

(1880) 07 CAL CK 0004

Calcutta High Court

Case No: None

Budoloo Khan

APPELLANT

Vs

Khemna Gowala

RESPONDENT

Date of Decision: July 8, 1880

Citation: (1881) ILR (Cal) 251

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

The plaintiff, who is the respondent in this Court, brought this suit for a kabuliat against the defendant, appellant, in the Court of the Deputy Collector of Chatra, in the Manbhum District, on 3rd June 1878, and on 7th August following, both plaintiff and defendant filed a joint petition before [255] the Deputy Collector, stating that they had agreed to refer the matters in dispute to certain arbitrators.

2. These arbitrators, accordingly, delivered their award on 8th November, and it was sent in to the Deputy Collector. He, however, rejected it, as he considered that it was at variance with the decision in the case of Gogon Manji v. Kashishwary Debi (I. L. R. 3 Cal. 498), as it awarded a lower rate of rent than was claimed in the plaint. He, therefore, dismissed the suit. The lower Appellate Court, however, after discussing the legality of a reference to arbitration in a suit under Act X of 1859 (as to which he decided that such a reference could be legally made), and, finding that there were no valid objections to the proceedings of the arbitrators, reversed the decree of the Deputy Collector, and passed a decree in terms of the award.

3. In this Court it is contended that the reference to arbitration was null and void, as the chapter of the CPC relating to reference to arbitration is not applicable to suits under Act X of 1859.

4. It is quite true that that part of the CPC does not apply, and the lower Appellate Court was in error in relying upon two cases reported in the N. W. P. Reports as

authorities. We have referred to those cases, and find that they are based upon an Act (No. XIV of 1863), which was only applicable to the N. W. P.

5. But we think that, on other grounds, we can uphold the decision of the lower Appellate Court. Irrespective of any Code of Procedure, persons are at liberty to refer any matter in dispute to arbitration, and any award made under such circumstance may be enforced by a suit brought for that purpose. It has also been held by this Court that parties, who have a suit pending in Court, may submit the subject-matter of that suit to arbitration, see *Thakoor Doss Roy v. Hurry Doss Roy* (W. E., 1864, Mis. Rule, 21); and the same law has been laid down in Bombay, see *Harivalabdas Kalliandas v. Utamchand Mankchand* (I. L. R. 4 Bom. 1). We see no reason why this principle should not be applied to a suit in Court under Act X of 1859. At any rate, if there was any irregularity in the reference to arbitration at the request of both the parties, we think, on the authority of *Puna Bibee v. Khoda Buhsh* (22 W. E. 396) it is one which the respondent cannot be allowed to object to in appeal.

6. No valid grounds for setting aside the award of the arbitrators have been shown to us. We, therefore, affirm the decree of the lower Appellate Court, and dismiss this appeal with costs.