ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Weston.

1943
February 15

BRIJLAL RAMJIDAS AND ANOTHER, APPELLANTS (ORIGINAL PLAINTIFFS) *v.* GOVINDRAM G. SEKSARIA AND OTHERS, RESPONDENTS (ORIGINAL DEFENDANTS).*

Award—Notice of filing it in Indore District Court—Proceeding transferred to Indore High Court—Indore Civil Procedure Code s. 24 corresponding to Civil Procedure Code (Act V of 1908), s. 24—Judgment of Indore High Court—Its conclusiveness in British Indian Court—Civil Procedure Code (Act V of 1908), s. 13—Foreign judgment—Adjudication on Validity of the Award—Suit to set aside the award barred.

A foreign judgment under s. 13 of the Civil Procedure Code means an adjudication by a foreign Court of the matter before it. It does not mean a statement by a foreign judge of the reasons for his order. Under s. 13 of the Civil Procedure Code a foreign judgment is conclusive unless it can be shown in the first place, that it was made without jurisdiction.

Certain disputes arose between the parties who were partners in a firm which acted as the managing agents of the Indore Malwa United Mills Ltd. These disputes were referred to the arbitration of the Prime Minister of Indore under a written submission dated December 17, 1940. On February 8, 1941, the Prime Minister made his award. On February 12, 1941, the appellants filed this suit in the High Court of Bombay for setting aside the award on the ground that it was invalid and not binding upon them and for a declaration that the appellants continued to be partners in the managing agency firm. On February 25, the arbitrator sent the award to the District Judge of Indore to be filed. Under the Indore Arbitration Act it was provided that "the Court" meant the Court of the District Judge. Notices were thereupon issued by the District Judge to the parties to show cause why the award should not be filed. While the matter was still pending before the District Judge, the High Court of Indore made an order on August 23, 1941, transferring the matter of the award to itself. The matter was then heard before Mr. Justice Jambhekar of the Indore High Court who gave judgment on October 29, directing the award to be filed. There was an appeal from that judgment but owing to difference of opinion between the judges of the Appeal Court, the decision of the lower Court prevailed in accordance with a notification of the Indore State to that effect.

The question for decision was whether the judgment of the Indore High Court by which it directed the award to be filed was binding upon this Court under s. 13 of the Civil Procedure Code.

Held, by the Appeal Court affirming Chagla J. that the judgment of the Indore High Court amounted to an adjudication that the award was a valid award and that inasmuch as that decision was not without jurisdiction, it was not open to this Court to go behind it and to hold that the award should be set aside.

* O. C. J. Appeal No. 32 of 1942; Suit No. 218 of 1941.

Held further, that it was not open to this Court to hold that the Indore High Court had no jurisdiction to deal with the matter of the award after it was transferred to it.

Vanquelin v. *Bouard,*(1) referred to.

Sheosagar Singh v. *Sitaram Singh,*(2) distinguished.

APPEAL from the judgment of Chagla J.

CHAGLA J. [Relevant portions of His Lordships judgment are as follows]. The question that arises *in limine* is whether the plaintiffs' suit is barred by reason of the judgment of the Indore Court. As I have pointed out, the plaintiffs have urged various objections to the award of Lieut. Col. Dinanath. These very objections were urged before Jambhekar J. and Jambhekar J. after hearing them, upheld the validity of the award, and the question that arises for my determination is whether the plaintiffs can re-agitate these objections in this Court or whether the judgment of the Indore Court is final and conclusive.

There is no doubt that a foreign judgment under s. 13 of the Civil Procedure Code, 1908, not only affords a cause of action to a plaintiff on which he may base his suit but it can also operate as *res judicata* and as a bar to the plaintiff's suit. In considering s. 13, the first question that arises is, what is the construction to be placed upon the word "judgment"?

There is no doubt that the word "judgment" in s. 13 is used in the sense in which it is understood by English lawyers. But it is incorrect to suggest that in England the Court merely looks at a decree or order and never at the reasons given by the Judge for his decision. See *Simpson* v. *Fogo.*(3)

The language of s. 13 itself makes it clear that the Court is entitled to look at the reasons given by the Judge for arriving at his judgment, because under s. 13 a foreign judgment is

(1) (1863) 15 C. B. (N. S.) 341. (2) (1897) L. R. 24 I. A. 50.
(3) (1862) H. & M. 195.

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Chagla J.

conclusive "as to any matter thereby directly adjudicated upon".

