

**CIVIL APPELLATE**

*Before Kapur, J.*

1951  

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May 30th

**RADHA KISHAN,—Plaintiff-Appellant,**

*versus*

**GANGA RAM,—Defendant-Respondent.**

**Regular Second Appeal No. 122 of 1948**

*Indian Arbitration Act (X of 1940), section 32—  
Whether a suit to enforce the award lies.*

*Held, that a suit praying for a decree in terms of the award on the ground that it had become final and binding necessarily raises the question with regard to the existence and validity of the award and as such is barred by section 32.*

*Second Appeal from the decree of Shri Mani Ram, Senior Sub-Judge with enhanced appellate powers, Amritsar, dated the 30th day of October 1947, reversing that of Shri Ram Lal, Sub-Judge, 1st Class, Amritsar, dated the 18th January 1947, and dismissing the suit and leaving the parties to bear their own costs throughout.*

S. L. PURI, for Appellant.

N. L. SALUJA, for Respondent.

**JUDGMENT**

Kapur J.

KAPUR, J. This is a plaintiff's appeal against a judgment and decree of the Senior Subordinate Judge,

Amritsar, allowing an appeal against the decree of the Subordinate Judge, whereby he held that a suit could lie on an award, and had decreed the suit.

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One Ram Chand died in 1941 leaving a will in favour of Ganga Ram. The question of the validity of the will was agitated in the Probate Court and went up in Letters Patent Appeal to the Lahore High Court which was, on the 30th of May 1944, decided in favour of Ganga Ram, defendant. Some time in January 1943 there was an agreement to refer to arbitration the dispute between Ganga Ram and the present plaintiff, Radha Kishan, and the award was given the following day which was got registered.

On the 23rd of June 1944, the plaintiff brought a suit for declaration that he is the owner of the property in dispute and therefore entitled to obtain possession of it from the receiver who had been appointed by the Probate Court, and he also applied for injunction to restrain the defendant from getting the same from the receiver. In his plaint the plaintiff alleged that an award had been given in his favour by Girdhari Lal, the arbitrator, which had been accepted both by him as well as by the defendant, Ganga Ram, and that by the terms of the award the plaintiff was to spend all the money on the Letters Patent Appeal and if the appeal succeeded the plaintiff was to become the owner of the whole property and the defendant would be entitled to Rs 4,750, out of which the plaintiff would be entitled to take Rs 1,750 and on these allegations he made the prayer mentioned above. The defence was that no suit could be brought to enforce the award because of section 32 of the Indian Arbitration Act. The suit was decreed by the trial Court but on appeal was dismissed and the appellate Judge has given a decision on the validity of the agreement as well as the award.

Counsel for the appellant has submitted that on these allegations the plaintiff could bring a suit and as both parties had signed the award it was not open to the appellate Judge to go into the validity of the agreement or the award. It was, however, not necessary to

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go into these questions, nor should they have been gone into, because the present suit which was brought by the plaintiff is barred by section 32 of the Arbitration Act. Section 32 is as follows :—

“ 32. Notwithstanding any law for the time being in force no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration, agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.”

In *Moolchand Jothajee v. Rashid Jamshed Sons and Co.* (1), it was held that the scheme of the Arbitration Act is to prevent the parties to an arbitration agitating questions relating to the arbitration in any manner other than that provided by the Act and a suit praying for a decree in terms of the award on the ground that it had become final and binding necessarily raises the question with regard to the existence and validity of the award and as such is barred by section 32. Same view was taken earlier in *Deokinandan Dalmia v. Basantlal Ghanshyamdas* (2), and also in *Bhagwandas Atmasing v. Atmasing Jassasing* (3), where the question in dispute was the validity of an arbitration agreement. Same view was taken by Achhru Ram, J., in Lahore in an unreported case in which I appeared as counsel for one of the parties.

Counsel for the appellant has relied on *Nanhelal Anandilal Jain and another v. Singhai Gulabchand* (4). It is a Single Bench judgment of the Nagpur High Court. This judgment does not discuss the question and has been expressly dissented from by the Madras Court in the case that I have mentioned above.

(1) A. I. R. 1946 Mad. 346.

(2) 45 C. W. N. 881

(3) A. I. R. 1945 Bom. 494.

(4) A. I. R. 1944 Nag. 24.

In *Ratanji Virpal and Co. v. Dhirajlal Manilal* (1), the High Court of Bombay read section 32, Arbitration Act, in the way in which I have read it. I am unable to agree with the view of Pollock, J., in the Nagpur case and I am of the opinion that such a suit, as the one brought by the plaintiff, does not lie, and on that ground alone the appeal should be dismissed.

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As I am deciding this case on the ground that such a suit does not lie, naturally the findings given in this case will not affect the parties' rights whatever they may be.

The respondent will have his costs in this Court and in the Courts below.