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such a petty case is final in the requisite sense only as to the precise point of liability distinctly adjudicated. In ordinary cases the authority of *res judicata* extends back to the several elements of fact and law of which an adjudication is composed(1); but in the case of a Court of summary jurisdiction a different principle operates. Such a Court, for the purpose of deciding a question within its final cognizance, may have to form an opinion on a point not within its cognizance or not within its final cognizance. The opinion it forms on such a point is to be regarded rather as ancillary or subjective than as an objective conclusion on a matter incidentally, not directly and substantively, cognizable—*Khugowleesing* v. *Hossein Bux Khán*(2), and it is only in the latter character that the conclusion can create a permanent and unquestionable jural relation(3). The jurisdiction of the District Court trying a small cause is to be regarded as summary in comparison with the jurisdiction exercised by it in ordinary cases as part of a more elaborate and deliberate procedure.

We, therefore, reverse the decree of the District Court, and direct that the case be re-tried on the merits, with reference to the foregoing observations. Costs to be costs in the cause.

Decree reversed.

(1) See *per* Mellish, L. J., L. R., 9 Ch. A., at p. 25.

(2) See *per* Judicial Committee, 7 Beng. L. R., at p. 679.

(3) See *per* Lord Selborne in *R.* v. *Hutchings*, L. R., 6 Q. B. D, 300.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nándbhái Haridás.

September 15.

DAGDUSA TILAKCHAND (ORIGINAL DEFENDANT), APPLICANT, *v.* BHUKAN GOVIND SHET (ORIGINAL PLAINTIFF), OPPONENT.*

Award—Power of arbitrators to deal with question of costs—Excess in award—Order to file award—Extraordinary jurisdiction of High Court—Civil Procedure Code Act (XIV of 1882), Sec. 622.

The parties to a suit having referred the matters in dispute between them to arbitration, the arbitrators, without being specially authorized to decide the question of costs, included in the award a direction that the defendant should pay

* Civil Application, No. 76 of 1884.

the costs of the plaintiff. On the application of the plaintiff the Subordinate Judge under section 526 of the Civil Procedure Code (Act XIV of 1882) ordered the award to be filed, holding that the arbitrators had, as such, an implied power to deal with the costs. The defendant applied to the High Court, under its extraordinary jurisdiction, praying that the record of the case might be sent for, and the order of the Subordinate Judge set aside.

Held, that the arbitrators had no implied power to deal with the question of costs, and that on the defendant's objection the Subordinate Judge should have refused to file the award.

Under the circumstances, the High Court, instead of setting aside the order to file the award, directed the award to stand good, except so far as it awarded costs, and that the decree should be drawn in accordance with it, as it would be if it contained no direction as to costs.

In any case where there is a disregard of the law amounting to an excess of jurisdiction, or a perversion of the purposes of the Legislature, the High Court will interfere under its extraordinary jurisdiction where no other remedy is available.

THIS was an application for the exercise of the extraordinary jurisdiction of the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued the defendant to establish his right to a wall which the plaintiff alleged to be his property. By a written agreement the matter was referred to private arbitration on 13th November, 1883. The arbitrators gave their award in favour of the plaintiff, and also awarded him his costs. The plaintiff applied on 10th December, 1883, to the Subordinate Judge at Amalner, in the Khándesh District, to have the award filed in Court. The defendant objected, contending that the award was unjust, and included matters that were not submitted to the arbitrators. The Subordinate Judge, however, ordered it to be filed and registered, with the following remarks:—

"The defendant contends that the award is unjust, and decides matters that were not referred to the arbitrators. From the *kabuláyat* (exhibit 16) put in by the arbitrators I find that the arbitrators have determined those matters only which were connected with the wall about which the dispute arose between the parties, and which were referred to the arbitrators. The defendant contends that the arbitrators have without authority awarded to the plaintiff a sum for costs, and, therefore, the award is *ultra vires*. But I think that an arbitrator must have some voice

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as to the costs that the parties might incur. All arbitrators may be presumed to have an implied authority to that extent. In the present case the final words of the *kabuláyat* clearly indicate that the arbitrators were bound, in terms of the *kabuláyat*, to dispose of the case in every way they could, and I do not think that the defendant can now turn round, and say that they had no power to award costs.

"I direct that the award should be registered, and a decree should follow. The costs of this application should be borne by each his own in terms of the award."

The defendant applied under the extraordinary jurisdiction of the High Court, praying that the record of the case might be sent for, and the order of the Subordinate Judge set aside.

A rule *nisi* was granted on the 26th June, 1884.

Ganesh Rámchandra Kirloskar showed cause.—The reference to arbitration included all matters connected with the dispute. The question of costs was not a new matter. Section 519 of the Civil Procedure Code contemplates the question of costs. There is an appeal from a decree on an award: see *Debendra Nath* v. *Aubhoy Churn Bagchi*[1]; *Sashti Charan* v. *Tarak Chandra*[2]; *Lachman Das* v. *Brijpal*[3]; *Dandekar* v. *Dandekars*[4]; *Dutto Singh* v. *Dosad Bahádur Singh*[5]. The lower Court having exercised its discretion it is not open for the opposite party to invoke the extraordinary jurisdiction of this Court.

