

Munshi Rajbuns Sahay Vs Soorjee Lal And Others

Court: Calcutta High Court

Date of Decision: Dec. 22, 1911

Final Decision: Dismissed

Judgement

1. The substantial question of law which calls for decision in this appeal relates to the construction of sec. 104, sub sec. (1), cl. (c) of the CPC of

1908. That clause provides that an appeal shall lie from an order modifying or correcting an award. On behalf of the Appellant it has been argued

that this clause, in effect, confers an unrestricted right of appeal; in other words, that when an order has been made by which an award has been

modified or corrected, in an appeal preferred against that order the validity of the whole award may be called in question. On behalf of the

Respondent, it has been argued, on the other hand, that the true effect of the clause is to allow an appeal against the order only in so far as it

modifies or corrects the award. In our opinion, there is no room for controversy that the contention of the Appellant is unfounded. If the argument

of the Appellant were to prevail, the result would be that the party in whose favour the award has been modified or corrected would be at liberty

to prefer an appeal and to question the propriety of the award in so far as it went against him. This could hardly have been intended by the

Legislature. In the case before us, the Appellant was the Defendant in an action for money commenced against him by the Plaintiff Respondent.

The matters in controversy were referred to three arbitrators who submitted their award in due course. The Defendant took exception to the

award on all possible grounds. The Subordinate Judge considered those objections in detail and overruled every one of them except the objection

as to costs. He held that the arbitrators had no authority to make an award as to costs of the litigation. The result was that the Subordinate Judge

modified the award in so far as the order for costs was concerned and confirmed the award in every other respect. The Appellant now contends

that as an order has been made modifying the award, although the modification is in his favour, he is entitled in the present Appeal to re-agitate all

the questions on the merits which were decided against him by the Subordinate Judge. In support of this view, reference has been made to

decisions under the Code of 1882, of which *Kali Prosanno v. Rajani Kant* I. L. R. 25 Cal. 141(1887) may be taken as the type, where it was held

that upon an appeal against a decree made in accordance with an award it was competent to the Court to consider whether there was any legal

award on which a valid decree could be founded. Those decisions are of no assistance to the Appellant whose case must be determined with

reference to the terms of the provisions of the Code of 1908. We are therefore of opinion that the only question open for consideration in the

present Appeal is the question of costs. In so far as that question is concerned, it has not been suggested that it is in any way improper. The result,

therefore, is that the order of the Court below is affirmed and this Appeal dismissed with costs. We assess the hearing-fee at one gold mohur.