was well within its powers in again referring the matter to arbitrators." Such is not our law and we hold that all proceedings taken by the arbitrators in obedience to the order of the Subordinate Judge, directing the arbitrators to arbitrate against their will were null and void. This view renders it unnecessary to consider the second ground of appeal before us. We therefore set aside the decrees of both the lower Courts and remand the case u/s 562, Civil Procedure Code. Costs in all the Courts to abide the result.