Supreme Court of India
Abdul Kadir Shamsuddin Bubere vs Madhav Prabhakar Oak on 20 September, 1961
Equivalent citations: 1962 AIR 406, 1962 SCR Supl. (3) 702
Author: K Wanchoo
Bench: Wanchoo, K.N.

PETITIONER:
ABDUL KADIR SHAMSUDDIN BUBERE

Vs.

RESPONDENT:
MADHAV PRABHAKAR OAK

DATE OF JUDGMENT:
20/09/1961

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GUPTA, K.C. DAS
SHAH, J.C.

CITATION:
1962 AIR 406 1962 SCR Supl. (3) 702

ACT:
Arbitration All persons interested in the subject matter of dispute not made parties-If dispute could be referred to arbitration-Asking for accounts-If amounts to allegation of fraud-Arbitration Act, 1940 (X of 1940), s. 20.

HEADNOTE:
An agreement with regard to a forest was entered into between B the appellant and 0 and A the respondents. Apart from 0 and A another person was also interested in the said forest. The said agreement mentioned other earlier agreements entered into with, regard to the said forest. The operative part of the agreement was in these terms:--

> Should there be a dispute between the parties in connection with this agreement or in connection with the agreements dated 22.10.1948 and 5.5. 1952 or regarding Khan Babadur Divakar's money or the jungle cutting or export or in 'any other way, the same should be got decided in accordance with the current 'law by appointing arbitrators and through them."

Disputes arose between B the appellant and respondents 0 and

A. The respondents filed an application under s. 20 of the Arbitration Act for reliefs including accounts and appointment of receiver.

The application was opposed by B the appellant on the grounds inter alia that as one of the person who bad an interest in the forest was not party to the application there could be no reference to. the arbitration, as the whole dispute, as to the forest would not be before the arbitrator and further, as there were allegations of fraud that was a ground for not referring the dispute to arbitration.

Held, that where parties entered into an arbitration agreement, knowing fully well that there was another person who was interested, but leaving, him out, then the court should send the parties to the forum chosen by them, even if the other person who might be interested, and whose share was not in dispute, could not be made party before the arbitrator.

Where the share of a person, not a party before the arbitrator, was not in dispute, there could not be any bar to referring the dispute to arbitration on the ground that the whole dispute was not before the arbitrator. The arbitrator would decide the dispute between the parties before him and

703

give an award leaving out the share of the person who was not a party before him.

Held, further, that when serious allegations of fraud were made against a party and the party who was charged with fraud desired that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make a reference. But it was not every allegation imputing some kind of dishonesty particularly in matters of accounts alleging that they were not correct or certain items were exaggerated or allegations tending to suggest or imply moral dishonesty or moral misconduct in the matter of keeping accounts that would amount to such serious allegations of fraud as would impel a court to refuse to order the arbitration agreement to be filed and refuse to make a reference and to take the matter out of the forum which the parties themselves had chosen.

In the present case, it cannot be said that the reference desired was piecemeal and split up the cause of action. The dispute raised was covered by the arbitration clause, and there was no such serious allegation of fraud as would be sufficient for the court to say that there was sufficient cause for not referring the dispute to arbitration.

Obiter. The pleadings in Mufassil courts could not be considered too strictly.

Russel v. Russel, [1880] 14 Ch. 'D. 471, discussed.

Charles Osention and company v. Johnston, [1942] A. C. 130,

Maharajah Sir Manindra Chandra Nandy v. H. V. Low & Co.

Ltd. A. I.R. 1924 Cal. 796, Narsingh Prasad Boobna v. Dhanraj Mills, I.L.R. (1942) 21 Pat. 544, Union of India v. Pirm Vishvadha Ghee Vyopar Mandal, 1. L. R. (1953) 1 All. 423, Sudhangsu Bhattacharjee v. Ruplekha Pictures, A I.R 1954 Cal. 281 aid Manifia v. The Railway Passengers Assurance Co. (1881) 44 L. T. 552, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 305 of 1958. Appeal from the judgment and decree dated April 14/15,1955 of the Bombay High Court in Appeal from Order No. 28 of 1955.