It is further urged that an order made in a summary proceeding cannot constitute a foreign judgment under s. 13 of the Civil Procedure Code. The proceedings taken in the Indore Court were by no means summary. The matter was investigated very carefully and elaborately; evidence was led; and a considered judgment was given. It is true that a decision was not given in a suit but in proceedings under the Arbitration Act; but I see nothing in the language of s. 13 which lays down that a foreign judgment given only in a suit can become conclusive and binding between the parties.

There is clear authority for the proposition that an order in a summary proceeding can operate as *res judicata*. See *North Eastern Railway* v. *Daiton Overseers*[1]; *Wakefield Corporation* v. *Cooke*[2]; *Deep Narain Singh* v. *Dietert*.[3]

It is further urged by the plaintiffs that the judgment relied on by the defendants as "foreign judgment" under s. 13 of the Civil Procedure Code was not pronounced by a Court of competent jurisdiction. Very elaborate and interesting arguments were advanced before me as to what is the real meaning of a Court of competent jurisdiction. There is no doubt to my mind that what we have got to consider is the question of the international competence of the foreign Court. We are not really concerned with its domestic competence. If it lacks domestic competence, it is a matter of defence to be pleaded by the defendants in that Court. The question that is raised is whether in actions *in personam* a mere submission by the defendant to the jurisdiction of a foreign Court is by itself sufficient to make the Court internationally competent, or whether it is further necessary that that Court should have the authority from the State to pronounce that particular judgment. To put the same matter in a different language, the question to be

[1] [1898] 2 Q. B. 66. [2] [1904] A. C. 31.
[3] (1903) 31 Cal. 274.

considered is whether the foreign Court should have jurisdiction not only over the person of the defendant but also over the subject matter of the suit.

[His Lordship referred to Dicey on Conflict of Laws, Fifth Edition] and the following cases :—

Vanquelin v. *Bouard*,(1) *Pemberton* v. *Hughes*,(2) *Castrique* v. *Imrie*,(3) *Ricardo* v. *Garcias*,(4) *Scott* v. *Pilkington*,(5) *Ingenohl Wingon & Co.*,(6) *Papadopoulos* v. *Papadopoulos*,(7) *Godard* v. *Gray*,(8) *The Bank of Australasia* v. *Nias*,(9) *Moczzim Hossein Khan* v. *Rephael Robinson*(10) *and Harchand Panaji* v. *Gulabchand Hanji*.(11)

His Lordship said : the principle to be deduced from all these decisions, to which I have referred, is that in order that a foreign Court should be considered to be a Court of competent jurisdiction, it must have jurisdiction not only over the person but also over the subject matter of the suit. Even though a defendant might have submitted himself to the jurisdiction of a foreign Court, it would still be open to him to show that that Court had not the authority from the State to deal with the particular subject matter with which it had dealt.

In this case there is no dispute as to the fact that the plaintiffs had submitted themselves to the jurisdiction of the Indore Court and that, therefore, that Court had jurisdiction over the person of the plaintiffs. The only question that remains to be considered is whether the Indore Court had jurisdiction over the subject matter of the proceedings it tried and decided.

"It was suggested that the Indore High Court had no jurisdiction to transfer the arbitration proceedings to itself."

(1) (1863) 15 C. B. (N. S.) 341.
(2) [1899] 1 Ch. 781.
(3) (1869–70) L. R. 4 Eng. & Ir. Ap. 414.
(4) (1845) 12 Cl. & F. 368.
(5) (1862) 2 B. & S. 11.
(6) (1927) 30 Bom. L. R. 753, P. C.
(7) [1930] P. 55.
(8) (1870) L. R. 6 Q. B. 139.
(9) (1851) 16 Q. B. 717.
(10) (1901) 28 Cal. 641.
(11) 39 (1914) Bom. 334.

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Chagla J.

Now if one looks to the provisions of s. 24 of the Indore Civil Procedure Code, it is clear that the power is given to the High Court either to transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same.

In my opinion the High Court is given jurisdiction to try matters which it transfers to itself under s. 24 itself. This section itself confers jurisdiction upon the High Court, and it is not necessary to find that the High Court has jurisdiction outside this section.

In my opinion the Indore Arbitration Act does not create a special jurisdiction and does not exclude the jurisdiction of the High Court under s. 24 of the Civil Procedure Code.

