

Dori Lal vs Lal Sheo on 29 October, 1953

Equivalent citations: AIR1954ALL244, AIR 1954 ALLAHABAD 244

JUDGMENT

Malik, C.J.

1. This is a Civil Revision under Section 115 of the Civil Procedure Code.

2. The plaintiff filed a suit for recovery of a certain sum of money. The defendant denied his liability to pay the amount. The matter was referred to arbitration and the father of lawyer appearing for the plaintiff was appointed arbitrator. The arbitrator on the 16th of January, 1948, fixed the 22nd of January, 1948, for hearing and he gave notice of the date to counsel for the parties on the 18th of January, 1948. On the 22nd of January, 1948, the defendant did not appear and the plaintiff produced his evidence and on the 23rd of January, 1948, the arbitrator gave his award. The award was filed in the court of the learned Munsif to be made a rule of the court. The defendant objected to the award being made a rule of the court on the ground that he had no information of the date fixed.

The learned Munsif held that the defendant had no notice of the date fixed and the arbitrator was, therefore, guilty of legal misconduct and he set aside the award. The plaintiff appealed and the lower appellate court has held that notice to the counsel on the 16th of January, 1948, was notice to the defendant and it cannot, therefore, be said that the defendant, who was represented and whose pleader was informed, had no notice of the date. As regards the defendant's contention that the registered post-card sent by defendant's pleader to the defendant on the 16th of January did not reach him in time, the learned Judge was not satisfied that this was true. There was an endorsement on the post-card on the 21st of January, 1948, that the defendant was not found in the village. The next endorsement is of the 24th of January, 1948, that the defendant refused to accept the post-card as the date had already passed; and then there is a note of the 26th of January, 1948, that the post-card was refused.

The information of the date having been conveyed by the pleader to the defendant in a postcard the learned Judge suspected that the defendant deliberately evaded taking delivery of the post-card on the 21st January otherwise there was no reason why the post-card which had reached the village on the 21st January should not have been offered to him for delivery till the 24th January. It is not denied that the arbitrator had given due notice of the date to the counsel for the parties. It was, therefore, open to the arbitrator to proceed ex parte if a party did not appear and if the arbitrator proceeded ex parte it could not be said that he was guilty of legal misconduct. This was the view taken by the learned District Judge who allowed the appeal, set aside the order of the lower court and passed a decree in terms of the award.

3. This revision has been filed under Section 115 of the Code of Civil Procedure and it is submitted that the lower appellate court erred in the exercise of its jurisdiction in accepting the award as the arbitrator was guilty of legal misconduct in proceeding ex parte against the defendant. It is urged that, even if a party has been duly served, an arbitrator cannot proceed ex parte, unless he issues to him a second notice to show cause why he should not proceed ex parte against him.

This submission is based on certain observations in -- 'Gladwin v. Chilcote', (1841) 61 RR 825 (A) and reliance is also placed on -- 'Pratapsingh v. Kishanprasad and Co.', AIR 1932 Bom 68 (B); -- 'Venkata Subbayya v. Venkataramanayya', AIR 1930 Mad 646 (C), as also -- 'Municipality of Ahmedabad v. Ravjibhai Bhailal', AIR 1935 Bom 127 (D). In none of these cases it has been held that an arbitrator, who has given due notice of the proceeding to the parties, is not entitled to proceed ex parte if one party does not choose to appear. In the -- 'Gladwin case (A)', it was said that it would be better that the arbitrator should give a notice that he wanted to proceed 'ex parte'. Learned counsel admits that there is no provision in the Arbitration Act rejoining the arbitrator to give a second notice of his intention to proceed 'ex parte' against a person who is absent after service of notice.

In -- 'Udaichand Panna Lall v. Debibux Jewanram', AIR 1920 Cal 853 (E), Mookerjee J. has pointed out that :

"There is no statutory rule however that if an arbitrator proceeds ex parte without giving notice of his intention to proceed in that manner, the award made by him must be set aside. In the absence of such an inflexible statutory provision, the procedure commended in -- '(1841) 61 RR 825 (A)', and the other cases mentioned can be regarded only as a rule of prudence and convenience."

Again, the learned Judge has said:

"There is obvious good sense in the view that notice that the arbitrator will proceed with the reference on a certain day is notice that he will then proceed ex parte if one of the parties absents himself without sufficient reason."

We respectfully agree with the observations quoted above. The fact, therefore, that the arbitrator did not give a second notice of his intention to proceed ex parte cannot amount to legal misconduct. It is, however, urged that in the circumstances of the case the arbitrator was not justified in proceeding ex parte; in other words, that the defendant had sufficient cause for non-appearance as his lawyer was not able to get into touch with him. This raises a question of fact rather than a question of jurisdiction. We do not think it is possible for us to interfere under Section 115 of the Code of Civil Procedure.

4. The revision has no force and is dismissed with costs.