S. B. Sukhthankar, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellant.

A. V. Viswanatha Sastri and Ganpat Rai, for the respondents.

1961. September 20. The Judgment of the Court was delivered by WANCHOO, J. This is an appeal on a certificate granted by the Bombay High Court. An application was filed under s. 20 of the Arbitration Act, No. X of 1940. (hereinafter referred to as the Act) by the two respondents against the appellant praying that the arbitration agreement dated February 27, 1953 may be filed in court, arbitration be made accordingly, and thereafter a decree in terms of the award made by the arbitrator be passed.

The circumstances in which the application was made were these. There is a forest in village Done, which belonged to three persons, namely, Madhav Prabhakar Oak, respondent No. 1, (hereinafter referred to as Oak), Babaji Chandrarao Rane, uncle of the second respondent (hereinafter referred to as Babaji), Gajanan Babaji Rane (hereinafter called Gajanan). Oka had six annas share in the forest, Babaji eight annas share and Gajanan two annas share. It may be mentioned that Gajanan's share was purchased by the appellant in November 1944. On October 22, 1948, a partnership agreement was arrived at between Babaji, Oak and the appellant for cutting the forest. The value of the forest for the three owners was fixed at Rs. 60,000/which was to be divided amongst them according to their shares. The work of cutting was to be done by the appellant who appears to be an experienced forest contractor. Any income over and above the expenditure incurred in the cutting and the value of the forest was to be divided equally amongst the three partners; if there was any loss that was also to be borne equally by them. It appears,. however, that nothing was done in pursuance of this agreement, apparently because a suit had been filed by two persons with whom there was an earlier agreement of 1939 about the cutting of this very forest. It appears also that in March 1951 Gajanan and the appellant executed another document in which the price of Gajanan's share to be paid by the appellant was raised. In May 1951 Babaji died. Consequently in May 1952 another agreement was executed between the appellant and the heirs of Babaji, namely, Anant Yeshwant Rane respondent No. 2 (hereinafter referred to as Anant), Ambikabai, widow of Babaji, Gajanan and his mother Devubai and Oak. This agreement referred to the earlier agreement of 1948 and was obviously necessitated on account of the death of Babaji. It confirmed that agreement and stated that it was drawn up because of the necessity of Anant, Ambikabai and Devubai being made

parties to the settlement in the agreement of 1948. The consideration of Rs. 60,000/- was divided between the owners, and Rs 51,000/- was to go to Oak, Anant and Ambikabai and the rest represented the price for which the appellant had purchased the share of Gajanan and his mother Devubai. Nothing seems to have been done in pursuance of this agreement either. In October 1952, another agreement was entered into between the appellant the two respondents and one Khan Bahadur Divkar by which the cutting of the forest was assigned to Divkar for a sum of Rs. 1,00,000/-. This amount was to be divided between the appellant and the respondents; Anant was to get Rs. 44,800/-, Oak Rs. 35,700/- and the appellant Rs. 19,500/-. Divkar was unable to carry out his part of this agreement. Eventually on February 27, 1953, an agreement was entered into between the appellant and the two respondents as Divkar had not carried out his agreement. It was agreed between the parties that the dispute with Divkar be got decided and the forest be cut in accordance with the agreements of October 22, 1948 and May 5, 1952. The operative part of this agreement also contained a term for arbitration in al. 6(4), which in these terms:-- "Should there be a dispute between the parties in connection with this agreement or in connection with the agreements dated 22.10.1948 and 5.5.1952 or regarding Khan Bahadur Divkar's money or the jungle cutting or export or in any other way, the same should be got decided in accordance with the current law by appointing arbitrators and through them."

It appears that thereafter the forest was cut by the appellant ; but disputes appear to have arisen between the parties to the last agreement of 1953; consequently respondents Nos. 1 and 2 filed the application under s. 20 of the Act in August 1954.

