

Lakshmi Narain vs Ram Babu And Anr. on 27 September, 1951

Equivalent citations: AIR1953ALL9, AIR 1953 ALLAHABAD 9

JUDGMENT

P.L. Bhargava, J.

1. This is an appeal by Lakshmi Narain, who had instituted a suit in the Court of the Civil Judge of Agra, praying that an award made by the arbitrators, in pursuance of a reference made to them by him and others, be directed to be filed in, and be made a rule of the Court. The facts and circumstances which have given rise to this appeal are these:

2. Ram Babu, a minor through his father Kishen Lal as next friend, instituted suit no. 297 of 1942, in the Court of the Munsif of Agra, against Lakshmi Narain the appellant, for recovery of possession over a piece of land and for demolition of certain structures built thereon by the defendant, namely, Lakshmi Narain. The suit was contested and was eventually dismissed on 31-8-1943. Against the decision of the Munsif, Ram Babu preferred an appeal no. 292 of 1943 in the Court of the District Judge of Agra. The appeal was transferred for disposal to the Civil Judge of Agra and it is still pending there.

3. Apart from the dispute which was the subject-matter of the litigation mentioned above, there were other disputes, the disputants being Hub Lal, the grandfather of Ram Babu, and Kishen Lal, the father and guardian of Ram Babu, first party, Asa Ram, second party, Lakshmi Narain, the appellant, third party, and Gajadhar Singh, fourth party. On 10-7-1949, all the disputants, including Ram Babu through his father, executed a deed of agreement to refer the entire dispute, including the dispute which was the subject-matter of the appeal pending in the Court of the civil Judge of Agra, to arbitration. The dispute which was the subject-matter of the appeal was referred to arbitration without reference to or intervention of the Court. But, subsequently, on 7-8-1944, a joint application was made on behalf of Ram Babu, through his counsel, by Hub Lal, the grand-father of Ram Babu, and by Lakshmi Narain, the appellant, to the Civil Judge of Agra stating that the dispute in the appeal along with certain other matters had been referred to arbitration out of Court, and a deed of agreement for reference to arbitration had been executed by the parties. The prayer in the application was that some distant date be fixed in the appeal so that the matter may be decided by the arbitrators in pursuance of the said agreement. This application was granted on the same date and the hearing of the appeal was postponed.

4. In pursuance of the deed of reference, the arbitration proceedings commenced and in due course an award was made by the arbitrators on 16-8-1944. As regards the dispute between Ram Babu and Lakshmi Narain, the decision of the arbitrators contained in the award was that the latter should pay to the former a sum of Rs. 700/-for the land. Lakshmi Narain was satisfied with the award; while the other disputants were not satisfied with it. Accordingly, Lakshmi Narain filed the suit

which has given rise to this appeal.

5. Under the direction of the Court, the award was filed by the arbitrators in Court and, upon the receipt of notice of the filing of the award, Ram Babu and others filed written statements challenging the validity of the award on various grounds. The ground of objection, which is material for the purposes of this appeal and which had been raised on behalf of Ram Babu, was that the reference made on his behalf without the permission of the Court was bad in law and the reference being incompetent, the award based upon it was also invalid and not binding upon him.

6. During the pendency of the objections to the award on 30-5-1945, an application was made to the Civil Judge on behalf of Ram Babu, through his counsel, saying that the appointment of a referee would be beneficial in the interest of the minor and that the necessary sanction for the appointment of a referee in the case be given. This application was allowed.

7. On the same date, viz., 30-5-1945, counsel for the parties, including the counsel for Ram Babu, made the following statement before the Court:

"Vaklai Fariqain ne bayan kiya ki Babu Mathura Pd. Kacker vatil ko gawah hazri muqarrar karte hain. Gawah Mazkur bad tahqiqat ya bila tahqiqat ya khufia ya alania jo kuchh omur nazai ke mutaaliq bayan karde usi par muqadma faisal kar diya Jawe. Fariqain ko iteraz na ho ga aur qabul wa manzoor hoga. Fariqain mubligh 100/-rupiya nisfa nisf ada karen."

Thereupon, the Court made the following order:

"Parties stated that Mr. Mathura Pershad Kacker is appointed as Referee. Allowed. Mr. M.P. Kacker is appointed as Referee who will get Rs. 100/- as his fees. Parties will pay half and half and submit his report by 12-7-1945."

