

(1956) 02 MP CK 0007

Madhya Pradesh High Court

Case No: Civil Revision No. 19 of 1955

Chhedi

APPELLANT

Vs

Kirra

RESPONDENT

Date of Decision: Feb. 29, 1956

Acts Referred:

- Arbitration Act, 1940 - Section 14, 32

Hon'ble Judges: Jagat Narayan, J.C.

Bench: Single Bench

Advocate: Hanuman Prasad, for the Appellant; Lal Pradumn Singh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jagat Narayan, J.C.

1. This is a revision application by one Chhedi whose suit for recovery of Rs. 185/- which was decreed by the trial Court was dismissed by the learned District Judge of Rewa. I have heard the Learned Counsel for the parties.

2. It appears from the material on record that the defendant kept the wife of the plaintiff as his mistress. The matter was referred to arbitration by the parties on 13-8-54. An award was given by the arbitrators on the same day giving the defendant the option to pay either (1) Rs. 185/- to the plaintiff as damages, or (2) Rs. 100/- to the "Beredri" as penalty and to be out casted for 5 years.

On hearing the award the defendant elected to pay Rs. 185/- to the plaintiff and made a promise that he would pay the amount. He however failed to pay it and hence the present suit was brought for the recovery of the money. This is clearly a suit to enforce the award. It is barred by S. 32, Arbitration Act.

On behalf of the applicant reliance was placed on "Nanhelal v. Singhai Gulabchand", 1944 Nag. 24 (AIR V 31) (A). With all respect I am unable to agree with the view taken

in it. If a successful party brings a suit to obtain the relief that is granted to him by the award it cannot be gainsaid that the plaintiff must prove the fact of the award that is its existence, before he can get relief, This he is debarred from doing under S. 32. It has been held by the High Courts of Calcutta, Bombay, Madras and Patna in the under mentioned cases that a suit to enforce an award does not lie in view of S. 32, Arbitration Act:

1. Deokinandan v. Basant Lal, 1941 Cal 527 (AIR V 28) (B).
2. Ratanji Virpal & Co. v. Dhirajlal Manilal", 1942 Bom. 101 (AIR V 29) (c).
3. Moolchand Jethajee v. Rashid Jamshed Sons & Co.", 1946 Mad. 346 (AIR V 33) (D).
4. Ramchander Singh v. Munshi Mian", 1950 Pat. 48 (AIR V 37) (FB) (E).
5. Sia Kishori v. Bhairvi Nandan Singh", 1953 Pat. 42 (AIR V 40) (F).

The present suit of the applicant therefore does not lie and was rightly dismissed. The second ground however on which the learned District Judge dismissed the suit does not appear to be sound. The award gave two options to the defendant. The case of the plaintiff was that the defendant elected to pay Rs. 185/- to the plaintiff. Having made that election he would have been bound to pay the amount if the award could be enforced by suit.

3. I accordingly dismiss the application with costs. An application was moved for treating the plaint as an application for filing an award under S. 14, Arbitration Act. The plaint is not suitably worded for that purpose and this prayer cannot be granted.