In the result I hold that the plaintiffs' suit is barred under s. 13 of the Civil Procedure Code and must therefore be dismissed with oosts.

The plaintiffs appealed.

M. C. Setalvad, with *C. K. Daphtary* and *K. K. Desai*, for appellants.

N. P. Engineer, Advocate General, with *Sir Jamshedji Kanga*, for respondents Nos. 1 to 3.

M. L. Manekshaw, with *R. J. Kolah*, for respondents Nos. 4 and 5.

BEAUMONT C. J. This is an appeal by the plaintiffs against a decision of Mr. Justice Chagla dismissing the suit on certain preliminary issues. The effect of the learned Judge's decision is that the real substance of the dispute between the parties has been determined by a decision of the High Court of Indore, which is binding between the parties in his suit under s. 13 of the Civil Procedure Code, 1908.

The facts giving rise to the appeal are these. The plaintiffs and defendants are partners in a firm, the business

of which is to act as managing agents of the Indore Malwa United Mills, Limited, a company which owns mills in Indore State and they carried on business under articles of partnership dated July 17, 1935, which are exhibit A to the plaint. Disputes arose between different groups of partners, and on December 17, 1940, the parties signed a written submission authorizing the Prime Minister of Indore State to arbitrate between them. The terms of the submission are these :

"We, the undersigned, the seven partners in the Managing Agency Firm of the Malwa United Mills Limited, Indore, by this writing authorize the Prime Minister of the Holkar State to fix the price of the transaction of purchase or sale of any *debentures* of the said Mills or any share in the agency or capital stock of any nature that may be effected by any one of us. And the price fixed by him shall be acceptable by each one and all of us and we shall act accordingly."

Another version of the English translation of the original document, which was in Hindi, makes it rather clearer that the price was to be fixed conditional on the parties wishing to sell, because the terms of that document are :

"If any of us were to sell or buy any debentures of this Mill or any share of the Managing Agency or any kind of 'Capital Stock' then the Prime Minister is to fix the price of such dealings and the price fixed by him shall be acceptable to each one and all of us and we shall abide by it."

On February 8, 1941, the Prime Minister made his award in writing, in which he recites that the partners in the Managing Agency had come to see him on December 17, 1940, and requested him to decide as to who should buy or sell their respective shares and at what price. Then he goes on : "They further signed a letter of authority authorizing me to decide this point and agreed to be bound by my decision ". Then he mentions that a large number of shareholders of Indore State had waited upon him from time to time and had expressed their dissatisfaction with the present management. Then he decides that Seth Govindram Gowardhandas Seksaria is to buy up the five anna shares of Seth Brijlal Ramjidas and Bilasrai Juharmal at par and that the latter should sell their respective shares of annas 2-6 each in the rupee at par, and that they are also to sell the debentures

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

held by them to Seth Govindram Gowardhandas Seksaria at par. Then he provides that the outgoing partners in the managing agency will be entitled to the managing agency and selling agency commission and also interest on their invested capital excluding debentures till the day of payment of the invested capital which must be paid within one month. Then he directs that the outgoing partners shall be liable for all acts or defaults which they may have previously committed as members of the managing agency of the Malwa United Mills, and that they shall sign necessary letters, papers and documents evidencing their retirement from the managing agency to enable Seth Govindram Seksaria and his friends to carry on the business as managing and selling agents in the same name. The partners who were to be bought out are the present plaintiffs, and the partners entitled to buy them out are the defendants.

To any lawyer reading that award it is apparent that serious objections may be taken to it. The most serious is that, whereas the submission merely enables the arbitrator to fix the price of a transaction of purchase or sale, the award determines which of the partners are to sell and which are to purchase, a matter which appears plainly to go beyond the terms of the written submission. It is also to be noticed that the arbitrator in the absence of the parties allowed people to come and see him in relation to the subject-matter of the arbitration who are not parties to the submission, and further that he fixed the value of the shares in this partnership "at par", an expression to which it is difficult to assign any meaning in relation to a partnership.

The plaintiffs on February 12, that is directly after the award had been published, filed this suit in the Bombay High Court, asking for a declaration that the decision of February 8, 1941, that is to say, the award, is invalid, of no effect, and not binding on the plaintiffs, and for

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

a declaration that the plaintiffs continue to be partners in the managing agency firm, and an injunction to restrain the defendants from excluding them from partnership. An interlocutory injunction was granted restraining the defendants from excluding the plaintiffs. After the filing of the suit, namely, on February 25, the arbitrator sent the award to the District Judge of Indore to file, and gave notice of so doing to the plaintiffs.