8. The referee did not submit any report, but after several adjournments awaiting the report, on 22nd September 1945, the referee made the following statement: "There is no misconduct or material irregularity which can vitiate the award. The objections are futile."

9. Even after the statement of the referee had been recorded, on behalf of Ram Babu the original objection to the validity of the award was pressed. That is to say, it was contended that the reference having been made on behalf of the minor without the leave of the Court, the reference as well as the award passed thereon were both invalid.

10. The learned Civil Judge did not proceed to decide the matters in dispute in terms of the statement made by the referee. He was of the opinion that the dispute, which was the subject-matter of the appeal, could not be referred to arbitration without the permission of the Court; that all the parties other than Ram Babu were bound by the statement of the referee; that the award so far as the defendants other than Ram Babu were concerned it was binding upon them and they were not entitled to challenge the same; that so far as Ram Babu was concerned the reference itself was illegal

and the award based upon the said reference was also illegal and invalid; and that the operation of the award relating to the illegal reference was separable from the rest of the award. Accordingly he made the following order :

"The award will be made decree of the Court under Section 17, Arbitration Act, so far (as) defendants other than Ram Babu are concerned. Ram Bubu will not be bound by the award and so his appeal will be heard on merits The award 71A will form part of the decree."

11. In pursuance of the above mentioned order, a decree was prepared. Both the parties preferred separate appeals against the decree of the Civil Judge. Lakshmi Narain in his appeal contended that the decree should have been passed in terms of the whole award; while the appellants in the other appeal contended that the entire award ought to have been set aside. The learned District Judge, who heard the appeal, held that the reference to arbitration of the dispute, which was the subject-matter of the appeal, pending before the Civil Judge, was illegal as the necessary sanction of the Court to make a reference on behalf of the minor had not been obtained. As regards the referee and his statement, the learned Judge observed :

" . . . reference to referee only sought to enforce the award. Consequently, the fact that, there was consent to refer the question whether the award should be enforced to a referee does not relieve the Court of the responsibility to see whether the award was beneficial to the minor I am of opinion, therefore, that the award cannot be enforced against the minor."

The learned District Judge further held that the want of sanction of the Court on behalf of the minor to refer the dispute to arbitration did not vitiate the whole award. Accordingly, he dismissed both the appeals.

12. Now, Lakshmi Narain has preferred this appeal and the contention put forward on his behalf is that the award is valid and enforceable against Ram Babu inasmuch as a reference was made on his behalf by his father and natural guardian, and as such, no sanction or permission of the Court, where the appeal was pending, was necessary in law to validate the reference; that, in any case, the permission had been granted by the Court, if not expressly, by necessary implication, on 7th August 1944, when the parties informed the Court about the reference to arbitration and asked for a long date in the appeal; that, apart from it, the parties to the suit including Ram Babu having agreed to abide by the statement of a referee appointed by common consent and the statement having been made by the referee, the Courts below had no jurisdiction to go behind the referee's statement and to reopen the question of validity or invalidity of the award, much less to declare it invalid with respect to any part of it.

13. Hub Lal and Kishen Lal have filed cross-objections wherein it is contended that in law there could be no reference to a referee and no decision could be based upon the statement of the referee; that the reference to arbitration was one and indivisible and a part of the reference being illegal, the whole reference became void and unenforceable; and that the award so far as it related to the

dispute pending in appeal before the civil Judge could not be separated from the other portion of the award.

14. On behalf of the respondents, a preliminary objection has been raised as to the maintainability of this appeal; and it has been contended that no second appeal lies, in view of the provisions of Sub-section (2) of Section 39, Arbitration Act, 1940. According to the contention of the respondents' counsel, the trial court had modified and set aside a portion of the award; consequently, the appeal filed in the court below was against the orders referred to in Clause (iii) and (vi) of Sub-section (1) of Section 39, Arbitration Act, and as such, the second appeal is barred by Sub-section (2) of the said section.

15. In reply to the preliminary objection, the learned counsel for the appellant has pointed out that the trial court had not made any order under Section 39(1)(iii) or (vi), Arbitration Act, but passed a decree which was not in accordance with the award. Hence, Lakshmi Narain's appeal in the court below was against the decree and not against any order modifying or setting aside the award in whole or in part.