The case put forward by the respondents in the application was that the appellant, though he carried on the work of cutting the forest, did not carry out the terms of the agreement of 1953 and showed the statements of accounts intermittently to the respondents. It was alleged that the accounts were not made up to date, and inspite of the respondents' demand that the accounts should be made up to date, the appellant did not do so. The respondents also demanded that the goods remaining to be sold should be disposed of with the consent of all; but this was also not agreed to by the appellant. The statement of accounts shown to the respondent was not complete and correct. The whole stock of goods was not to be found in the statement of accounts and the debit items seemed to have been exaggerated and were not correct; and consequently it was not possible to carry on the business of partnership with the appellant and it was necessary to dissolve the partnership and take accounts of the partnership. It was also said that the appointment of a receiver had become necessary in order to protect the interest of the respondents and that an injunction should be granted restraining the appellant from removing the stock in balance so as to avoid misappropriation thereof pending the appointment of a receiver. The respondents prayed that the agreement of February 1953 for referring the dispute in connection with the agreements dated October 22, 1948 and February 27, 1953 between them and the appellant should be filed in court and necessary directions made by the court.

The application was opposed by the appellant. The agreement of February 27, 1953 was admitted by the appellant; but it was contended that no reference should be made to the arbitrator and a number of grounds were urged in that connection.' It is not necessary for purposes of this appeal to refer to all the grounds in reply to the application of the respondents. We shall only refer to those grounds

which have been urged before us and they are as below :-

> (1) Ambikabai, widow of Babaji, admittedly had a share in the forest and as she was not a party to the application there could be no reference to arbitration as the whole dispute as to the forest would not be before the arbitrators.
>
> (2) The respondents only desired in their application that the disputes arising out of the agreements of October 22, 1948 and February 27, 1953 be referred to arbitration but did not include the agreement of May 5, 1952, and therefore no reference should be made as it would be a piecemeal reference resulting in splitting up the cause of action. (3) The dispute sought to be referred was not covered by the arbitration clause. (4) The respondents had made allegations of fraud against the appellant in their application and that was also a ground for not referring the dispute to arbitration.

It may be mentioned that the respondents later applied for the appointment of a receiver, and that application was allowed. Eventually, however, the trial court dismissed the application under s.20 on two main grounds namely, (1) that all the parties who were necessary in the, matter of accounting were not parties to the application under s. 20, and (ii) that there were allegations of fraud against the appellant and therefore this was not a fit case to be, referred to arbitration.

This was followed by an appeal to the High Court by the present respondents. The High Court held that even though Ambikabai had a share in the forest and was not a party to the application under a. 20 her interest was sufficiently represented by Anant and therefore it could not be said that all the parties interested in accounting would not be before the arbitrator. On the question of fraud, the High Court took the view that the allegations made in this case were not allegations of fraud at all and in any case were not such allegations of fraud as would make it incumbent on the court to exercise its discretion in favour of the appellant and refuse to refer the dispute to arbitration. An argument was also raised before the High Court that the appellant was challenging the very existence of partnership between the parties and this question could not be referred to arbitration. The High Court, however, repelled this contention and held that the existence of the arbitration agreement was never challenged by the appellant. It there- fore allowed the appeal and ordered that the arbitration agreement be filed in court and consequent proceedings be taken thereafter. As the judgment was of reversal, the amount involved was more than Rs. 20,000/- and the order was a final order, the High Court granted a certificate; and that is how the matter has come up before us. Learned counsel for the appellant has urged four points before us, which we have already indicated earlier. We propose to deal with these points one by one. Re.(1). It is urged that Ambikabai admittedly has a share in this forest and as she is no party to the, application under s. 20 no reference should be made, as the entire dispute arising out of the agreements of October 22, 1948 and May 5, 1952 would not be before the arbitrator. This argument found favour with the trial court but the High Court repelled it holding that Ambikabai's interest was sufficiently represented in arbitration proceedings by Anant. If that is so, there could be no objection on this ground to the filing of the arbitration agreement ; but even if that is not so, we are of opinion that is no ground in the circumstances of this case for not referring the dispute to arbitration in accordance with the

