# Ram Alam Lal And Ors. vs Dukhan And Ors. on 6 February, 1950

## Equivalent citations: AIR1950ALL427, AIR 1950 ALLAHABAD 427

JUDGMENT

Desal, J.

1. This is an application by the plaintiffs whose application for the filing of an award has been dismissed by the Additional Civil and Sessions Judge of Banaras on appeal. It was alleged by the applicants that on 5th November 1943 an agreement was entered into by the parties for referring their disputes to arbitration, that accordingly the disputes were referred to arbitration, and that the arbitrators gave an award on 23rd January 1944. The applicants applied on 17th July 1944 for the filing of the award. The application was resisted by the defendants-opposite parties on the ground that there was no valid reference and that their signatures on the supposed reference were obtained fraudulently. The learned Munsif, in whose Court the application was filed, dismissed the objection of the opposite parties and passed a decree in terms of the award. The opposite parties filed an appeal from the decree in the Court of the learned Civil Judge who, holding that there was no valid agreement for reference, set aside the decree of the learned Munsif and dismissed the application.

2. The only ground taken by the applicants before us is that no appeal lay in the Court of the learned Additional Civil and Sessions Judge against the decree passed by the learned Munsif. Under Section 17, Arbitration Act, a decree passed on the basis of an award is not appealable except on the ground that it was passed in excess of the award or was otherwise not in accordance with the award. The appeal that was filed by the opposite parties was not on the ground that the decree was in excess of the award or not in accordance with it; it was only on the ground that the signatures on the agreement for reference were obtained fraudulently on blank sheets of paper. Therefore, the appeal did not lie Under Section 17 and it is to be seen whether it lay Under Section 39. Under this section, an appeal would lie from an order setting aside or refusing to set aside an award. The opposite parties had applied to the learned Munsif that the application for the filing of the award should be rejected on the ground that there existed no valid agreement for reference and the learned Munsif refused to set aside the award. But he did not pass a separate or formal order refusing to set it aside. He wrote out a judgment disposing of the suit on the basis of the award, and a decree was prepared in accordance with it. It is the judgment that contains the fact of refusal to set aside the award and the grounds for the same. Though there was no separate order refusing to set aside the award, the opposite parties should have filed their appeal against the order and not against the decree that was passed in accordance with the judgment. They should have first got a formal order prepared by the learned Munsif and attached a copy of it to their memorandum of appeal. It has now been contended before us on their behalf that their appeal, though expressed to be an appeal from the decree, should be treated as an appeal Under Section 39 from the order of the learned Munsif refusing to set aside the award, contained in his judgment.

3. There is no doubt about the intention of the opposite parties, which was to challenge the order of the learned Munsif refusing to set aside the award on the ground that it was improperly obtained on an agreement to refer which was not signed by the opposite parties with the requisite intention. They did not at all want to challenge the decree otherwise than by challening the award itself, The appeal itself was under, stood by all concerned as an appeal from the order refusing to set aside the award. The learned Additional Civil and Sessions Judge entertained the appeal and even allowed it on the assumption, that it was from the order and not from the decree. The applicants themselves understood it to be an appeal from the order and not from the decree and consequently did not plead before the learned Additional Civil and Sessions Judge that the appeal was not maintainable at all. We are sure they would not like us to think that they understood it to be an appeal from the decree and yet deliberately refrained from taking the plea before the learned Additional Civil and Sessions Judge and reserved it for a later date in second appeal when it would not be possible for the opposite parties to do anything. If they had pleaded before the learned Additional Civil and Sessions Judge that the appeal being from the decree was not maintainable, the opposite parties would have at once got the memorandum of appeal corrected by substituting the words "order refusing to set aside the award" in place of the word "decree." Such an amendment would have been allowed by the learned Additional Civil and Sessions Judge without any hesitation and the appeal would have been quite in order. Everybody laboured under the impression that the appeal was from the order because there was no separate order recorded by the learned Munsif refusing to set aside the award. Had there been such a separate order, and yet the opposite parties filed the appeal from the decree and not from that order their case would have been weak and it would have been difficult for us to treat their appeal as one from the order and not the decree. But, as the facts stand, we have no good reason for not treating the appeal as one from an order. We would do everything in our power to prevent a patty from being prejudiced by a mistake of the Court itself. The objection raised by the applicants is of a technical nature; we need not treat it as an objection going to the root of the jurisdiction of the learned Additional Civil and Sessions Judge. It is not that he had no jurisdiction to entertain any appeal at all. He had jurisdiction to entertain an appeal from the learned Munsfi's order refusing to set aside the award. The appeal, in substance, was such an appeal. The trouble is caused because it purported to be one from the decree passed on the award. The objection based simply on the language used in the memorandum of the appeal must necessarily be treated as a technical objection. As this objection has been raised at a late stage when it was not possible for the opposite parties to do anything to rectify their mistake, we would not attach as much importance to it as we would otherwise have done.

