

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice.

In the matter of the Indian Arbitration Act (IX of 1899).

1910.
August 6.

TRIBHUWANDAS KALLIANDAS GAJJAR, PETITIONER, v.
JIVANCHAND LALLUBHAI AND CO., RESPONDENTS.

Indian Arbitration Act (IX of 1899), sections 11 and 15—"Award"—Civil Procedure Code (Act V of 1908), schedule I, Order XXI, rule 29.

An award filed in Court under section 11 of the Indian Arbitration Act (IX of 1899) is nothing more than an award, although it is enforceable as if it were a decree.

Execution of such an award cannot be stayed under Order XXI, rule 29 of the Civil Procedure Code (Act V of 1908).

PROCEEDINGS in chambers.

The petitioner above named had been employed by the respondents for some years, when certain disputes arose between them, and a reference was made to arbitration. The respondents, however, shortly afterwards filed a suit against the petitioner, contending (*inter alia*) that the agreement between them was illegal and void. Another suit, No. 850 of 1909, was thereafter filed against the petitioner and the respondents by Gulabchand Munalal and Co. for the taking of accounts of a partnership which had previously existed between the parties. It was alleged in this suit (*inter alia*) that the petitioner was liable to refund to the partnership assets a large sum which he had prematurely withdrawn.

Eventually a settlement was arrived at between the petitioner and the respondents, and on 19th January 1910 an award was made in the arbitration ordering the respondents to pay to the petitioner Rs. 2,15,000 (Rs. 1,00,000 on 25th January 1910, and the balance in monthly instalments of Rs. 10,000), and a consent decree was passed in the suit filed by the respondents. The above settlement was without prejudice to the rights of the parties in Suit No. 850 of 1909.

In pursuance of the award the respondents duly paid sums amounting to Rs. 1,50,000, but made default in payment of the instalment due on 25th July 1910, claiming to retain the balance.

against the amount which the petitioner was himself liable to refund in Suit No. 850 of 1909.

On 1st August 1910 the petitioner applied for execution under section 15 of the Indian Arbitration Act, and on the same day the respondents, paying Rs. 10,000 into Court, took out a summons against him to show cause why execution should not be stayed until the final disposal of Suit No. 850 of 1909.

The summons was argued before Scott, C. J., in chambers.

Jardine, acting Advocate-General, appeared to show cause for the petitioner.

Taleyarkhan appeared for the respondents.

SCOTT, C. J. :—On the 1st of August 1910 a summons was obtained from the Sitting Judge in chambers headed: "In the matter of the Arbitration between Professor Tribhuwandas Kalliandas Gajjar and the firm of Messrs. Jivanchand Lallubhai and Co., and in the matter of the Indian Arbitration Act IX of 1899—Professor Tribhuwandas Kalliandas Gajjar—Petitioner; and Lallubhai Dharamchand and the other partners in Jivanchand Lallubhai and Co.—Respondents," calling on the above-named petitioner to appear and show cause, if any he hath, why the execution of the award, dated the 19th January 1910, should not be stayed until the final disposal of Suit No. 850 of 1909.

The award of the 19th January 1910 was an award made under the provisions of the Indian Arbitration Act IX of 1899, whereby the firm of Jivanchand Lallubhai and Co. were directed to pay to Tribhuwandas K. Gajjar the sum of Rs. 2,15,000, Rs. 1,00,000 being payable at once and Rs. 10,000 every subsequent month. At the time of the summons there still remained payable by monthly instalments a sum of Rs. 65,000. Up to that time no steps had been taken to obtain the assistance of the Court in securing the payment of the amount of the award, but under the provisions of the Indian Arbitration Act the petitioner would be entitled to enforce the award as if it were a decree of the Court.

On the strength of that provision in section 15 of the Indian Arbitration Act, the parties against whom the award has been made contend that this Court, under Order XXI, rule 29 of the

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Civil Procedure Code, should stay the execution of the award until the disposal of Suit No. 850 of 1909. That is a suit filed by Gulabchand Munalal against Kasturchand Daya, the firm of Jivanchand Lallubhai and Co., the present respondents, and the petitioner, T. K. Gajjar, for the winding up of a partnership, in which, it is said, the petitioner was entitled to a share of profits, although not liable for losses, and is liable to the partnership for monies withdrawn to the extent of Rs. 90,000.

Now, such an order for stay can only be made by the Court, if there is a suit pending on the part of a person against whom a decree has been passed, against the holder of a decree of the Court. It appears to me that the petitioner is not a holder of a decree of the Court, nor are the firm of Jivanchand Lallubhai and Co. persons against whom a decree has been passed; for the award, to which the applicants seek to give the force of a decree, is nothing more than an award, although it is enforceable as if it were a decree. In the words of Fletcher Moulton, L. J., used with reference to section 12 of the English Arbitration Act of 1889, that section "gives no power to turn such an award into a judgment. It gives to the award the same status as a judgment for the purpose of enforcement, but it leaves it what it was before, *viz.*, an award." See *In re a Bankruptcy Notice*⁽¹⁾.

The application is, therefore, in my opinion, misconceived, and it is unnecessary to discuss the further question which might arise as to whether Suit No. 850 by Gulabchand Munalal is such a suit as is within the contemplation of Order XXI, rule 29 of the Civil Procedure Code, even if we assume that the award is a decree within the meaning of that rule.

I, therefore, discharge the summons with costs.

Attorneys for petitioner: Messrs. *Bicknell, Merwanji and Romer.*

Attorneys for opponents: Messrs. *Tyabji, Dayabhai and Co.*

K. McI. K.

(1) [1907] 1 K. B. 482.