

(1923) 03 BOM CK 0037

Bombay High Court

Case No: None

Thakoredas Tribhavandas and
Another

APPELLANT

Vs

Lalubhai Tribhovandas and
Others

RESPONDENT

Date of Decision: March 3, 1923

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Citation: 75 Ind. Cas. 102

Hon'ble Judges: Norman Macleod, C.J; Crump, J

Bench: Division Bench

Judgement

1. In this case, there being an agreement to refer to arbitration the disputes between the parties without the intervention of the Court, the arbitrators made an award, and thereupon the defendants applied for a decree in terms of the award. That would be an application under Order XXIII, Rule 3, the defendants seeking to prove to the satisfaction of the Court that the suit had been adjusted by a lawful agreement or compromise. The plaintiffs impugned the award on the ground that the arbitrators were guilty of misconduct. The Trial Court passed a decree In terms of the award. An appeal was filed to the District Judge who held that the award was vitiated and could not be given effect to in accordance with law on various grounds and accordingly the Judge directed that the decree on the award should be set aside and the suit remanded for trial.

2. An application has now been made u/s 115 of the Code to revise the order of the District Judge. The first ground relied upon was that the Judge acted without jurisdiction in going into the misconduct of the arbitrators under Order XXIII, Rule 3. It cannot be that the Judge had no jurisdiction to entertain the question, as he is bound to decide whether there was a lawful agreement or compromise, and an agreement referred coupled with an award in which it has been proved that the

arbitrators are guilty of misconduct, will not be a lawful agreement or compromise. It is impossible to conceive that it was intended, when an application was made to the Court under Order XXIII, Rule 3, that all that the Court had to do was to satisfy itself that there had been an agreement to refer and an aware, and that it was bound to pass a decree in terms of the award, without considering any objection raised by one party or the other that there had been misconduct on the part of the arbitrators, such as is in any other case would vitiate an award.

3. But there is another ground on which we refuse to entertain the application and that is that the case has not been decided. All that the Court has found is that there had been no lawful agreement or compromise of the suit, and, therefore, it directed a trial of the suit. The Rule will, therefore, be discharged with costs.