4. It was vehemently argued before us that no appeal lay at all from the judgment of the learned Munsif because there was no application before him Under Section 33 of the Act for the setting aside of the award. The applicants applied Under Section 14 of the Act for the award being filed. On this the learned Munsif gave notice to the parties. The opposite parties filed a written statement denouncing the agreement to refer as fraudulent and null and void and the award, as unenforceable. The relief sought in the written statement was that the application be dismissed, Merely because it was not stated in the written statement that it was an objection Under Section 33 and the relief claimed was not that the award be set aside but that the application for its being filed be dismissed, it cannot be said that it was not an objection contemplated by Section 33 and that the judgment passed by the learned Munsif in the suit does not contain any order refusing to set aside the award.

The law does not require any objection Under Section 33 to be filed in addition to the written statement in such a case. It does not require any written statement to be filed at all. All that it requires is that a notice of the filing of the award should be given to the parties and it is for the parties to decide whether to challenge the award Under Section 33 or not. If they wish to challenge it, they can do so in any manner they like; Section 33 does not prescribe the manner in which the challenge should come. The written statement serves the purpose of the objection challenging the validity of the award. The learned Munsif disposed of the objection through the judgment and upheld the award. His judgment, therefore, clearly contains his refusal to set aside the award. If the learned Munsif did not pass a separate order contemplated by Section 39 refusing to set aside the award but embodied it in the judgment, that would not deprive the opposite parties of the right of preferring an appeal against the order. The mere facts that he passed It decree on the basis of the judgment and that there can be no appeal from the decree also would not deprive them of the right of appeal.

5. The view that we take is supported by Jagat Pande v. Sarawan Pande, 47 ALL. 743 : (A. I. R. (12) 1925 ALL. 404), Trailokya Nath v. Sukumar Base. I. L. R. (1940) 2 Cal. 551: (A.I.R. (28) 1941 Cal. 202) and Imtiaz Khan v. Dost Mohammad Khan, 9 Luck, 73 : (A. I. R. (20) 1933 Oudh 384). In the first case, there was an application to file an award under Para. 20 of Schedule II, Civil P. C., there was an objection by the defendant on the ground of his being a lunatic incapable of representing his interests, the trial Court disposed of the matter by an ex parte order decreeing the claim of the plaintiff on the basis of the award, the first appellate Court set aside the judgment and the decree on the ground that the trial Court had not properly disposed of the question of the defendant's capacity and the plaintiff challenged that order by second appeal to this Court. It was contended before this Court that no appeal lay to the first appellate Court from the decree when it was not passed in excess of the award or was not inconsistent with it. Sulaiman and Daniels JJ., remarked that there was no separate order passed by the trial Court directing the award to be filed, that the defendant could file an appeal only from the ex parte judgment that it had passed and that "the appeal was in substance an appeal from an order directing the award to be filed." In the second case there was an application under para. 20 of Schedule II, Civil P. C., for an order that the award be filed, the defendant objected to the filing on the ground that there was no valid reference to arbitration and that the arbitrators were guilty of misconduct, the objection was overruled and a decree was passed in terms of the award, and the defendant preferred an appeal which was treated by the first appellate Court as an appeal from an order directing an award to be filed. There also there was no distinct order filing the award. Sen J., noticed that the appeal was directed not against the decree but against the award and observed at p. 555 :

> "In circumstances like these, where the Court neglects to pass an explicit order filing the award and passes a decree upon the award, what is an aggrieved party to do? He can only appeal from the whole decision. Such an appeal must be treated as an appeal from Implied order filing the award even though a decree upon the award has already been passed."

