

Abdul Rehman Khan And Ors. vs B. Basant Rai And Ors. on 21 April, 1955

Equivalent citations: AIR1955ALL678, AIR 1955 ALLAHABAD 678

JUDGMENT

Agarwala, J.

1. This is application in revision arising out of arbitration proceedings. The parties referred a suit to arbitration. There was an award. The defendants-applicants filed objections to the award and prayed that the award be set aside. The trial Court rejected the application, refused to set aside the award and then proceeded by the same order to pass a decree in terms of the award. Thus the orders refusing to set aside the award and directing that a decree be passed in terms of the award were passed as a composite order on one and the same date.

The plaintiffs opposite parties filed an appeal to the lower appellate Court and the lower appellate Court set aside the award and remanded the case to the trial Court for decision according to law. An objection was taken before the lower appellate Court that the appeal was incompetent. That Court rejected the objection.

2. In this revision application it has been urged that the appeal to the Court below was incompetent. Learned counsel has urged that as there was a composite order and as a decree in terms of the award was prepared under Section 17, Arbitration Act, an appeal to the Court below could only lie within the limits prescribed by Section 17, namely if the decree was in excess of or not otherwise in accordance with the award. This contention, has no force,

3. Section 39, Arbitration Act confers a right of appeal against an order refusing to set aside an award. The right of appeal against an order refusing to set aside an award was not available before the enactment of the Arbitration Act of 1940, see Section 104 Civil P. C. The mere fact that an appealable order has been followed up by a decree in terms of the award can be no ground for denying the right of appeal to a party. Section 17, Arbitration Act, contemplates that where there has been an objection to file award, that objection will be decided and if it is rejected, then a decree shall follow in terms of the award.

Normally, the Court should pass two separate orders on separate sheets of paper one deciding the objections to the award and the other directing a decree to be passed in terms of the award. Very often lower Courts do not follow this procedure. After having held that there was no force in the objections and rejecting them, they make a direction in the same order that a decree be passed in

terms of the award. This procedure, though irregular, cannot, by any stretch of reasoning, take away the right of a party to appeal against the order refusing to set aside the award.

For the purposes of the appeal a copy of both the orders may have to be filed and instead of a formal order embodying the decision that the objections are dismissed, the decree which is passed in terms of the award may have to be filed, yet the substance of the appeal will have to be seen and if the order rejecting the objections to the award is challenged in the appeal, the appeal will be construed" as being against the order refusing to set aside the award.

4. Learned counsel has referred us to certain decisions of this Court and of the Privy Council, e.g., -- 'Ghulam Khan v. Muhammad Hassan', 29 Ind App 51 (PC) (A); -- 'Lutawan v. Lachya', AIR 1914 All 446 (FB) (B); -- 'Mt. Mariam v. Mt. Amina', AIR 1937 All 65 (FB) (C) & -- 'Suraj Singh v. Phul Kumari', AIR 1926 All 202 (D). But these cases were all decided before the enactment of the Arbitration Act, 1940.

As already pointed out there was no provision in the Civil Procedure Code for an appeal against an order refusing to set aside an award and the cases cited by the learned counsel have, therefore, no bearing on the point we have to consider in the present revision application,

5. There is no force in this application. It is dismissed with costs.