

(1928) 04 BOM CK 0011

Bombay High Court

Case No: Civil Revisional Application No. 83 of 1923

Keshavlal Mohanlal Jhaveri

APPELLANT

Vs

Bai Lakshmi

RESPONDENT

Date of Decision: April 5, 1928

Citation: (1928) 30 BOMLR 950 : (1928) ILR (Bom) 568

Hon'ble Judges: Mirza, J; Fawcett, J

Bench: Division Bench

Judgement

Mirza, J.

We have heard full arguments in this matter but the point seems to us to be a simple one, and depends upon the interpretation we are to put upon the writing sent to the arbitrators by the learned Judge. The application made by the plaintiffs to the arbitrators was that certain suits having been sent to the arbitrators and fixed by them for taking evidence that day the applicants were present under protest and wished that the arbitrators would note that fact. On that application the arbitrators made the endorsement "As the plaintiff gives the application as stated above, we do not think it proper that we should decide these matters under these circumstances. Therefore we return the proceedings." On receipt of the papers and proceedings the learned Judge returned them with a note as follows: ♦

The arbitrators are requested to finish the work. The protest does not matter. It is unjustified. The Court has confidence in the arbitrators. The Arbitrators should not retire for that would mean that the plaintiff succeeds in his tactics. If not for anything else at least for the sake of principle and in order to put down such tactics they ought to continue.

2. After receipt of this note the arbitrators resumed their arbitration and fixed a meeting to proceed with the arbitration from a point where they had left it. At that meeting the applicants appeared by their pleader without any protest, and applied for an adjournment. That application was acceded to, and the proceedings were adjourned to March 18. Meanwhile on March 16, 1928, the applicants took out this

rule and obtained an interim stay of the arbitration proceedings. The interpretation we put upon the writing of the learned Judge is, that it is not an order which forces or compels the arbitrators to resume the arbitration against their own wish. It is in the nature of a request made to the arbitrators to reconsider their decision and to resume the arbitration if they were agreeable to do so. Had it been an order compelling the arbitrators against their will to resume the arbitration, the case would fall under the ruling in *Shibcharan v. Ratiram* I.L.R (1884) All. 20 and the further proceeding in arbitration would be vitiated. But that is not the case here. In our opinion the present case falls under the rulings in *Har Narain Singh v. Bhagwant Kuar* I.L.R (1887) All. 187; *Maharajah Joymungul Singh Bahadoor v. Mohwn Ram Marwaree Q*; and *Basdeo Mal Gobind Prasad v. Kanhaiya Lal, Lachmi Narain*. I.L.R (1920) All. 101. In the view we have taken, no question of jurisdiction arises, and the application is, therefore, dismissed with costs. The interim stay granted is dissolved and the rule discharged with costs.