16. An order modifying or correcting an award mentioned in Clause (iii) of Sub-section (1) of Section 39, Arbitration Act, is the one made under Section 15 of the Act, in cases covered by Clauses (a), (b) or (c) of the said section. The matter which was separated by the trial court had undoubtedly been referred to arbitration; but the reference was said to be illegal. There was no objection to the award on any of the grounds mentioned in Clauses (a), (b) or (c) of Section 16 of the Act. Consequently, it is not possible to hold that there was any order modifying the award under Section 15 of the Act.

17. An order setting aside an award referred to in Clause (vi) of Section 39(1), Arbitration Act, is the one which is contemplated by Section 30 of the Act. Under Section 33 of the Act an award can be set aside at the instance of any party on an application made by it for the purpose. No such application was filed by any party and no portion of the award was set aside on any of the grounds mentioned in Section 30 of the Act. Even in the written statement filed by Ram Babu and others, there is no prayer for the setting aside of the award. In the written statement filed on behalf of Ram Babu certain defects were mentioned and it was alleged that in view of those defects the award was vitiated; and, in the end, it was pointed out in para. 16 that under the circumstances the application for filing the award was liable to be rejected. Lakshmi Narain had prayed for the award being made a rule of the court, and the court found that a portion of the award was illegal; and in the result passed a decree in terms of so much of the award as was not vitiated on any ground. Consequently, it is difficult to hold that there was an order setting aside the award in whole or in part.

18. The trial court passed a decree which was not in accordance with the award. Such a decree was appealable in view of the provisions contained in Section 17, Arbitration Act, and Lakshmi Narain preferred an appeal against it. The appeal was dismissed and the lower appellate court has made a decree to that effect. Against that decree the present appeal has been filed and is clearly maintainable.

19. I, therefore, overrule the preliminary objection.

20. The main argument advanced on behalf of the appellant is that the parties had agreed to abide by the statement of Shri Mathura Prasad Kacker Vakil, who was cited as a witness and nominated a referee by common consent of the parties; that the referee made a statement in pursuance of the reference; and that the statement covered all the points in dispute between the parties; consequently, the courts below ought to have given effect to the statement made by the referee and the adjustment thus arrived at between the parties and they had no jurisdiction to consider on merits the objection that the reference to arbitration or the award was illegal or invalid. It has been further argued on behalf of the appellant that as far as Ram Babu minor was concerned, an application was made on his behalf seeking the permission of the court to make the reference to the referee on the ground that the course suggested was beneficial to the interests of the minor and the court had allowed the guardian through his counsel, to make the reference, and as such, Ram Babu was also bound by the reference and the statement made by the referee and the resulting adjustment.

21. On behalf of the respondent, Ram Babu, it has been contended that the dispute between him and the appellant, Lakshmi Narain, which was the subject-matter of the appeal pending in the court of the Civil Judge of Agra, could not be referred to arbitration without the intervention of the court; that, in view of the decision of this Court in Shukrullah v. Mt. Rahmat Bibi, A. I. R. 1947 ALL. 304, even the appellate court could not refer the said dispute to arbitration; that the reference of the said dispute to arbitration without the intervention of the court and without obtaining the court's permission to make the reference on behalf of the minor, Ram Babu, and the award made in pursuance of such a reference were both bad in law; and that, in any case, the question of the validity of such a reference and award could not be referred to or decided upon the statement of a referee.