Under the Indore Arbitration Act it is provided that " the Court " means the Court of the District Judge, and " submission " means a written agreement to submit present or future differences to arbitration. Clause 11 provides that the arbitrator shall sign the award, and give notice to the parties, and on payment of his proper fees cause the award to be filed in the Court. Clause 14 enables the Court to set aside the award on the ground of misconduct by the arbitrator. Clause 15 provides :

" An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court."

It would appear from the terms of that Act that the Court on receiving the award can file it without any reference to the parties, leaving them subsequently to apply to have it set aside. The learned District Judge, however, gave notice to the parties to show cause why the award should not be filed, and on that notice the plaintiffs put in a long document called " Objections to the filing of the alleged award ", and in the last paragraph they submitted that the award should not be taken on file of the Court, and further that :

" This award is one which ought to be set aside ". The defendants put in cross-objections contending that the award was in order. Certain hearings took place on those objections and cross-objections before the learned District Judge. But on August 23, 1941, the High Court of Indore made an order transferring the case to itself. The order was

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

made by the learned Chief Justice, and his principal ground for directing the transfer appears to have been that the learned District Judge was hesitating, as he well might be, to allow oral evidence to be given that the parties suffered under a mutual mistake when they signed the submission in question. It is objected that the High Court had no power to deal with the matter after transfer, and I will deal with that objection later on.

The matter being in the High Court of Indore it was dealt with by Mr. Justice Jambhekar, and on October 29, 1941, he gave judgment directing the award to be filed. There was an appeal from that judgment to two Judges of the Indore High Court, who differed on the question as to whether an appeal lay. There is a notification having effect in Indore State, which provides that when there is a difference of opinion between the two Judges of the High Court constituting a bench, the decision of the lower Court will prevail. Accordingly the Appeal Court made an order :

"That this appeal is dismissed, that the decision of the lower Court prevails; that the parties should bear their own costs."

Now, the first question is whether the judgment of the Indore High Court is binding upon the parties to this suit under s. 13 of the Code of Civil Procedure, 1908. That section provides :

"A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title."

Then there are certain exceptions to this enactment. The first is :

"Where it has not been pronounced by a Court of comepetent jurisdiction."

The second is :

"Where it has not been given on the merits of the case."

The third is not relevant. The fourth is :

"Where the proceedings in which the judgment was obtained are opposed to natural justice."

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

The other exceptions are not material. "Foreign judgment" is defined in the Civil Procedure Code as "the judgment of a foreign Court", and "judgment" is defined as meaning "the statement given by the Judge of the grounds of a decree or order". The Civil Procedure Code deals with a "decree" or "order" as the document containing the actual directions of the Court, and "judgment" as the statement given by the Court as grounds of the decree or order, but the definitions in the Code only apply so far as there is nothing repugnant in the subject or context. I have no doubt that under s. 13 judgment is not used in the sense of a statement of the Judge's reasons. I have no doubt that a foreign judgment means an adjudication by a foreign Court upon the matter before it. It would be quite impracticable to hold that a foreign judgment means a statement by a foreign Judge of the reasons for his order. If that were the meaning of "judgment", the section would not apply to an order where no reasons were given. Section 13 applies to foreign judgments generally, and we must remember that some systems of foreign procedure may not recognise the distinction between decrees and orders with which we are familiar, and there may be no requirement on a Judge to give reasons. We have to ascertain what is the actual adjudication of the foreign Court, and for that purpose the first thing to look at is the actual decree or order of the foreign Court. But in order to understand and interpret the decree or order, we may have to look at the pleadings of the parties and the reasons of the Judge. Those reasons would not, in my opinion, be binding on any question of fact or law, except so far as they show what the judgment actually decides, and whether any of the exceptions to s. 13 applies. It is, therefore, necessary to consider the judgment of Mr. Justice Jambhekar and the reasons for it, although, of course, we are not sitting in appeal on such judgment.

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

The learned Judge in an early part of his judgment says this :

"The moment you introduce an oral agreement as the basis on which the arbitrator is to act, the special remedies open to the parties under the Arbitration Act are no longer available to them."