arbitration clause in the agreement of February 27, 1953. Babaji had a brother Yeshwant and Anant is his son. It is not disputed that Babaji was holding eight annas share in the forest on behalf of the joint family consisting of himself and his nephew Anant, and his personal share in it was half, i.e., four annas. On his death his personal share would go to his widow Ambikabai while Anant would have the remaining half Anant appears to be the eldest male member of the family now alive. Therefore, in a sense the High Court was right in holding that Anant would represent the entire interest of the joint family which consisted of eight annas share in this forest. But even if this was not so because at one stage at any rate Ambikabai was also a party to the agreement of May 5, 1952, we can see no reason why the dispute as between the appellant and the respondents should not be referred to arbitration. The share of Ambikabai as we have already stated above is not in dispute. Ambikabai was not a party to the agreement of February 27, 1953, though she was a party to the agreement dated May 5, 1952. The appellant was also a party to the earlier agreement of May 1952 and knew that Ambikabai had a share in this forest. Even so, he entered into the agreement of February 27, 1953, with the two respondents and agreed to the disputes between him and the respondents being referred to arbitration. We fail to see how he can now say that the disputes between him and the respondents should not be referred to arbitration because Ambikabai was not a party to the agreement of February 1953. The reason why Ambikabai did not join in the application under s.20 was that she was not a party to the agreement of February 1953 and could not therefore apply under s. 20; but that is no reason why the dispute between the appellant and the two respondents should not be referred to arbitration, particularly when there is no dispute as to the share of Ambikabai in this forest. All that would happen would be that the arbitrator would decide the dispute between the appellant and the respondents and give an award leaving out the share of Ambikabai, the extent of which is not in dispute. The matter might have been different if the share of Ambikabai was in dispute; but as the share of Ambikabai and its extent are not in dispute, the arbitrator can go into accounts and give an award with respect to the parties before him, leaving out the four annas share of Ambikabai. We see no reason why where parties entered into an arbitration agreement of this nature knowing fully well that there was another person who was interested but leaving her out, the court should not send the parties to the forum chosen by them, even if the other person who right be interested and whose share is not in dispute cannot be made party before the arbitrator. We- are therefore of opinion that even if Anant may not be able to represent the interest of Ambikabai in the arbitration proceedings that will follow in this case, that is no reason for not giving effect to the arbitration clause in the agreement of February 27, 1953 as between the parties to that agreement The contention therefore of the appellant on this point must fail. Re.(2). It is true that in the application under s. 20 the respondents have asked for the agreement of February 27, 1953 to be filed in court and the dispute in connection with that agreement and the agreement of October 22, 1948 to be referred to arbitration, and have not specifically asked for reference of the agreement of May 5, 1952, even though it was included in the agreement of February 1953. But as already indicated, the agreement of May 1952 is merely in confirmation of the agreement of 1948 and when the arbitrator goes into the dispute between the parties he will necessarily have to refer to the agreement of May 1952, so far as it is relevant. The agreement of May 1952 had to be entered into because of the death of Babaji. It is merely supplementary to the main agreement which is of October 22, 1948. In the circumstances when the dispute is referred to the arbitrator under the agreement of February 1953 with respect to the agreement of October 1948, the arbitrator will be entitled to look into the confirmatory agreement of 1952, for the main agreement was that of

October 1948. We agree with the view of the trial court in this connection that the pleadings in muffasil courts cannot be considered too strictly; even the trial court was prepared in case the matter should be referred to arbitrator to ask the arbitrator to consider also the agreement of May 1952. The agreement of May 1952 would have to be considered by any arbitrator who is going into the dispute arising out of the agreement of October 1948. In the circumstances we are of opinion that it cannot be ,said that the reference desired in this case is piecemeal and split up the case of action. The contention of the appellant on this score must also fail.

Be,. (3). The contention under this head is that the dispute sought to be referred was not covered by the arbitration clause. We have already set out the arbitration clause and as we read it we find it is of very wide import. It provides for reference to arbitration of all disputes arising out of agreements of October 22, 1948, May 5,1952 and February 27, 1953. It also provides for reference of all disputes arising out of the jungle cutting or export or in any other way. In view of this wide language of the arbitration clause it cannot be possibly said that the dispute which has been raised in the present case is outside the terms of the arbitration clause. Reliance in this connection was however placed on the opening words of cl. 6 of the agreement of February 1953, which say that the agreement was arrived at "without prejudice to the contents of the letter sent by the first party (namel y, the appellant) to the second and third parties (namely, the respondents) on the date 7th of February, 1953, and without the first party (namely, the appellant) withdrawing the said letter". This letter contained certain contentions of the appellant based on the agreements between the parties. Those words do not in our opinion in any way out down the wide amplitude of the arbitration clause; at the best they can only mean that the appellant was free to raise the contentions which he had raised in this letter for the decision of the arbitrator. Nor do these words confine the agreement of February 1953 only to the dispute arising out of the agreement with Divkar as contended for on behalf of the appellant. We are therefore of opinion that the dispute raised in this case is covered by the arbitration clause, and the contention of the appellant in this behalf must also fail.

