Ram Chandra Pal Vs Krishna L.L. Pal

Court: Calcutta High Court

Date of Decision: Nov. 27, 1912

Judgement

1. This Rule arises out of a suit brought by the Opposite Party No. 1 who was admittedly in partnership with the present Petitioner. It is admitted

before us that the partnership has been brought to an end and it seems that after the partnership was closed the present Opposite Party No. I as

well as the Petitioner entered into an agreement to submit the accounts and all matters in dispute between them relating the partnership to

arbitration in order that all disputes between them might be cleared up and that their dues might be satisfactorily determined. This agreement was

admittedly reduced into writing in the form of a contract and was registered. Six months after this agreement had been come to, the Opposite Party

served the present Petitioner with a notice that he did not intend to go on with the arbitration and then he instituted the suit in respect of which the

present Rule has been granted to recover from the present Petitioner a half share of a debt due to the firm which had been realised by the

Petitioner. A copy of the notice has not been produced before us, but the learned pleader for the Opposite Party has been unable to indicate to us

what just or good cause the Opposite Party set out in that notice as a ground for withdrawing from the agreement to submit their disputes to

arbitration. When the present suit was instituted the Petitioner in his defence pleaded that no suit would lie on the ground that the Opposite Party,

the Plaintiff, had already agreed to submit all matters in dispute between them to the decision of the arbitrators. The suit, it is to be noticed, was

brought in the Court of Small Causes; and the learned judge who decided the suit appears to have considered the objection taken by the Petitioner

to be invalid and to have given the Plaintiff, the Opposite Party, a decree to recover from the present Petitioner a sum refreshening a half share of

the partnership debt which had been realised by him. The Petitioner applied to this Court and obtained a Rule calling upon the Opposite Party to

show cause why the judgment and decree of the Court of Small Causes should not beset aside on the ground that having regard to the provisions

of sec. 21 of the Specific Relief Act it was open to question whether the Court of Small Causes had jurisdiction to try the suit. The portion of sec.

21 on which reliance has been placed runs as follows-"" Save as provided by the CPC and the Indian Arbitration Act, 1899, no contract to refer

present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract, and has refused to

perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit."" The Petitioner in relying

on the provisions of this section has contended that the contract to refer the matters in controversy to arbitration covered all partnership debts and

that it was staed in the defence filed in this suit that other debts due to the firm had been realised by the present; Opposite Party, the Plaintiff, and

that he had no. paid over to the Petitioner his share of the sums so realised. It is contended under the circumstances that the Plaintiff was not

entitled to proceed with this suit in the Court of Small Causes after he had agreed to refer the matters in controversy between them to arbitration.

In opposition to the Rule it has been argued that the Plaintiff, the Opposite Party, was justified in withdrawing from the contract because there had

been delay on the part of the arbitrators in commencing proceedings for over six months. The learned pleader who has appeared for the Opposite

Party has referred us amongst others to the cases of Adhibai v. Cursandas I. L. R. 11 Bom. 199 (1886) and O. R. Colly v. V. A. Dacosta 1. L. B

17 Cal. 201 (1889). The learned pleader at the same time admits that the principles which were laid down by the Privy Council in the case of

Pestonfee v. Manockfee 12 M. I. A. 112 11868). must be followed in cases of this description and that in fact the principles laid down in that

judgment had been adopted by the Courts in India in the cases decided subsequently to the passing of the Specific Relief Act. In fact the last case

relied on by the learned pleader for the Opposite Party itself lays down the same principle. The principle is that it is not in the power of a person to

revoke at his mere will and pleasure a submission to arbitration after he has once agreed to the submission. It has been universally held that where

a person has agreed with another that all matters in controversy between them should be referred to arbitration it is not open to that person to

resile from the agreement unless for good and sufficient cause. In the present case the only cause which has been suggested is the delay of six

months in commencing the arbitration proceedings. The learned pleader has, however, failed on behalf of the Opposite Party to show that his client

made any effort at all to push forward the proceedings before the arbitrators and that he was no himself responsible for the delay. In our opinion

therefore it is impossible in the present case to say that the present Opposite Party was justified in withdrawing from the agreement or in cancelling

the reference to arbitration. We think therefore that the Rule should be made absolute on the ground on which it has been issued, namely, that

under the terms of sec. 21 of the Specific Relief Act the Opposite Party was not entitled to sue in the Court of Small Causes in respect of the debt

which he had contracted 10 refer with the rest of the matters in dispute between him and the Petitioner to the determination of arbitration.

2. We are of opinion that this case should not have been entertained by the Small Cause Court at all. Admittedly the two parties had been partners

in a business. That business had been brought to an end; and the only dispute between them is with reference to the division of the property. That

dispute can only be finally settled in a proper suit for dissolution of partnership and for adjustment of account. It is certainly not desirable that each

of the parties should proceed by separate suits in order to recover from the other any sums due to the partnership business which he alone may

have realised.

3. A point was taken on behalf of the Opposite Party that the Petitioner, when the suit was instituted ought to have proceeded in accordance with

Rule 18 of the second schedule to the CPC and ought to have applied to the Court for slay of the suit. We do not think that in the present case

there is much substance in this point. The present Petitioner appears to have put in an objection to the suit proceeding, although, possibly from

ignorance of this new provision in the law, he did not expressly apply for stay of the suit. In our opinion the Petitioner in the present case, in the

course of the suit did put forward the objection which he had to the suit proceeding in the Small Cause Court. We think this objection the Court

ought to have accepted and the lower Court ought to have held that the Plaintiff was not entitled to recover the sum in a suit in the court of Small

Causes in the way in which his suit was framed.

4. We therefore make the Rule absolute and set aside the judgment and decree of the Court of Small Causes and direct that if any sum has been

realised in execution of the decree it should be refunded to the Petitioner. The Petitioner is entitled to recover his costs in this case. We fix the

hearing-fee at four gold mohurs. He is also entitled to recover from the Opposite Party No. I his costs in the Court of Small Causes.