

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand Jain, JJ.

MAHESH CHAND,—*Plaintiff.*

versus

PURAN CHAND AND OTHERS,—*Respondents.*

Civil Miscellaneous No. 4267 of 1967

Civil Original No. 1 of 1967

July 30, 1968.

Arbitration Act (X of 1940)—S. 17—Court—fees Act (VII of 1870)—S. 11—Suit for dissolution of partnership and rendition of accounts—Dispute referred to arbitrator—Award made rule of the Court—Decree based on such award—Whether can be drawn up until the difference between the court-fee actually paid and the fee payable is made up.

Held, that there is no provision in the Arbitration Act which, either by necessary implication or specifically, overrides the provisions of section 11 of the Court Fees Act. A decree under section 17 of the Arbitration Act in a suit is a decree within the terms of section 11 of the Court-fees Act. A decree based on an award in a suit is a decree in the suit. It is a decree that puts an end to the suit; and, therefore, the provisions of section 11 would come into play and decree would be drawn up only if difference between the court-fee actually paid and fee which would be payable is made up. However, a decree passed on the basis of an award in a reference out side the Court does not require a Court fee stamp and section 11 does not apply thereto. [Paras 5 and 6]

Case referred by the Hon'ble Mr. Justice D. K. Mahajan on 29th March, 1968 to a larger bench for decision of an important question of law involved in this case, and it has been finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice P. C. Jain on 30th July, 1968.

Application for execution under Order 21 Rule 10 of Civil Procedure Code praying that a notice be issued to the judgment-debtor to make payment of the amount of Rs. 54069.

R. N. MITTAL WITH S. K. SYAL ADVOCATE, for the Petitioner.

H. L. SONI AND PURAN CHAND ADVOCATES, for Siri Niwas Respondent.

JUDGMENT OF DIVISION BENCH

MAHAJAN, J.—This case was referred by me to a larger Bench in view of the importance of the question involved.

(2) The precise question, that requires determination, is whether a suit, in which there is a reference to arbitration and a decree follows on the award and is made a rule of the Court under section 17 of the Arbitration Act, would be governed by the provisions of section 11 of the Court-fees Act ?

(3) This question has arisen in the following circumstances. The decreeholder filed a suit for dissolution of partnership and rendition of accounts against the judgement-debtor. This suit was pending in the Court of subordinate Judge, Ambala, and was brought to this Court by transfer. The dispute in the suit, with the agreement of the parties was referred to arbitration. The arbitrator gave his award and after hearing the objections of the parties, the award was made a rule of the Court under section 17 of the Arbitration Act.

(4) The office, however, did not draw up the decree in view of the provisions of section 11 of the Court-fees Act. The plaintiff-decree holder and one of the defendants, in whose favour the award has gone, have made an application for execution of the recovery of amount awarded to them. The judgement-debtors have raised the objection that there is no decree and that none could be drawn till the provisions of section 11 of the Court-fees Act were complied with, namely, the difference in the Court-fees paid and the requisite Court-fees on the relief granted is made good. It is this objection that falls for determination in these proceedings. When the matter was posted before me on the 29th March, 1968, I was doubtful whether the provisions of section 11 would apply to such a decree. It was for that reason that I referred the case to a larger Bench; and that is how the matter has been placed before us.

(5) After hearing the learned counsel for the parties at length, I am of the view that the objection of the judgment-debtors is well-founded and must prevail. There is no provision in the Arbitration Act which, either by necessary implication or specifically, overrides the provisions of section 11. Mr. R. N. Mittal, who appears for the decreeholder, contends that inasmuch as a decree under section 11 in a reference outside Court does not require Court-fees stamp, it follows that a decree in a suit does not require Court-fees when it

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is an award-decree and is passed under section 17 of the Arbitration Act. I am unable to agree with this contention. Section 11 of the Court-fees Act reads thus—

“In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be drawn up until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.”;

and it only covers the cases specifically mentioned therein and there too in a suit. The present decree undoubtedly was passed in a suit. The only difference was that instead of the Court determining the controversy, by agreement of the parties, the forum was changed; and an award was given by the arbitrator, which award was made a rule of the Court under section 17 of the Arbitration Act; and in terms of that provision a decree had to follow. It cannot, therefore, be held that a decree under section 17 in a suit is not decree within the terms of section 11 of the Court-fees Act. The view, I have taken of the matter, finds support from the observations of Mr. Justice Straight in *Nath Prasad v. Ram Paltan Ram and others* (1), though the decision does not relate to the matter of the Court-fees. The observations of the learned Judge, are quoted below;

“* * * The agreement to refer a suit to arbitration does not close the litigation; on the contrary, the parties continue before the arbitrators in the adverse positions of plaintiff and

(1) I.L.R. 4 All. 218.

defendant, the one seeking to fix liability on the other, and the other to avoid that liability. Even if the award is subsequently made upon the consent of the parties, it does not occur to me that it stands in any respects in a different position to a confession of judgment in the suit itself, and the decree that is passed in either case would seemingly stand upon the same footing. * * * * *

(6) Therefore, the approach has to be whether the decree, that followed, was a decree in a suit; and it cannot be denied that the decree, that followed, was in a suit. It is the decree that put an end to the suit; and, therefore, the provisions of section 11 of the Court-fees Act come into play.

(7) For the reasons recorded above, the objection prevails and is allowed. The plaintiff is allowed one month's time to make good the Court-fees. There will be no order as to costs.

PREM CHAND JAIN, J.—I agree.

R.N.M.

FULL BENCH

Before Harbans Singh, D. K. Mahajan and Shamsheer Bahadur, JJ.

KUNDAN SINGH,—*Petitioner*

versus

KABUL SINGH AND OTHERS,—*Respondents*

Election Petition No. 1 of 1968

February 6, 1969

Representation of the People Act (XLIII of 1950 as amended by Act XLVII of 1966)—S. 23(2) and 23(3)—Representation of People Act (XLIII of 1951)—S. 62—Qualified voter's name not included in the electoral roll—Application for inclusion made before the relevant date—Order including the name passed after the date of nominations for the election—Such order being opposed to section 23(3)—Whether without jurisdiction and non est or only illegal or irregular—S. 23—Provisions of—Whether mandatory.