(1917) 04 CAL CK 0003

Calcutta High Court

Case No: None

Rajendra Nath Das	APPELLANT
Vs	
Abdul Hakim Khan	RESPONDENT

Date of Decision: April 20, 1917

Citation: 39 Ind. Cas. 767

Hon'ble Judges: Newbould, J; Fletcher, J

Bench: Division Bench

Judgement

Fletcher, J.

This is a Rule obtained by the plaintiff calling on the opposite party, the defendant, to show cause why the order complained of should not be set aside. The plaintiff sued on a hand note. By agreement between the parties, the case was referred to arbitration, the arbitrator being a Pleader practising in the Court and, according to the statement of the petitioner in his petition, the engaged Pleader of the defendant. There is no objection to the arbitrator having been engaged either on that occasion or on some other occasion as the Pleader of the defendant. There ought not to be any objection that a gentleman engaged in the legal profession is not entitled to be appointed arbitrator because on some occasions he was engaged by one of the parties as his Pleader. It is a common case that members of the legal profession are appointed arbitrators in suits oven incases where they are engaged for one of the parties. I have seen many cases where the Counsel engaged on one side has been appointed arbitrator to decide the case. There is no reason to think that merely on that ground the gentleman appointed as arbitrator will not honestly and fairly determine the suit. In this case, the arbitrator made this finding: He disbelieved the case of benami set up by the defendant. He found as a fact that the defendant did not borrow the money for the purpose stated by the plaintiff but that the money was paid by the plaintiff for the purpose of assisting the defendant, who was called in the award his boon companion, to visit brothels and bring in prostitutes. That is an immoral purpose and the law will not enforce the payment under such circumstances. That being so, there could not be anything to say against the award of the arbitrator. But the arbitrator stated that the defendant admitted that there was a sum of Rs. 25 due to the

plaintiff and that, therefore, there should be a decree in favour of the plaintiff for that sum. An application was then made before the learned Judge to file the award and to pass a decree on it and an objection was made on the part of the plaintiff. The learned Judge set aside so much of the award as found that the sum of Rs. 25 was due to the plaintiff and dismissed the suit in full. That clearly the Judge was not entitled to do. He ought to have remitted the case to the arbitrator, if he came to the conclusion that the plaintiff was not entitled to this sum. So far as the award stands, the plaintiff is entitled to a judgment for Rs. 25. The defendant at the hearing of this Rule did not object to a decree being passed in favour of the plaintiff for this sum and the decree of the Court below being varied by awarding Rs. 25 to the plaintiff instead of dismissing the suit in full.

2. The other matters are these: First of all, the arbitrator fixed as a reasonable hour 8 o''clock in the evening for the sitting of his Court on one occasion. It is said that the plaintiff suffered such injury by this improper conduct of the arbitrator that he was unable to attend the arbitration Court. It is said that 8 o''clock in the evening is an unsuitable time. But the time should be selected by the arbitrator, of course, after taking into consideration the convenience both of himself and of the parties and it must be left to his discretion. Then there was an objection that the plaintiff wanted to summon three witnesses but that the arbitrator declined to summon them. There is nothing to show that the arbitrator was not acting within his powers and if, in the exercise of a prudent and wise discretion, he declined to summon them, there is nothing to say against it.

3. The conclusion I come to is that the learned Judge of the Court below ought to have passed a decree in terms of the award made by the arbitrator in this case, that is, for Rs. 25 only. That being so, I think we must set aside the order passed by the learned Judge and, in lieu of the order of dismissal, pass a decree in favour of the plaintiff for the sum of Rs. 25. The arbitrator having dealt with the costs in the suit in his award by directing the parties to pay the costs in proportion, I think we should also make a similar order with reference to the costs in the suit. There will be no order as to the costs of this Rule.

Newboold, J.

4. I agree.