(1921) 01 BOM CK 0026

Bombay High Court

Case No: None

Laxman and two Ors. Sons and Hairs of the deceased Upendra Santappa Shanbhog		APPELLANT
	Vs	
Manjunath Damodar Prabhu and Others		RESPONDENT

Date of Decision: Jan. 17, 1921

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 17 Rule 3
- Specific Relief Act, 1877 - Section 21

Citation: (1921) ILR (Bom) 1181

Hon'ble Judges: Shah, J; Norman Macleod, J

Bench: Division Bench

Judgement

Norman Macleod, Kt., C.J.
The plaintiff and defendant were partners. The partnership was dissolved by agreement, and it was arranged that the defendant should hand over to the plaintiff all the account books and papers in connection with the partnership. The plaintiff was to examine the said accounts and papers, and if he found that any balance was outstanding against the defendant, and if two persons Murari Grovind and Padmanabh Govind decided as Panchas that that balance should be paid by the defendant, the plaintiff should recover the said amount. In spite of this agreement the plaintiff filed a suit, and thereafter the parties informed the Court that they intended to carry out their agreement and to abide by the decision of Murari and Padmanabh. The suit was, therefore, stayed u/s 18 of the second schedule of the Code. Then it appears that difficulties arose. One arbitrator Padmanabh sent a letter saying that if four months'' time was allowed he would dispose of the matter. Then the other arbitrator, the plaintiffs nominee, stated that he refused to act as an arbitrator. A case, therefore, had arisen for an application to the Court to

remove the stay of the suit if the parties did not come to an arrangement to remove the difficulties which had arisen, so as to enable the arbitration to proceed. The plaintiff''s application that the suit might be proceeded with was rejected, for what reason it does not appear. Although the learned Judge said that the plaintiff could not refer to any decided case in which the course which he proposed had been taken, it is always open to the Court to remove the stay of a suit if in the opinion of the Court the stay ought to be removed. Here the suit was stayed to enable the arbitration to proceed. Facts were proved to show that there were difficulties in the way of the arbitration proceedings. Therefore it was open to the Court to remove the stay. However, although the stay was not removed, the Co art proceeded to decide in what manner the suit'' should be disposed of, and under Order XVII, Rule 3, the learned Judge thought that the Court might order the suit to proceed and be decided upon the materials already before it. As far as I can see, Order XVII does not apply to the case at all. If the Court declined to remove the stay, then obviously the suit could not proceed. Rule 3 of Order XVII applies to cases where a party to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed. In such cases the Court may, notwithstanding such default, proceed to decide the suit forthwith. However, it is obvious that the Court ought to have proceeded to deal with the suit and decide, it on its merits, as the arbitration had become impossible owing to the parties failing to agree to any particular course being followed after one arbitrator refused to act. The learned Judge, having determined to decide the suit, then held that the suit was barred by the agreement. That, with all due respect, could not be a right finding, because the suit itself was not barred by the agreement, since under para. 22 of Schedule II of the Code the last 37 words of Section 21 of the Specific Relief Act, 1877, shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of that Schedule apply. As soon as the stay was removed the Court should have proceeded to decide the suit on its merits. The appeal, therefore, must be allowed. The suit must be restored to the Board and be heard according to law. The appellant to have his costs of the appeal.