

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

DHANJIBHAI GIRDHARBHAI (ORIGINAL PLAINTIFF), APPLICANT v.
MATUURBHAI GHELABHAI (ORIGINAL DEFENDANT 4), OPPONENT.*

1903.

December 15,

Civil Procedure Code (Act XIV of 1882), sections 520, 521 and 525—Arbitration—Award—Allegations against the award—Refusal to file the award—Objections must be proved to the satisfaction of the Court.

It is not sufficient merely to allege a cause or ground against the filing of an award such as is indicated in sections 520 and 521 of the Civil Procedure Code (Act XIV of 1882), but the cause or the ground must also be proved to the satisfaction of the Court:

Dandekar v. Dandekars (1) followed; *Venkatesh Khando v. Chanapavda* (2) and *Tejpur v. Mahomed Jamal* (3) distinguished.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Lallubhai P. Parekh, First Class Subordinate Judge of Surat.

Suit to obtain a decree in terms of an award.

The plaintiff sued to have the award made by the arbitrators appointed by parties without the intervention of the Court filed and to obtain a decree thereon alleging that there were disputes between the parties regarding houses, lands, etc.; that with a view to have them settled they appointed certain arbitrators on the 13th July, 1899; that the arbitrators gave their award the next day, and that the plaintiffs were entitled to have the award filed and to obtain a decree in its terms.

Defendants 1, 2, 3 and 5 were absent.

Defendant 4 contended *inter alia* that the plaintiff's application did not satisfy the requirements of the Civil Procedure Code; that the award was indefinite and incomplete; that it was incapable of execution; that it was made without hearing him and without taking his evidence; that two of the arbitrators did not act honestly, and that the award was illegal and could not be filed under section 525 of the Civil Procedure Code.

* Application No. 252 of 1902 under the extraordinary jurisdiction.

(1) (1882) 6 Bom. 663.

(2) (1892) 17 Bom. 674.

(3) (1896) 20 Bom. 596.

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The Subordinate Judge raised the following issues:—

1. Is the award sought to be converted into a decree legal and valid under the Civil Procedure Code ?
2. Is the award indefinite and imperfect and thus incapable of enforcement ?
3. Does the defendant 4 show any corrupt motive or spite on the part of the arbitrators ?
4. Was defendant 4's submission obtained conditionally and is the award void for non-fulfilment of the condition ?
5. Can the plaintiff's prayer be granted ?

The Subordinate Judge found on issue No. 5 in the negative and dismissed the suit without recording findings on the other issues for the following reasons:—

The award, Exhibit 24, sought to be filed appears to be indefinite. * * *

The award nowhere says that the parties were heard by the arbitrators before it was made.

Plaintiff Dhanji says (*vide* Exhibit 20) that he had no dispute regarding the lands disposed of by Narotam by his will and yet the arbitrators appear to have awarded part of the lands to the plaintiff.

Arbitrator Raising says (*vide* Exhibit 21) that no evidence was taken by him and the other arbitrators before making the award. It appears that none of the parties except the plaintiff and defendant Jhaver were called and heard by the arbitrators (*vide* Exhibit 21). They did not even care to inquire where the other parties were. Arbitrator Kashinath (Exhibit 22) says that Dhanji, plaintiff, was first called and then Jhaver was called and heard each in the absence of the other, and that no evidence regarding the adoption was taken by them.

Hearing one of the parties in the absence of the other is a breach of duty on the part of the arbitrators. It therefore entitles defendant No. 4 to have the award set aside: I. L. R. 18 Bom. 299.

The objections raised by the defendant regarding the *factum* and validity of the award are not merely frivolous or colourable. I have, therefore, no jurisdiction to deal with them. I therefore refrain from deciding the first four issues of this case (*vide* I. L. R. 20 Bom. 596). I must, therefore, refer the parties to a regular suit.

In I. L. R. 17 Bom. 674 it was held that where the objections taken by the defendant are not obviously unfounded the award cannot be filed.

The plaintiff applied under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) urging that the Court erred in not exercising the jurisdiction vested in it by law; that it did not properly understand the scope of the inquiry provided for by sections 525 and 526 of the Civil

Procedure Code; that the *factum* of the reference to arbitration being admitted the Court was wrong in withholding the exercise of its jurisdiction; that the mere circumstance that the objections raised by the defendant were not on the face of them frivolous and colourable did not deprive the Court of its jurisdiction unless they were proved to be substantial and proper; that the view taken by the Court was erroneous and it was wrong in not recording its findings on the first four issues, and that it erred in referring the parties to a regular suit instead of filing the award. A *rule nisi* having been issued calling on the defendants to show cause why the order of the Subordinate Judge should not be set aside:

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Markand N. Mehta appeared for the applicant (plaintiff) in support of the rule:--We applied for the filing of the award under section 526 of the Civil Procedure Code, but the Judge refused to do so on the ground that, as the defendant raised several objections against the *factum* and the validity of the award, he had no jurisdiction to entertain and dispose of the application on the merits. The Judge relied on the decisions in *Fenkatesh Khando v. Uhanapagavda*⁽¹⁾, *Tejpur v. Mahomed Jamal*⁽²⁾, and without giving any finding on the first four issues referred the parties to a civil suit. Section 521 of the Civil Procedure Code lays down three requisites against filing an award, and if those three requisites are absent, the Court cannot refuse jurisdiction. In the present case the *factum* of arbitration is not disputed, so the cases referred to by the judge do not apply. We rely on *Amrit Ram v. Dasrat Ram*⁽³⁾; *Mahomed Wahiduddin v. Hakimian*⁽⁴⁾; *Surjan Raot v. Bhikari Raot*⁽⁵⁾; *G. S. Jones v. H. Ledgard*.⁽⁶⁾ The view taken by the Judge is erroneous. He should have entertained our application and gone into the merits. The objections urged against the filing of the award are such as are contemplated by sections 520 and 521 of the Civil Procedure Code and they have not at all been proved. The Judge should have taken evidence and recorded findings on the other issues.

(1) (1892) 17 Bom. 674.

(2) (1893) 20 Bom. 596.

(3) (1894) 17 All. 21.

(4) (1898) 23 Cal. 757.

(5) (1893) 21 Cal. 213.

(6) (1886) 8 All. 340.

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Krishnabal M. Jhaveri appeared for the opponent (defendant 4) to show cause:—We have shown all the grounds mentioned in sections 520 and 521 of the Civil Procedure Code. The Judge has, as a matter of fact, found on all the issues, though he has not recorded distinct findings on them and it was not necessary for him to do so. A mere allegation that such grounds as are mentioned in sections 520 and 521 exist is quite sufficient to preclude the Court from making an inquiry: *Venkatesh Khando v. Chanappavda*.⁽¹⁾ But in the present case there is something more than mere allegations. The arbitrators and parties were examined. We disputed the *factum* and the validity of the award, therefore the Judge was right in referring the parties to a Civil Suit: *Tejpur v. Mahomed Jamal* ⁽²⁾; *Dandekar v. Dandekars* ⁽³⁾.

Mehra in reply.

JENKINS, C. J.—The present application arises out of a refusal by the First Class Subordinate Judge of Surat to file an award under section 526 of the Civil Procedure Code. It is conceded that there was a submission and an award, and that the applicant was interested in the award; but the Subordinate Judge declined to file the award because he conceived himself to be bound by the decisions in *Venkatesh Khando v. Chanappavda*⁽¹⁾ and *Tejpur v. Mahomed Jamal*,⁽²⁾ for he took the results of those decisions to be that, if to an application for the filing of an award any substantial grounds of objection are brought in, then the Court has no jurisdiction to entertain and dispose of the application on its merits.

There is an impression that the view of the Bombay High Court is diametrically opposed to that of the other Courts, but we think that this exaggerates the difference that really exists.

The objections against the filing of an award may fall under two heads: those indicated in sections 520 and 521 of the Code of Civil Procedure and those which do not fall within the descriptions of those sections.

(1) (1892) 17 Bom. 674.

(2) (1896) 20 Bom. 596.

(3) (1882) 6 Bom. 663.

Section 526 provides that if no ground such as is mentioned or referred to in section 520 or 521 be shown against the award, the Court shall order it to be filed and such award shall then take effect as an award made under the provisions of this chapter; and it has been decided in *Dandekar v. Dandekars*⁽¹⁾ that under the corresponding sections of Act X of 1877, it did not suffice merely to *allege* a cause or ground against the award such as is indicated in the sections 520 and 521 of the present Code, but that the cause or the ground must also be proved to the satisfaction of the Court.

The cases cited in support of the view that the mere allegation of a cause or ground suspends the power of the Court to act under section 525 are *Samal Nathu v. Jaishankar Dalsukram*⁽²⁾; *Nirjibhai v. Jamselji*⁽³⁾; *Venkatesh Khando v. Chanappavda*⁽⁴⁾, and *Tejpur v. Mahomed Jamal*⁽⁵⁾; but Sir Charles Sargent in *Venkatesh Khando v. Chanappavda*⁽⁴⁾ and Sir Charles Farran in *Tejpur v. Mahomed Jamal*⁽⁵⁾ are careful to point out that the case of *Dandekar v. Dandekars*⁽¹⁾ is in no way touched by their decisions, and the result of these cases appears to us to be that the Bombay High Court is in accord with the others where the cause alleged is one under section 520 or 521, and that it differs from them only in declining to hold that objections other than those can be made the subject of investigation and determination in a proceeding under chapter 37 of the Code of Civil Procedure.

In this case we have nothing to do with the latter class of objections, because it is clear that the objections urged against the filing of the award fall under sections 520 and 521 of the Civil Procedure Code. We therefore think that the learned Judge was in error and failed to exercise the jurisdiction which was vested in him when he declined to investigate and determine the merits of the grounds urged against the filing of the award. We accordingly make the rule absolute, set aside the order of the Subordinate Judge, and remand the case to the Lower Court for a decision on the merits.

Costs of this rule will be costs in the application.

Rule made absolute.

(1) (1882) 6 Bom. 663.

(3) (1890) P. J. p. 250.

(2) (1884) 9 Bom. 254.

(4) (1892) 17 Bom. 674.

(5) (1896) 20 Bom. 596.

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