22. I will first take up the question whether the dispute between the appellant and Ram Babu, which was the subject-matter of the appeal pending in the Court of the Civil Judge of Agra, could or could not be referred to arbitration without the intervention of the Court. There is no clear provision in the Arbitration Act for a reference to arbitration in an appeal pending in any Court, although there is such a provision for a reference to arbitration in a suit pending in any Court. The question whether the word "suit" in Section 21, Arbitration Act, is wide enough to include an appeal, and the word "Court" appearing in the same section is comprehensive enough to include an appellate Court, has been dealt with in two Division Bench cases of this Court in Shukrullah v. Mt. Rahmat Bibi, I. L. R. 1947 ALL. 227; A. I. R. 1947 ALL. 304 and in Munni Lal v. Kishun Prasad, 1948 ALL. L. J. 556. In the first case Mootham J. interpreted the word "suit" to mean a proceeding instituted in a Court of the first instance by a plaint or in such other manner as may be prescribed and the word "Court" to mean a Civil Court having jurisdiction to decide, as a suit, the questions forming the subject-matters of the suit (p. 231). It was further held in the first case that an appellate Court has no power to make any reference to arbitration in respect of the subject-matter of an appeal pending before it. In the second case, the learned Judges recorded their opinion that it was not necessary to give such a restricted meaning to the word "suit" in Section 21, Arbitration Act, as to exclude execution proceedings, appeals and other proceedings before the Civil Court which are in the nature of suits in which Civil Courts decide disputes between the parties of a civil nature. In Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd., A. I. R. 1933 P. O. 63, it was pointed out that the word

"suit" ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint.

Learned counsel for the appellant informed me that the question, whether an appellate Court has the power to make a reference to arbitration in respect of the subject-matter of the appeal pending before it has been, in view of the conflicting decisions aforesaid, referred to a Full Bench. The word "Court" has been defined in Section 2, Arbitration Act, as meaning "a civil Court having jurisdiction to decide the questions forming the subject-matter of the reference, if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under Section 21, include a small cause Court."

In my opinion, the word "Court" appearing in Section 21 cannot be restricted to mean a civil Court of original civil jurisdiction only and that the definition is wide enough to include an appellate Court also, inasmuch as it has got jurisdiction to decide the questions forming the subject-matter of the reference, if the same had been the subject-matter of a suit. An appellate Court does decide such questions when they come up in appeal before it. When the word "Court" used in Section 21 of the Act, is wide enough to include an appellate Court, there appears to be no reason to give a restricted meaning to the word "suit" so as to exclude an appeal from its purview.

23. Therefore, following the second case, I would hold that the subject-matter of the appeal pending in the Court of the Civil Judge of Agra could have been referred to arbitration through the intervention of the Court. The reference, as we have already seen, was, however, made direct without the intervention of the Court. Is such a direct reference absolutely prohibited under the Arbitration Act? Section 21 of the Act provides that, where in a suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before the judgment is pronounced apply in writing to the Court for an order of reference. This provision of law is not mandatory and the parties may or may not apply. Section 47 of the Act contemplates arbitrations other than those made in accordance with the provisions of the Act; and such arbitrations may include a joint arbitration relating to the subject-matter of a pending suit and the matters which are not the subject-matters of the suit without the intervention of the Court and the award made in pursuance of such an arbitration may, with the consent of the parties interested, be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

24. In a case like the one before me, that is to say, where the dispute pending before a Court is only a minor dispute and, between the same parties, there are other major disputes, which can be referred to arbitration without the intervention of the Court, there appears to be no legal bar to the parties agreeing to refer all the disputes between them to arbitration without the intervention of the Court and then to deal with the award "otherwise obtained", that is, obtained in a manner different from that laid down in the Arbitration Act and to place it before the Court concerned for consideration as a compromise or adjustment of a suit.

25. It is true that there cannot be two conflicting jurisdictions relating to one and the same matter, that is, the jurisdiction of the Court in the suit and the jurisdiction of the arbitrator under the

Arbitration Act; but the parties are entitled at any time to settle their disputes out of Court and then approach the Court to record an adjustment of the claim in respect of the subject-matter of the suit or appeal without, in any manner, interfering with the jurisdiction of the Court. The parties may adjust their dispute by themselves or through the intervention of a third person as an arbitrator or a referee.

26. On behalf of the respondents, my attention has been invited to the Privy Council decision in *Ram Protap Chamria v. Durga, Prasad Chmria*, A. I. R. 1925 p. c. 293. That case was decided long before the Arbitration Act, 1940, came into force; and it is also distinguishable on facts. In that case, a reference to arbitration was made through Court in respect of matters in dispute in a pending suit and other matters which were not the subject-matter of the suit and the order of reference clearly stated that the reference was being made only in respect of the matters in dispute in the pending suit, but the award covered all the matters, including those not in suit. Their Lordships of the Privy Council observed at page 297 :

"The appellate Court based their decision upon the ground that it was really impossible according to the Statute Law of India that one and the same arbitration should be held as Rankin J., expresses it;

'As to matters within the jurisdiction of the Court and matters without the jurisdiction of the Court; between the parties to the suit and between them and other persons; under the Code provided by the Indian Arbitration Act and under the Code by the second Schedule; under the superintendence and control of the Judge who has seisin of the suit and of the Judge disposing of business under the Indian Arbitration Act; partly upon an order of reference and partly under an agreement.' "

27. Although Section 89, Civil P. C. in force at the time when the above pronouncement was made, provided that "(1) Save in so far as is otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the second Schedule."

