(1869) 02 CAL CK 0007

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 416 of 1868

Srikrishna Bhakat		APPELLANT
	Vs	
Rambhanjan Bhakat		RESPONDENT

Date of Decision: Feb. 18, 1869

Judgement

Norman, J.

The plaintiff, Srikrishna, is a mahajan; and the defendant, Rambhanjan, is his gomasta. Srikrishna sued Rambhanjan for an account of the profits of certain kutis, one of which was at Bhagalpur. The dispute between them was referred to arbitration. The arbitrators found that there was a sum of Rs. 725-11-9 appearing to be due by third parties to the Bhagalpur kuti, and that of this sum Rs. 483-13 was the share of Srikrishna, the mahajan, and the residue, Rs. 241-14-6, of Rambhanjan Sing, the gomasta. The award went on to state that, if the sum of Rs. 483-13-6 could "not be recovered from the debtors, or if it be not proved that they have taken it," that sum must be paid by Rambhanjan to Srikrishna. It went on to state that Rambhanjan was to make mukabala of this sum of Rs. 483-13-6 (meaning that he was to point out the debtors, and show, on comparison of their accounts, that this sum was really due); and if there should be no proof of the alleged arrears being due from the debtors to the firm, he should pay the amount to Srikrishna out of his own pocket. The award contained a declaration that the sum of Rs. 553-13-6 found due in respect of the accounts of another kuti, was paid by Rambhanjan to Srikrishna immediately after the making of the award. The plaintiffs applied to the Subordinate Judge of Bhagalpur, u/s 327, to file the award. The defendant objected that the award could not be filed, and alleged that he had been willing to make mukdbala of the sum that was due from the debtors of the firm.

2. The Subordinate Judge tried that question, and found that it was not proved that the defendant had made the mukabala. He gave judgment that the plaintiff''s "suit be decreed, and that the defendant do pay to the plaintiff Rs. 483-13, with interest from date of suit to that of realization, and costs and interest." From that decision the defendant appealed to the Judge. The Judge held, firstly, that no appeal lay from

the judgment enforcing award u/s 327; and, secondly, he thought that the Principal Sudder Ameen had jurisdiction, because "the matter to which the award relates, must determine the jurisdiction in this case: the matter exceeded 1,000 rupees, and hence the Principal Sudder Ameen had jurisdiction." From that decision the defendant has appealed to this Court specially. We are of opinion that the decision of the Judge is erroneous. The 325th section of Act VIII of 1859 enacts that, "in every case in which judgment shall be given according to the award, the judgment shall be final." If, then, this judgment is a judgment given "according to the award," within the meaning of the words of that section, no appeal lies. We think the expression "judgment according to the award," refers only to the case of a judgment simply following an award where the Court enforcing the award exercises no judgment on the matters referred, but simply enforces the decision of the arbitrators, not to a case where the Court pronounces a new and distinct decision, founded partly upon the award, and partly upon matters which were in issue before itself, and which were never in issue before and never adjudicated upon by the arbitrators.

3. We may observe that the 325th section does not take away the appeal, when the award is submitted in the form of a special case, and the Court passes judgment according to its own opinion on the special case. This shows that it is not intended to take away the appeal when the judgment proceeds, though in part only, upon matters independent of, and decided by, the award.

4. Here the judgment of the Principal Sudder Ameen was not a judgment according to the award, but proceeds on the determination of a question of fact not decided by the award. The appeal was not against any decision or determination of the arbitrators, but against a finding of the Subordinate Judge on a question of fact. We are not prepared to say that the plaintiff has not a right to ask to have the award filed under the 327th section; and, therefore, we do not at once dismiss the suit.

5. We think that there is nothing in the award, as it stands at present, which is capable of being enforced without a fresh suit.

6. We think that the application is one which might have been brought in the Munsiff''s Court. It is clear that the Munsiff has jurisdiction in respect of the demand of the account of the Bhagalpur kuti, viz., Rs. 725, which is all which remained in dispute when the award was finally made. But we are not prepared to say that the plaintiff is not entitled to a decree setting out the entire award, which would operate as a declaratory decree as regards the accounts of the other kuti. This would bring the case within the jurisdiction of the Subordinate Judge.

7. We, therefore, think that the Judge''s decision on the question of jurisdiction must stand.

8. The respondent will pay the costs of this appeal and of the hearing before the Judge.

E. Jackson, J.

I also think that the case must be remanded, in order that the Judge may decide the appeal before him, as to whether the defendant is liable for the sum of rupees 483 annas 13. The Judge was right, in my opinion, in the view he took as to this suit being improperly instituted as a suit merely to enforce on award. The award, as it stands, cannot be enforced. It must first be ascertained whether the defendant made mukabala or not; or whether even now the defendant can make mukabala. The meaning of making mukabala is simply that the defendant must prove that the money was paid to the other parties, and is due from them, so that the plaintiff can recover it directly from them. If the defendant cannot do this, he is to be liable for the money himself. No time is specified in the award, and, therefore, it seems to me that even now, if the defendant can do what the award requires of him, he should be allowed to do it. If the judgment of the first Court had been only an order to enforce the award, it might have been final, but it is more than this. The suit should not, I think, have been brought under the 327th section, but having been so brought and allowed, perhaps the Judge is right to let it stand. Still he must decide the appeal on the question which the award left undecided.