

Allahabad High Court

Mt. Naraini Kuer vs Thirpal on 24 October, 1934

Equivalent citations: AIR 1935 All 281, 153 Ind Cas 505

ORDER

1. This is an application in civil revision by one Mt. Naraini Kuer against an order of the learned Sub ordinate Judge of Mainpuri revoking a reference to arbitration. There was. a civil suit in his Court No. 8 of 1933. Mt. Naraini Kuer v. Thirpal, and there was another suit No. 417 of 1933, Chirpal v. Somraj Somraj is the nephew of the deceased husband, of Mt. Naraini. The parties made an application jointly to the Court on 18th July 1933 stating that they were closely related to each other and that they desired arbitration of three arbitrators, Chhajju Rain, the arbitrator of Mt. Naraiji, Jagram, the arbitrator of Thirpal, and Bohra Panna Lal, said, to be the umpire of the parties. Accordingly the Court made a reference to arbitration. On 4th September 1933 an application was made on behalf of Thirpal to the effect that when the other case No. 417 of 1933 was being heard by the arbitrator the arbitrator abused the petitioner Thirpal and turned him out of the room and did not take his evidence, that the arbitrators were acting in collusion with Mt. Naraini Kuer and Somraj, and the application asked that the arbitration should be superseded in case No. 8 of 1933. The learned Subordinate-Judge made an enquiry into the matter and he finds that Thirpal was unaware of the relationship between Panna Lal, the umpire, and Somraj, the nephew of the husband of Mt. Naraini. He also finds that on account of this, relationship the arbitrators are prejudiced against Thirpal defendant. It appears to us that this conclusion is correct and that the three arbitrators-two of whom are connected with Mt. Naraini, are not a tribunal which is likely to decide justly between the parties. Learned Counsel argues that the parties are related. That however does not appear to affect the situation.

2. The next argument which was put before us is that the lower Court had no power to supersede an arbitration once a reference has been made on the agreement of the parties and that the powers of the lower Court are confined to the second schedule which deals with the power of the Court when the award is submitted. In the present case no award has yet been submitted. The lower Court has not stated under which section it acted, but apparently the action has been taken under Section 151, Civil P.C. The question is whether that section covers an order such as the present superseding a reference to arbitration. The section states that the Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. It appears to us that it is necessary for the purpose of a just decision that a tribunal should be impartial. The fact that two members out of three members forming the tribunal are more closely connected with one party is a fact which would vitiate the integrity and impartiality of the tribunal. Learned Counsel pointed out that in such arbitration cases as deal with partitions it is common to have the members of the family making the partition. That however is a class of case where know-ledge of the family property is desirable. The present cases are not of that nature. The case of Mt. Naraini is for rendition of accounts between her and Thirpal alleged to be her karinda. In Bholanath v. Raghunath Das-Mithan Lal 1929 All. 743, a Bench of this Court had a similar question before it whether a Court had power under Section 151, Civil P.C., to supersede a reference to arbitration, and it was held that a Court had such power. On p. 744, Col. 2 it is stated: It may however be said in favour of the respondent that there is an inherent jurisdiction in a Court to intervene and supersede the

arbitration if the case fell under Section 151 of the Code, viz., where such an order is necessary for the ends of justice or to prevent the abuse of the process of the Court. We agree with that dictum and we consider that the lower Court had power to act under Section 151, Civil P.C. The circumstances of this case in our opinion bring the matter within that section. Accordingly we dismiss this application with costs.