

(1912) 11 BOM CK 0024

Bombay High Court

Case No: First Appeal No. 75 of 1912

Atmaram Yekoba Vani

APPELLANT

Vs

Bhila Ganpat Vani

RESPONDENT

Date of Decision: Nov. 15, 1912

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 32 Rule 7

Citation: (1913) 15 BOMLR 223

Hon'ble Judges: Chandavarkar, J; Basil Scott, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Basil Scott, Kt., C.J.

A suit had been filed on behalf of a minor for partition by his next friend Umabai and she shortly after the institution of the suit had given a Mukhtiarpatra in general terms to a male relation. The Mukhtiarpatra did not refer expressly to submission to arbitration. Subsequently, the Mukhtiar, without bringing to the notice of the Court that he was consenting to a reference on behalf of the minor, agreed to a reference to arbitration, and after a considerable time an award was made by a Sirpunch or umpire awarding to the plaintiff a certain portion of the joint family-property.

2. The plaintiff on attaining majority declined to be bound by the award.

3. The learned Subordinate Judge set aside the award and proceeded with the hearing of the suit and passed a decree awarding to the plaintiff considerably more than he would have got under the award.

4. This appeal is concerned with the question whether the Subordinate Judge was right in holding that the plaintiff was not bound by the award.

5. It is conceded that if Order XXXII, Rule 7, applies to the case, the terms of it were not complied with at the time of the reference to arbitration, and, therefore, the

agreement entered into without the leave of the Court expressly recorded is voidable at the option of the plaintiff.

6. The Allahabad High Court have held that the terms of Section 462, which was the corresponding section in the Code of 1882, did not apply to proceedings falling under the chapter relating to arbitration. That decision is contrary to a decision of the Madras High Court: *Lakshmana Chetti v. Chinnathambi Chetti* ILR (1900) Mad. 326.

7. Now a reference to arbitration is in itself an agreement. As observed in *Pragdas v. Girdhardas* ILR (1901) Bom. 76 " every submission to arbitration implies an obligation to perform the award of the arbitrator." So that here there was an agreement, on behalf of the minor with reference to the suit, entered into by the next friend through the Mukhtiar; and that agreement was entered into without the leave of the Court expressly recorded in the proceedings. It is, therefore, contrary to the terms of Order XXXII, Rule 7. Similarly, after the award had been given, there was a completed agreement in terms of the award, and that was an agreement also in violation of the provisions of Order XXXII, Rule 7. We have no doubt that we ought to follow the decision in *Lakshmana Chetti v. Chinnathambi Chetti* ILR (1900) Mad. 326 rather than the decision in *Hardeo Sahai v. Gauri Shankar* ILR (1905) All. 35; not only because we think it is correct but also because it was referred to with approval in the case of *Pragdas v. Girdhardas*, just referred to, a decision which is binding upon us. That is sufficient to dispose of the case. The minor has repudiated the award. He was entitled to avoid it.

8. The learned Subordinate Judge therefore was right in setting aside the award as far as the plaintiff in the suit was concerned and proceeding to decide the suit on the merits.

9. We, therefore, affirm the decree of the lower Court and dismiss the appeal with costs.