Re(4). We now turn to the question of fraud. The contention on behalf of the appellant in this connection is that serious allegations of fraud have been made against him and therefore this is not a case which should be referred to arbitration. Sub-section (4) of s. 20 lays down that where no sufficient cause is shown, the court shall order the agreement to be filed and make an order of reference to the arbitrator. It is therefore open to a court under this sub- section, where sufficient cause is shown not to order the agreement to be filed and not to make a reference to the arbitrator. The words of this sub-section leave a wide discretion in the court to consider whether an order for filing the agreement should be made and a reference made accordingly. It is neither necessary nor desirable to lay down in general terms what would be sufficient cause which would entitle a court to refuse to order the agreement to be filed and thus refuse to make an order of reference. The court will have to decide on the facts of each case whether sufficient cause has been made out for not ordering the agreement to be filed and not making the order of reference. Learned counsel for the appellant, however, contends that serious allegation of fraud has been generally held by courts to be a sufficient ground for not ordering the agreement to be filed and not making the reference'. He relies in this connection on the leading case of Russel v. Russel (1). That was a case of partnership between two brothers containing an arbitration clause. One of the brothers gave notice to the other for dissolving the 'Partnership. The other brother thereupon brought an action alleging various

charges of fraud and claiming that the notice should be declared void and no announcement of the dissolution of partnership should be allowed. Thereupon the brother who was charged with fraud moved that the matter be referred to arbitration under the arbitration clause. That was resisted and the court held that "in a case where fraud is charged, the court will in general refuse to send the dispute to arbitration if the party charged with the, fraud desires a public inquiry. But where to arbitration is by the party charging the fraud, the court, will not necessarily accede to it, and will never do so unless a prima facie case of fraud is proved."

This case certainly lays down that where allegations of fraud are made, the party against whom such allegations are made may successfully resist the reference to arbitration. (1) [1880] 14 Ch.D. 471.

The principle of this case was followed in Charles Osenton and Company v. Johnston (1). In that case a firm of estate agents and surveyors resisted the reference to an official referee under s. 89 of the Judicature Act of 1925. The decision of in official referee could not be called in question by appeal or otherwise except on a point of law as provided by s. 1 of the Administration of Justice Act, 1932. The firm therefore contended that as their professional reputation was involved the matter should not be referred to the official referee and the House of Lords held that as the professional reputation of the appellants was involved, that question should not be left to the final decision without appeal of an official referee but should be tried before the normal tribunal of a High Court with a jury.

The principal of these cases has also been followed in India with reference to cases coming under ss. 20 and 34 of the Act. (See, Maharaja Sir Mahindra Chandra Nandy v. H. V. Low & Co., Ltd. (2), Narsingh Prasad Boobna v. Dhanraj Mills(3), Union of India v. Firm Vishvadha Ghee Vyopar Mandal Sudhangsu Bhattacharjee v. Ruplekha Pictures(5). There is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference. But it is not every allegation imputing some kind of dishonesty, particularly in matters of accounts, which would be enough to dispose a court to take the matter out of the forum which the parties themselves have chosen. This to our mind is clear even from the decision in Bussel's case (6). In that case there were allegations of constructive and (1) [1942] A. C. 130.

(2) A. I. R. 1924 Cal. 796.

(3) I. L. R. (1942) 21 Patna 544.

(4) I.L. R. (1953) 1 All. 423.

(5) A.I.R.1954. cal. 281.

(6) [1880] 14 Ch. D. 471.

actual fraud by one brother against the other and it was in those circumstances that the court made the observations to which we have referred above. Even so, the learned master of the Rolls also observed in the course of the judgment at p. 476 as follows :

> ",Why should it be necessarily beyond the purview of this contract to refer to an arbitrator questions of account, even when those questions do involve misconduct amounting even to dishonesty on the party of some partner ? I do not see it. I do not say that in many cases which I will come to in the second branch of the case before the Court, the Court may not, in the exercise of its dis- cretion, refuse to interfere; but it does not appear to me to follow of necessity that this clause was not intended to apply to all ques- tions, even including questions either imputing moral dishonesty or moral misconduct to one or other of the parties."