Section 47, Arbitration Act, 1940, now lays down :

"Subject to the provisions of Section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder :

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending."

28. It is, therefore, not possible to lay down that in no case can the subject-matter of a pending suit or appeal be referred to arbitration without the intervention of the Court or that an award based in

pursuance of such a reference cannot be enforced by the Court. Consequently, in my opinion, there was no legal bar to the dispute, which was the subject-matter of the appeal pending in the Court of the Civil Judge of Agra, being referred to arbitration and to the award, made in pursuance of the reference, being recorded with the consent of the parties as an adjustment of the matters in dispute.

29. It remains to be considered whether for an agreement of reference to arbitration of the dispute, which was the subject-matter of the appeal pending in the Court of the Civil Judge of Agra, along with other disputes, which were not the subject-matter of any litigation in a Court of law, entered into on behalf of the minor, Ram Babu, the leave of the Court referred to in Rule 7 of Order 32, Civil P. C. was necessary even though the reference was made without the intervention of the Court. The rule aforesaid provides ;

"7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor."

The rule is applicable to agreement or compromise by next friend or guardian for the suit. When Kishen Lal, father of the minor, entered into the agreement of reference in question, he was acting as the father and natural guardian of the minor and not as his guardian for the suit. In the latter capacity he could not refer other disputes to arbitration,--that he could do only in his former capacity. He was entitled to adjust the matters in suit out of Court by direct agreement between the parties or through the intervention of an arbitrator or referee and have the adjustment recorded in Court with the leave of the Court. In my opinion, therefore, in a case of the nature mentioned above, the leave of the Court was, for the reasons stated earlier, not necessary.

30. The next question, which arises for consideration, is whether all the parties interested had moved the Court to take into consideration the arbitration award, obtained otherwise than in the manner provided by the Arbitration Act, 1940. The answer to this question depends upon the result of the proceedings, which followed the filing of the award in Court. The entire award was filed in Court under the directions of the Court, under Section 14 of the Act. In the suit, which was instituted for the filing of the award and for its being made a rule of the Court, the following points were in issue between the parties Lakshmi Narain, the appellant, on the one side, and Ram Babu, his father, grandfather and other disputants on the other side--and in regard to them the parties agreed to abide by the statement of the referee :

(1) Whether the dispute which was the subject-matter of the appeal in the Court of the Civil Judge of Agra had been validly referred to arbitration and whether the award based upon such a reference was valid and binding upon Ram Babu.

(2) Whether the reference to arbitration on behalf of the minor, Ram Babu, was prejudicial to his interests, and whether the guardian of the minor had in making the reference acted negligently.

(3) Whether the arbitrators were related to Lakshmi Narain and the fact had been concealed from the other side.

(4) Whether the award was vitiated on account of any misconduct on the part of the arbitrators.

31. It is not disputed that the parties could agree to abide by the statement of the referee on all the points except the first one. I, therefore, proceed to consider whether there was any legal bar to the parties agreeing to abide by the statement of the referee in regard to the first point.

32. An agreement that the parties will abide by the statement of a witness, who has been designated as a referee, is enforceable in law; and, as pointed out by this Court in *Suraj Narain v. Beni Madho*, A. I. R. 1937 ALL. 701, there is nothing in law to prevent the parties to a suit from agreeing, apart from the Oaths Act, to abide by the statement of a third person. The question whether such an agreement amounts to (1) a reference under Oaths Act, (2) a reference to arbitration, (3) a mutual admission of the parties creating an estoppel, or, (4) if carried out, an adjustment of the claim, was dealt with at some length in a Full Bench decision of this Court in *Mt. Akbari Begam v. Rahmat Husain*, A. I. R. 1933 ALL. 861 (S. b.). Sulaiman C. J., who delivered the leading judgment of the Full Bench observed :

"Now there is an overwhelming authority in favour of the view that a decree passed on the basis of such an agreement when carried out by the statement of the referee is binding upon the parties. The only difference of opinion that seems to have arisen is as to whether the binding character of the decree should be based on the supposition that such a reference amounts to a reference to arbitration or an adjustment of the claim, or is an admission of the parties of an offer amounting to an estoppel.