He then embarks upon a long discussion of the principles upon which Courts of equity act in rectifying a written agreement, and point out that where a written agreement, owing to mutual mistake, does not carry out the actual arrangement at which the parties arrived, the Court can rectify the written agreement so as to bring it into line with the true agreement of the parties. As I understand him, the learned Judge holds that there was an oral agreement between the parties that the arbitrator should decide, not only the price at which a sale or purchase should take effect, but also which partners should sell and which purchase, though the learned Judge agrees that the written submission as it stands does not cover that point. Then, as I understand him, he holds that there was a mutual mistake in not including this further matter in the written submission, and, therefore, the arbitrator was entitled to decide such matter. I must confess that I have the greatest difficulty in appreciating the relevance of the discussion as to the principles on which Courts of Equity act in rectifying a written document. It is not suggested by the learned Judge that the arbitrator himself could rectify the submission. So to hold would at once destroy the efficacy of insisting that the submission must be in writing. It is apparent that no application had ever been made to the Court to rectify the submission. The learned Judge himself was dealing with a notice to show cause why the award should not be filed, and on such an application he could hardly have rectified the written submission. In any case he does not purport to rectify it. The document never has been rectified. The only written submission is the original submission of December 17, 1940. But the learned Judge definitely holds, on an issue whether the decision of the arbitrator contains several

matters which were not referred to him that the decision of the arbitrator does not contain any matter which had not been referred to him. He then concludes his judgment by saying :

"As the result of the above finding, I dismiss the respondents' objections to the filing of the award which has been properly filed. I direct that the award be filed."

It is argued that the only actual order is that the award be filed. But it seems to me that, looking at the whole judgment, and the actual holding on the issues, the learned Judge has decided that the award does not go beyond the submission, and that it is valid, and ought to be filed. I think the learned Judge has really directed the filing of an award, which was made in part on an oral submission.

The law as laid down by the learned Judge is certainly not the law in force in British India. In British India an arbitrator, acting on a written submission, must confine himself to the terms of the submission, and none the less so, because he may think that possibly the submission ought to have gone further than it does go, and that it may have been a mistake on the part of the parties to limit it in the manner in which it has been limited. In such a case the most an arbitrator can do is to defer making his award until the submission has been extended, either by agreement between the parties, or by an order of a competent Court, and he certainly would not be at liberty in British India to proceed to arbitrate on something not included in the written submission. I have no doubt myself that if it were open to this Court to decide the question on merits, we should set aside this award, by whomsoever made, on the ground of legal misconduct of the arbitrator.

But under s. 13 the judgment of the Indore Court is conclusive, unless it can be shown, in the first place, that it was made without jurisdiction. Even taking it that the learned Judge has directed an award to be filed, which proceeded largely upon an oral submission, I do not think it possible to

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

say that the Indore Court had no jurisdiction to make such an order. It may not be an order which this Court would have made, but we cannot say that it was outside the competence of the Indore High Court. There is no evidence before us, apart from the statement to which I have referred in the learned Judge's own judgment, that it is illegal under the law of Indore to file an award on an oral submission. At common law a submission can be oral. It seems to me, therefore, that Mr. Justice Chagla was right when he held that the judgment of the Indore High Court does amount to an adjudication that this award is a valid award, and for that reason ought to be filed, and we cannot say that the only decision is that the award be filed. That is the main question in dispute between the parties.

But the award is challenged on other grounds. It is said, in the first place, that the High Court had no jurisdiction under the Indore Arbitration Act to deal with the filing of an award ; that that is entirely a matter for the District Court. No doubt, under the Act the District Court is the Court in which the award has to be filed. But the transfer was made under s. 24 of the Code of Civil Procedure of Indore, which is in the same terms as s. 24 of our Code, and provides so far as material that on the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and try and dispose of the same. Mr. Justice Chagla held that the very power given by the Code to the High Court to withdraw a suit and dispose of it enabled the Court to decide the matter withdrawn, although under the Arbitration Act no such power was given. He held that that construction was not precluded by s. 4 of the Code, which provides that nothing in the Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred. I think that view is

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

right. But, in my opinion, the point is really not open to us, because there is no doubt that some Court in Indore can deal with the question of this arbitration, since the subject-matter of the arbitration is within the competence of that Court, and the parties are within its jurisdiction. That being so, it is really a question for the Indore tribunal to decide which domestic Court should deal with the matter, and as the Indore Courts have held that the High Court has jurisdiction, I do not think it is open to this Court to disagree. What is the law of Indore is, in this Court, a question of fact, and the case of *Vanquelin* v. *Bouard*[1] shows that where a foreign tribunal has decided a question of fact necessary to determine the jurisdiction of a particular foreign Court, it is not open to an English Court to go behind that decision. I think, therefore, it is not open to us to hold that the Indore High Court had no jurisdiction to deal with the matter after it was transferred to it.