We are clearly of opinion that merely because some allegations have been made that accounts are not correct or that certain items are exaggerated and so on that is not enough to induce the court to refuse to make a reference to arbitration. It is only in cases of allegations of fraud of a serious nature that the court will refuse as decided in Bussel's case (1) to order an arbitration agreement to be filed and will not make a reference. We may in this connection refer to Minifie v. The Railway Passengers Assurance Company (2). There the question was whether certain proceedings should be stayed; and it was held that not with standing the fact that the issue and the evidence in support of it might bear upon the conduct of a certain persons and of those who attended him and so might involve a question similar to that of fraud or no fraud, that was no ground for refusing stay. It is (1) [1880] 14 Ch. D. 471.

(2) (1881) 44 L.T. 552.

only when serious allegations of fraud are made which it is desirable should be tried in open court that a court would be justified in refusing to order the arbitration agreement to be filed and in refusing to make a reference. Let us therefore turn to the allegations in this case to see what their nature is. These allegations are that (i) the accounts were not made up to date, and even on demand by the respondents, the appellant did not bring them up to date; (ii) the statements of accounts which were shown by the appellant were not complete and did not appear to be correct; and (iii) the whole stock of goods was not to be found therein and the debit items appeared to be exaggerated and incorrect. These were the only allegations with respect to the accounts in the application and they do not in our opinion amount to serious allegations of fraud against the appellant which would necessitate that there should be a trial in open court. Such allegation as to the correctness or otherwise of entries in the accounts are often made in accounts suits; but they in our opinion are not such serious allegations of fraud as to induce a court to order that the arbitration agreement should not be filed and no reference should be made. Besides these allegations as to accounts the respondents also said that an injunction should be granted restraining the appellant from removing the stock so as to avoid misappropriation thereof pending the appointment of a receiver. That was not an actual allegation of mis- appropriation; it merely said that the respondents were afraid that there might be misappropriation in future unless an injunction was issued and a receiver appointed. Further in the affidavit in support of the application for appointment of receiver after referring to

their own conclusions from the state of accounts, the respondents said that they had not received the true and complete account of the felling of the jungle, ready goods, the goods sold and the goods in balance from the appellant.

They also said that they suspected that on their conclusions from the accounts supplied to them, there might be misappropriation of the goods and of money. They further alleged that in the accounts shown to them, the sale of charcoal was shown at a rate much lower than the prevailing market rate and under these circumstances the respondents apprehended that if the work of the sale of goods remained in the hands of the appellant, the real price of the goods would not be realised. There is no allegation, however, that in actual fact the appellant had made secret profits by selling goods at a higher price and showing a lower price in the account. The respondents pointed to the entries in the account which showed the lower rate of the sale price in support of their apprehension that if the work of sale of goods remained in the hand of the appellant the real price would not in future be realised. A perusal therefore of the application under s. 20 and the affidavit filed in support of the application for appointment of receiver does not disclose any serious allegations of fraud against the appellant. What it discloses is that the respondents were not satisfied with the accounts submitted to them and were suspicious that they did not disclose the true and complete state of affairs. Such allegations, as we have already remarked are often made in account suits and if they were to be sufficient ground for not referring an account suit to arbitration on the ground of fraud, hardly any arbitration agreement in a matter in which accounting would be necessary could be referred to arbitration. That is why we emphasise that even in the leading case of Russel, (1) the learned Master of the Rolls was at pains to point out that it could not necessarily be said in a case of accounts that no reference to arbitration should be made, even though questions relating to accounts which might involve misconduct amounting even to dishonesty on the part of some partner might arise in the arbitration proceedings and even cases where moral dishonesty or moral misconduct is attributed to one party or the other might be referred to arbitration. It seems to us that every allegation tending suggest or imply moral dishonesty or moral misconduct in the matter of keeping accounts would not amount to such serious allegation of fraud as would impel a court to refuse to order the arbitration agreement to be filed and refuse to make a reference. Looking to the allegations which have made in this case we are of opinion that there are no such serious allegations of fraud in this case as would be sufficient for the court to say that there is sufficient cause for not referring the dispute to arbitration. This contention of the appellant must also therefore fail.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.