The trend of the authorities in this Court appears to be more in favour of the view that such an agreement is in substance a compromise or adjustment of the suit, and neither a mere admission capable of being rebutted nor strictly speaking a reference to arbitration."

33. On the question whether such an agreement amounts to a reference to arbitration, the learned Chief Justice summed up his conclusions thus ;

"In concurrence with the opinions of the learned Judges who have made this reference, I hold that an agreement to abide by the statement of a particular witness is in substance not a reference to arbitration. The essence of arbitration is that the arbitrator decides the case and his award is in the nature of a judgment which is later on incorporated into a decree of the Court. The arbitrator can either proceed on the

basis of his own knowledge or make enquiries and take evidence and then give his decision on such evidence. But, where parties agree to abide by the statement of a third person or a referee, the referee merely makes a statement according to his knowledge or belief and the Court then decides the case and pronounces its judgment on the basis of such a statement and passes a decree thereon. The referee is not authorised to make enquiries and take evidence, and then announce his decision on the basis of such evidence. He is called upon to make a statement according to his knowledge or belief. In the case of an arbitration as the arbitrator's award is an expression of an opinion and his procedure resembles that of Court, a party is entitled to file objections and challenge the validity of the award. The making of a statement by a referee or a third person has no resemblance to a proceeding conducted by him as if he were a Court of law, and accordingly there can be no procedure for filing objections as to its validity. It is for the Court, in pronouncing judgment, to consider its effect."

34. The true basis of the binding character of such an agreement was thus explained by the learned Chief Justice :

"When both parties make such admission simultaneously, it amounts to an offer by one and acceptance by the other. Such reciprocal admission would, therefore, be a valid agreement between them. Consideration is good because there is ' reciprocity. The statement of the referee would then be the admission of both the parties binding upon them. No doubt admissions are not conclusive; but, where, there has been mutuality of this kind and they have matured into an agreement, their conclusiveness follows from the principle of estoppel. The parties cannot be allowed to go back upon it and, therefore, the admission is conclusive as against both, and can be said to operate as an estoppel.

In my opinion the true basis of the binding character of such an agreement is that the original contract to abide by the statement of a third person is perfected into an adjustment of the claim in terms of the statement made, as soon as the referee makes the statement. After that stage, neither party can resile from the agreement because the claim has been duly adjusted and it has become the duty of the Court not only to record it, but also to pass a decree in terms of it. But as soon as the agreement has been fully carried out by the Court and the referee has made his statement in favour of one party or the other, it is too late for either party to go back upon the agreement; and at this stage the agreement must be deemed to have eventuated into an adjustment of the claim in accordance with the statement already made."

35. In the case before us, as we have already seen, the parties had cited Shri Mathura Prasad Kacker Vakil as a witness and had agreed to abide by the statement made by him in Court, and they had further agreed that all the matters in dispute were to be disposed of in accordance with the statement of the referee. In pursuance of this agreement, the referee, after taking time made a statement before the Court and that statement disposed of all the matters in dispute to which

reference has been made above. There was no-legal bar against the Court deciding the points in dispute between the parties on the basis of that statement. The Court of first instance did in fact accept the statement of the arbitrator except in regard to the question whether the dispute which was the subject-matter of the appeal in the Court of the Civil Judge of Agra had been validly referred to arbitration and whether the award based upon such a reference was valid and binding upon Ram Babu. On this question, the learned Civil Judge proceeded to give his own decision. I do not see any reason why the said question could not be referred to a referee or decided upon the statement.