In the third case, there was a decree passed on an award that was ex parte against one defendant, he unsuccessfully applied for its being set aside, he then filed an appeal from the decree alleging that

the reference to arbitration was illegal and the appellate Court denounced the award as null and void and set aside the decree. The Chief Court of Oudh upheld the judgment of the first appellate Court.

6. There are cases such as Lutawan v. Lachiya, A. I. R. (l) 1914 ALL. 446 : (36 ALL. 69 F. B.), Hari Shankar v. Mt. Bam Piari, 45 ALL. 441 : (A. I. R. (10) 1923 ALL. 502), Suraj Singh v. Phul Kumari, 48 ALL. 226 : (A. I. R. (13) 1926 ALL. 202), Gopal Das v. Baij Nath, 48 ALL. 239 : (A. I. R. (13) 1926 ALL. 238) and Tej Singh v. Ghasi Ram, 49 ALL. 812 : (A. I. R. (14) 1927 ALL. 563) in which an appeal from a decree passed on the basis of an award was held as incompetent. There can be no dispute about the law that no appeal lies from a decree passed on the basis of an award if it is not in excess of, or inconsistent with, the award. Those cases do nothing but follow this statutory law. They do not decide that an appeal from a decree cannot be treated as an appeal from an order filing an award or refusing to set it aside. In the case of Lutawan (A. I. R. (1) 1914 ALL. 416 : 36 ALL. 69 F. B.), decided by a Full Bench, the award was attacked on a new ground for the first time in appeal and it was laid down that all objections to an award must be decided by the trial Court. In Hari Shankar's case (45 ALL. 441 : A. I. R. (10) 1923 ALL. 502), the agreement to refer was not signed by one party S, he unsuccessfully objected to the award, a decree was passed in terms of it and his appeal from the decree was rejected as incompetent. There was no prayer in that case to the appellate Court to treat the appeal as one from the order refusing to set aside the award Therefore that case is of no guide to us when we are called upon to treat the appeal filed before the learned Additional Civil and Sessions Judge as one from an order and not a decree. The facts in the case of Suraj Singh's case (48 ALL. 226 : A. I. R. (13) 1926 ALL. 202) were similar to those in Hari Shanker's case (45 ALL. 441 : A. I. R. (10) 1923 ALL. 502). The facts in Gopal Das's case (48 ALL. 239 : A. I. R. (13) 1926 ALL. 238) were also similar but with this difference that the aggrieved party went up in revision against the decree passed on the basis of the award and his application was allowed and the award and the decree were set aside. In Tej Singh's case (49 ALL. 812 : A. I. R. (14) 1927 ALL. 563), the aggrieved party went up in appeal from the decree, challenging the validity of the award on the ground that he was not a party to the application for reference, and this Court held that no appeal lay and converted, the appeal into a revision application. Just as in that case the appeal was treated as a revision application, so also in the present case the appeal from the decree can be treated as an appeal from the order. It must also be mentioned that in that case Mukerji J., did not express himself finally on the question :

> "Whether an award to be binding and to be one from which no appeal would lie, should not be based on a genuine reference."

7. We were referred by the learned counsel for the applicants to Balwant Singh v. Ram Charan Singh, 1944 A. L. J. 241 : (A. I. R. (31) 1941 ALL. 188), but we do not see how it helps them. All that it decides is that a Court is not bound to pronounce judgment in accordance with the award merely because it dismisses an application Under Section 33.

8. We hold that however it was framed, the appeal presented by the opposite parties to the learned Additional Civil and Sessions Judge was an appeal from an order of the learned Munsif refusing to set aside the award and was rightly entertained by him.

9. We are sitting in revision and the jurisdiction that we exercise is discretionary. We find that substantial justice has been done in this case. Even if we had been of the opinion that the appeal could not have been entertained at all by the learned Additional Civil and Sessions Judge, we would not have interfered with the decree passed by him.

10. That the signatures of the opposite parties were fraudulently obtained on the agreement for reference is a finding of the fact which cannot be, and was not, challenged before us. Nor was it argued that the written statement or objection filed by the opposite parties in the Court of the learned Munsif was time-barred. The only point argued before us was the one discussed above.

11. We dismiss this application with costs.