(1929) 06 CAL CK 0018

Calcutta High Court

Case No: None

Ananta Lal Pakrasi		APPELLANT
	Vs	
Jnanada Sundari Debya and Others		RESPONDENT

Date of Decision: June 26, 1929

Citation: AIR 1930 Cal 255

Hon'ble Judges: Bose, J; B.B. Ghose, J

Bench: Full Bench

Judgement

B.B. Ghose, J.

This is an appeal by the defendant against an order of the Subordinate Judge of Pabna filing two awards dated 9th March 1926 and 3rd July 1926 on the application of the respondents. It appears that seven persons were entitled to properties moveable and immovable, of considerable value. Apparently they were not all on very good terms. On 12th February 1926 an achalnama was executed by all the seven persons appointing five gentlemen as arbitrators for settling their disputes, the subject matter of which was entered in a schedule attached to the said achalnama. It was provided that even if all the arbitrators did not join, the decision which a majority of them would jointly come to would prevail. One of the arbitrators named did not act but four of them made an award dated 7th March 1926. Under that award all the matters in dispute referred to the arbitrators were not decided. But the arbitrators did a good deal of work with reference to the arbitration as appears from that award which is a very lengthy document dealing minutely with various properties of the parties. On 1st July 1926 these seven persons addressed a petition to three of the gentlemen who acted as arbitrators, in which it was recited that the previous award only settled some of the matters in dispute and these three gentlemen were prepared to deliver an award with reference to the matters left undecided. The petition goes on thus:

We have no objection to your declaring your decisions regarding the undecided matters, and we do request you to deliver your award by putting your decisions in writing. None of us shall be entitled to make any objection with regard to the award you will deliver, either on the ground of the expiry of the time fixed, or on the ground of your having no authority. The award (to be) delivered by you shall b; treated as a part of tin first award. You shall deliver this award within 3rd July next.

2. Acting on the strength of this petition those three gentlemen prepared an award which bears the date of 3rd July 1926 and these are the two awards which the respondents asked for filing in Court. The objections that were raised by the appellant in the Court below were confined to two issues viz., the second and the third. Issue 2 refers to the award being bad as falling within the mischief of para. 14, Schedule 2, Civil P.C., and Issue 3 refers to the fact of the making of the award by the arbitrators on 3rd July 1926, The learned Subordinate Judge held in effect that the second award is only a continuation of the award of 9th March 1926 which has been completed by the latter award and he held that para. 14 of Schedule 2 of the Code is no bar to the filing of the two awards as one. With regard to Issue 3 the learned Subordinate Judge held that the second award was made on the petition filed by all the parties including the objector before him and it was a valid award. The Subordinate Judge also found that the appellant who was described as a defendant in the Court below had actually received a certain sum of money from the plaintiffs according to the directions given in the first award of the arbitrators and the defendant in his petition did not allege that the second award left any of the moveables properties undivided but he attempted to show that some properties were left undivided in his evidence. The learned Subordinate Judge held that the evidence amounted to this, that the moveable of very trifling value which taken together would amount to only Rs. 300 to 400 were not partitioned, but the defendant has not suffered any loss on that account because he was only entitled to as sixth share of the money and had in his possession a gun the value of which was more than the sixth share of the value of the other moveables and, therefore, ho had no reason to complain. Thereupon the learned Subordinate Judge made an order that the two awards be filed and the appeal is against that order.

3. Mr. Hira Lal Chuckerbutty for the appellant has taken several grounds against the decision of the Court below and it must be admitted that he has gone very carefully through the two awards in order to find discrepancies and flaws which would if substantiated vitiate the award as either incomplete or illegal. The first objection that he takes is that the award is illegal on the face of it; because although five arbitrators were appointed in the achalnama, only four of them acted and he argues very forcibly that that makes the award invalid. His argument is that, true according to the majority clause a decision arrived at by the majority of the arbitrators appointed would be a good award but the arbitrators who did not join in the award prepared by the majority must act in the matter of arbitration. The proposition thus stated may be accepted as correct, but in the present case I do not think that it has

any substance. The provision as regards the arbitrators acting together has already been recited by me. That may very well be construed as a provision for the event of all the arbitrators not acting in the matter of arbitration. At best the expression may be taken as ambiguous. But the meaning is quite clear from the fact that all the parties took that to be a valid award : the only exception that they might possibly have taken was that it was not a complete award. That appears from Ex. 4, the petition to the three arbitrators date 1st July 1926. By that document they not only asked three of the arbitrators to complete the work that had been done by four of them but they accepted the previous award as a valid award binding upon them. Under that circumstance, it cannot be said that the award of 9th March is illegal on the ground that only four arbitrators acted out of the five named. The answer to the question raised that the first award is invalid because it was not a complete award is also contained in the petition of the parties referred to above. If an award is incomplete, the parties may affirm and may agree that that incomplete award would be binding upon them. The authority for this proposition may be found in the case of Makund Ram Sukul v. Saliq Ram Sukal (1894) 21 Cal. 590 and the latest case to which our attention was drawn by the learned advocate for the respondent is that of Jnanendra Nath Bagchi Vs. Sures Chandra Roy and Harendra Krishna Bagchi and Others, . The learned advocate for the appellant, however, contends that in the case of Jnanendra Nath Bagchi Vs. Sures Chandra Roy and Harendra Krishna Bagchi and Others, the parties referred the matter to all the original arbitrators for completion of the work required to be done by the original reference and that differentiates that case from the present one. In my judgment, that is no distinction at all. Even if the parties had appointed quite a different set of arbitrators agreeing to abide by the previous award and asking them to complete the work done by the previous arbitrators, the previous award should be considered as affirmed by the parties and they would not be allowed to attack the award on the ground that it was incomplete. This disposes of the main contentions on behalf of the appellant. But certain other objections were taken which were not finally pressed on its being pointed out to the learned advocate for the appellant that those questions are really of fact which might have been raised before the lower Court if there was any serious difficulty about giving effect to the award. The only point that appears to be of substance was that in the first award it was directed that properties standing in the name of the parties themselves or their wives should be regarded as their per sonal properties. In the second award it was pointed out that one bit of property 3 bighas 1[illegible] cottas of land standing in the name of a lady named Sreemati Soudamini Debi was held to be ejmali property and it was argued that this really contradicts the previous award. As I have already said, proper explanation might have been obtained about this apparent contradiction if this question had been put to the arbitrators when they were examined in Court and if this matter had been raised before the lower Court. But Mr. Sen on behalf of the respondents points out that these two items refer to properties of two different characters; the statement in the first award relates to ejmali properties and in that award certain provisions have been made with regard

to khamar lands and the second award with reference to the land standing in the name of Soudamini Debi relates to the partition of khamar lands, and it is possible that that is an explanation as to why this land was held to be ejmali. However, that may be, I do not think that the award can be attacked here for the first time on account of the slight apparent discrepancies. The most serious thing against the defendant is that the defendant had actually affirmed the award by taking benefits under it and also giving up certain properties according to it. Having acted in accordance with the award he cannot now turn round and say that the award is invalid, unless he can prove that he was acting under some misapprehension. But there is no such evidence. No person can affirm in part an award and then repudiate it in part. He must either accept the whole or repudiate the whole. Under that circumstance, even if there had been any illegality in the award, that has been waived by the conduct of the defendant. This proposition has recently been dealt with in the case of Hurrybux Deora Vs. Johurmull Bhotoria and Another, referred to by the learned advocate for the respondents.

4. The result, accordingly, is that this appeal must stand dismissed with costs. Hearing fee, fifteen gold mohurs.

Bose, J.

5. I agree.