Then the next point taken is that this is not a judgment on merits. There is no doubt that the judgment of Mr. Justice Jambhekar was a judgment on merits, and there is equally no doubt that the decision of the Court of Appeal was not. It is argued on the strength of the Privy Council decision in *Sheosagar Singh* v. *Sitaram Sing*[2] that the decision of the Court of Appeal has destroyed the finality of the decision of the lower Court. In that case the lower Court had dismissed the suit on merits, and the Court of Appeal dismissed the appeal on the ground that the proper parties were not before the Court. The Privy Council in appeal held that there was no decision upon merits, because the decision of the Court of Appeal, which was not upon merits, had overridden, and destroyed the finality of, the decision of the lower Court. It was sought to apply that principle here. But the difficulty in this case is that the Court of Appeal never really

[1] (1863) 15 C. B. (N. S.) 341. [2] (1897) L. R. 24 I. A. 50.

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C. J.

entertained the appeal at all, because the two Judges constituting the Court differed on the question whether an appeal lay, and, that being so, the decision of the lower Court prevailed; not under the order of the Court of Appeal, but under the notification dealing with the matter in Indore State. No doubt, the decision of the Court of Appeal was that the decision of the lower Court prevails, but that result would have followed, if the Appeal Court had made no order. If the Appeal Court's order had recited that the Judges differed as to whether an appeal lay, and, therefore, thought fit to make no order, exactly the same result would have followed; the decision of the lower Court would have prevailed. In my opinion, it is impossible to say that merely filing an appeal, which becomes infructuous, destroys the finality of the lower Court's judgment. I think, therefore, that there was here a decision on merits.

Then it is argued that there was misconduct in the arbitrator in that he allowed, as the award shows, people to come and see him who were not parties to the arbitration. But, in my opinion, misconduct of that sort, which does not go to jurisdiction, is not a matter which can be gone into in this Court. Such a point can only be taken in the foreign Court. The decision of the Privy Council in *Oppenheim & Co.* v. *Mahomed Haneef*[1] seems to me conclusive on that point.

It is also argued that the decision of the Indore Court is opposed to principles of natural justice. It is not, in my opinion, possible to reach that conclusion. The parties were heard by the learned Judge, and he reached his conclusion, and the mere fact that we may disagree with the conclusion is clearly not enough to justify us in saying that it was opposed to natural justice.

The only other question argued is whether the finding that the judgment of the Indore Court determines that the

[1] (1922) L. R. 49 I. A. 174, s. c. 24 Bom. L. R. 1245.

1943

BRIJLAL RAMJIDAS v. GOVINDRAM SEKSARIA

Beaumont C.J.

award is valid, justifies the dismissal of the plaintiffs' suit. It is said that the plaintiffs have asked not only for relief in relation to the award by declaring it invalid ; they have also asked for a declaration that the plaintiffs continue to be partners in the firm and are entitled to exercise the rights and privileges of partners ; and that the defendants may be restrained from preventing them from so doing. But it seems to me, on the basis that the award is valid, that there is really nothing left. The learned Judge in Indore has expressed the view in his judgment that the reference to the " par value " of the plaintiffs' share in the partnership, in the context in which it appears, means the capital brought into partnership by them, and excludes any value for good will. It is apparent, therefore, that the High Court in Indore will not entertain any doubt as to how the award has to be given effect to, and the award having been filed, it can be executed as a decree. In the circumstances, it seems to me that the learned Judge was right in dismissing the suit. To make any order reserving the rights of the plaintiffs remaining outside the award would be useless, because as they have been directed to sell at a particular price, there is nothing left for them when the price is paid, and we are told that it has been tendered.

I think, therefore, the learned Judge was right in dismissing the suit, and the appeal must be dismissed with costs.

Injunction dissolved.

WESTON J. I agree and have nothing to add.

Attorneys for appellants : Messrs. *Haridas & Co.*

Attorneys for respondents : Messrs. *Ardeshir, Hormusji, Dinshaw & Co. : Merwanji Kola & Co.*

Appeal dismissed.

A. J. P.