

(1920) 09 BOM CK 0016

Bombay High Court

Case No: Second Appeal No. 945 of 1919

Ramanath Mulchand

APPELLANT

Vs

Gajanan Pandurang Limaye

RESPONDENT

Date of Decision: Sept. 27, 1920

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 151

Citation: AIR 1921 Bom 301 : (1921) 23 BOMLR 306

Hon'ble Judges: Norman Macleod, J; Fawcett, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Norman Macleod, Kt., C.J.

In this case a decree was passed on an award which the plaintiffs sought to execute. The trial Court directed execution to proceed. In appeal this order was set aside, and the application for execution was rejected with costs on the ground that there was no real point of difference between the parties on which a reference to arbitration could be made. The learned appellate Judge said :

The case having come before me in appeal I am in a position to treat this decree passed without jurisdiction as inoperative and to exercise the inherent powers of the Court u/s 151 of the CPC and Co refuse to the decree-holder the relief which he is seeking by way of execution. Had the ease come to my notice in any other way I would have made a reference to their Lordships u/s 115 of the CPC to set aside the decree passed upon the so-called award on the authority of [Velchand Chhaganlal Shah Vs. Lieut. R.C.C. Liston](#) .

2. In [Ramchandra Govind Thoware Vs. Jayanta Ravji Parawat](#), a very similar question arose, and the Court said :

Whatever powers the Court had to decide questions relating to the execution of the decree, we are of opinion that it is perfectly dear that the Court had no power to deal with the decree itself. The Court executing the decree cannot deal with the question whether the decree should stand or whether it should be set aside on any of the grounds on which a decree can be set aside.

3. And it was further held that Section 151 of the Code did not give the lower appellate Court authority to interfere in the way it did. Therefore this appeal must be allowed with costs throughout, and the order of the lower Court directing execution to proceed restored.