

Rama Nath Misra Vs Ramranjan Misra

Court: Calcutta High Court

Date of Decision: Feb. 27, 1922

Citation: 67 Ind. Cas. 866

Hon'ble Judges: Greaves, J; Ghose, J

Bench: Division Bench

Judgement

1. On the 9th February 1920 an application was made under Schedule II, paragraph 20, of the CPC to the Munsif at Asansol to file a private

award dated 22nd Aswin 1325. The Munsif hold that there was no arbitration in the case by all the arbitrators jointly and he refused the

application. It appears that there were five arbitrators and that they were to act jointly under the submission. One Rakhal Upadhyia, the Munsif

says, was present one day for a short time, but did not hear the evidence or take part in the deliberations of the arbitrators and the Munsif states

that there was no evidence to show that Rakhal Upadhyia signed the award after actually going through the papers and considering them. Against

the Munsif's decision an appeal was preferred to the Subordinate Judge and the Subordinate Judge framed this issue ""whether the defendant

waived his right to have his case tried by the continuous presence of Rakhal Upadhyia during the judicial portion of the arbitration case."" The

Munsif held on this issue that the defendant did not object on the ground of the absence of Rakhal Upadhyia from the judicial portion of the

arbitration proceedings and that from that his waiver of the objection might be inferred. The matter came back to the Subordinate Judge with the

Munsif's finding and he decreed the appeal and ordered the award to be filed. This Rule was obtained at the instance of the present applicant but

we cannot say that the decision of the Subordinate Judge was wrong having regard to the Munsif's finding, and we do not think that this is a matter

in which we ought to interfere. No doubt, the arbitrators must be present during the whole of the deliberation but it is open to the parties to waive

the absence of one of them. This is, it appears, what the defendant has done in the present case. But, then, it is said that whatever the defendant

has done with regard to Rakhal's absence from the evidence he did not waive his absence from the final deliberation and that, consequently, his

waiver does not extend to this. But we think, on the whole, that we must find with the learned Subordinate Judge that the defendant has waived the

whole of the irregularity caused by Rakhal Upadhyaya's absence from any part of the proceeding having regard to the form in which the issue was

framed and the finding of the Munsif thereon.

2. This being so, the Rule must be discharged with costs. Hearing-fee two gold mohurs.