Dáji Abáji Khâre, contra.—No appeal lies against an order filing an award—*Bijadhur Bhugut* v. *Monohur Bhugut*[6]; *Ichamoyee Chowdhranee* v. *Prosunno Nath Chowdhri*[7]; *Shreeram Chowdhry* v. *Deno Bundhoo*[8]. No appeal lies from an order for filing an award, so that the applicant has no remedy except under the extraordinary powers of the Court. The lower Court having exceeded its jurisdiction, its order is subject to revision under section 622 of the Civil Procedure Code (XIV of 1882).

(1) I. L. R., 9 Cal., 905.
(2) 8 Beng. L. R., 315.
(3) I. L. R., 6 All., 174.
(4) I. L. R., 6 Bom., 663.
(5) I. L. R., 9 Cal., 575.
(6) I. L. R., 10 Cal., 11.
(7) I. L. R., 9 Cal., 557.
(8) I. L. R., 7 Cal. at p. 493.

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WEST, J.—It does not seem to have been intended by the Legislature that any appeal should be entertained against an order made under section 526 of the Code of Civil Procedure. The interference of the High Court by an exercise of its extraordinary jurisdiction must now be limited according to the decision in *Shiva Náthâji* v. *Joma Kâshinath*[1], and this will, in general, prevent an examination of the view taken by the Subordinate Judge of the cause or ground shown under section 526 on which he has based his assent or refusal to file an award. As his decision is thus clothed with finality, there is the strongest reason, on the principle laid down in the beginning of the judgment just referred to, why the High Court should scrutinize with care, from the point of view of its legality, the exercise, by a Subordinate Judge, of a power of so great consequence. If, therefore, there has in any case been a disregard of the law amounting to an excess of jurisdiction, or a perversion of the purpose of the Legislature, this Court must hold itself ready to interfere where no other remedy is available.

In the present case it is urged that as the award gave to one of the parties costs, and the submission did not leave this question to the arbitrators, the Subordinate Judge was bound to refuse to file the award as open to an objection of a kind specified in section 520 of the Code of Civil Procedure. We think, notwithstanding the arguments of Mr. Kirloskar, that the submission did not extend to the matter of costs. The Subordinate Judge indeed, did not think it did; he relied on the arbitrators having, as such, an implied power to deal with the costs. It is certain, however, that they could not in a private arbitration have such a power, unless it was given to them, and it must be taken that their award was open to the objection raised by the applicant Dagdusa. The Subordinate Judge was bound to yield to that objection. It appears from *Chowdhri Murtaza Hossein* v. *Mussamut Bibi Bechunissa*[2] that the Judicial Committee held that section 327 of the Act, VIII of 1859, did not embody the earlier sections of the chapter in which it was placed. Section 526 of the present Code specifies the causes enumerated in sections 520,521 as

(1) I. L. R., 7 Bom. 341. (2) L. R., 3 I. A., 209, 213.

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those which may be urged against filing an award, but it does not say that the award may be remitted, nor without express authority can a Court send back an award to private arbitrators over whose proceedings it has no control. Its only course, then, if a reasonable ground is shown, (or a conclusive cause according to *Dandekar* v. *Dandekars*[1]) is to refuse to file the award. This does no irreparable harm, since the party to be benefited can bring a suit on the award thus rejected. In the present case, however, there has been a simple excess in the award. The party who would benefit by this (Bhukan) expresses his readiness to renounce the benefit rather than be put to the expense of a suit, and it seems that complete justice will thus be done. When we are called on, then, by an exercise of our extraordinary jurisdiction, to set aside the Subordinate Judge's order for filing the award, we think it preferable to direct that the award stand good only for the remainder after its direction as to costs has been rejected, and that the decree be drawn in accordance with it, as it would be if it contained no direction as to costs.

The parties severally are to bear their own costs of this application. The costs, in the Subordinate Judge's Court, of Dagdusa are to be paid by Bhukan.

(1) I. L. R., 6 Bom., 663.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

September 2.

BASWANTA'PA SHIDA'PA, MINOR, BY HIS MOTHER TAYAWA (ORIGINAL PLAINTIFF), APPELLANT, *v.* RA'NU AND MALKHA'NA (ORIGINAL DEFENDANTS), RESPONDENTS.*

Decree against the wrong person as representative of a deceased debtor—Sale in execution—Subsequent claim by proper representative—Estoppel—Quiescence.

One Shidápa Bápu died indebted to the second defendant Malkhána. On his death his widow Tayawa became his heir, as he left neither son nor brother surviving. In 1878 Malkhána brought a suit to enforce payment of the debt due by the deceased Shidápa Bápu, and he made Baslingáwa, the mother of Shidápa, defendant in the suit, omitting Tayawa altogether. On 30th August, 1878, Malkhána obtained an *ex-parte* decree, and on the 26th July, 1880, the house of Shidápa, then in the possession of Baslingáwa, was sold in execution, and the

*Second Appeal, No. 440 of 1883.