36. Learned counsel for the respondents has contended that inasmuch as the dispute involved a question of jurisdiction, it could not be referred to the referee; and, in support of his contention, he has invited my attention to a Single Judge decision of this Court in *Jwala Debi v. Amir Singh*, A. I. R. 1929 ALL. 132, wherein it was pointed out at page 132 that :

"a question of jurisdiction, although it may be raised by the defendant, is a question that virtually arises between the plaintiff and the Court itself. A decision on the question of jurisdiction does not affect in any way the status of the parties or the right of one party to obtain redress against the other..... A question of jurisdiction is not a question which may be said to have arisen between the parties."

37. The question which arose for determination in that case was whether a decision as to jurisdiction was or was not binding upon the parties in a subsequent litigation; and, for the reasons stated above, the question was answered in the negative. The case is no authority for the proposition that the parties cannot agree to abide by the statement of a referee on the question of validity of reference in an arbitration proceeding.

38. The agreement to abide by the statement of a third person is a valid contract; and if the parties are in law entitled to agree to abide by the statement of any person as a referee, there appears to be no reason why the rights of the parties should in any manner be restricted as regards the matters to be decided on the basis of the referee's statement. It would not be either convenient or in the interests of the parties to adjust their differences in part, that is so far as they relate to questions of fact on the basis of the referee's statement, and to leave questions of law to be decided by the Court. The parties may choose a referee well-versed in law, in whom they have full trust and confidence and agree to abide by his statement on questions of law as well as facts. A referee has to make a statement according to his knowledge and belief; and if he is competent to make such a statement on questions of law and facts both, the parties can certainly agree to abide by his statement on all the questions and adjust their differences accordingly. In my opinion, there is no reason why in such cases a distinction should be drawn between questions of law and those relating to facts. In this connection also I may usefully quote the following observations of the learned Chief Justice at page 879 in the Full Bench case cited above :

"It may be noted in this connection that for purposes of a reference to a third party under Section 20, Evidence Act, it is not necessary that the reference should be on questions of fact within the knowledge of the referee. In *Taylor on Evidence*, Vol. 1, para 761, it is stated that these principles apply whether the question referred be one

of law or of fact; whether the persons to whom reference is made have or have not any peculiar knowledge of the subject, and whatever the nature of the action in which the statements of the referee are proposed to be adduced in evidence'."

The above quotation clearly supports the view that the parties may agree to abide by the statement of a referee even on the questions of law. Consequently, there was no legal bar to the parties agreeing to abide by the statement of the referee on the question whether the dispute, which was the subject-matter of the appeal in the Court of the Civil Judge of Agra, had been validly referred to arbitration and whether the award based upon such reference was valid and binding, upon Ram Babu.

39. It follows, therefore, that the agreement arrived at between the parties on 30th May 1945, to abide by the statement of Shri Mathura Prasad Kacker Vakil on all the points in dispute was perfectly valid and binding. Ram Babu's guardian, through his counsel, entered into the agreement on behalf of the minor, Ram Babu, with the permission of the Court; consequently, Ram Babu was also bound by the agreement. The agreement was carried out by the Court and the referee made the statement no matter right or wrong; and the agreement eventuated into an adjustment of the matters in dispute. The trial Court should, therefore, have given effect to the adjustment which was lawful and decided the matters in controversy between the parties in accordance therewith. The result of this adjustment was also to bring about a settlement of the matter which was the subject-matter of the appeal pending in the Court of the Civil Judge of Agra; and the same could be recorded. When all the matters in dispute had been adjusted, the Court had no jurisdiction to enter into the merits of any of the points in dispute and to record his own decision on the question whether the reference to arbitration and the award based thereon were valid and binding upon Ram Babu. As the referee had stated that there was no misconduct or material irregularity sufficient to vitiate the award and that all the objections filed against the validity of the award were futile, the said objections ought to have been rejected by the trial Court.

40. As all the objections raised against the validity of the award were liable to be rejected in terms of the adjustment referred to above, the entire award should have been held to be valid and a decree passed in terms of the whole award.

41. I see no force in the cross-objections. In view of the adjustment referred to above, the reference to arbitration and the award based upon that reference are both valid. The cross-objections are, therefore, liable to be dismissed with costs.

42. For the reasons stated above, I allow this appeal, set aside the decision of the Courts below dismiss the objections filed against the validity of the award and direct that a decree be prepared in terms of the award, which shall form part of the decree. The respondents shall bear their own costs and pay those of the appellant in both the Courts.

43. The cross-objections are dismissed with costs.