

Privy Council Appeal No. 103 of 1914.

Thakur Umed Singh and another - - *Appellants,*

v.

**Rai Bahadur Seth Sobhag Mal Dhadha and
another** - - - - - *Respondents.*

FROM

THE COURT OF THE CHIEF COMMISSIONER OF AJMER-MERWARA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 2ND NOVEMBER 1915.

Present at the Hearing :

VISCOUNT HALDANE.
LORD PARMOOR.
LORD WRENBURY.

SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* VISCOUNT HALDANE.]

In this Appeal the question is whether the Officiating Chief Commissioner of Ajmer-Merwara has properly set aside the award in certain arbitration proceedings. The respondents had brought a suit to recover from the appellants Rs. 88,320 alleged to be due under a mortgage. The appellant first on the record is the father of the second appellant, who was at the time of the proceedings a minor. The Trial Judge appointed one Bhur Singh guardian *ad litem* of this minor appellant. Before the trial came on all the parties entered

into an agreement to refer the questions in dispute to two arbitrators and, in the event of these differing, to an umpire. The agreement was signed by the appellants and respondents each with his own hand, excepting in the case of the minor appellant, on whose behalf it was signed by the guardian *ad litem*. The parties appeared before the Trial Judge and produced the agreement and applied for an order of reference. The guardian *ad litem* was present in Court and was a party to the application. The Trial Judge thereupon made an order of reference. The arbitrators differed, and the parties then concurred in an application to refer the dispute to the umpire, and an order was made accordingly. The umpire made an award allowing the respondents' claim to the extent of Rs. 17,510 only. This award was filed in Court. The respondents, being dissatisfied with it, applied to the Trial Judge under the provisions of s. 15 of the Second Schedule of the Code of Civil Procedure 1908 to set the award aside. The Trial Judge refused the application. He held that all the parties to the suit, including the guardian *ad litem*, had been consenting parties to the application, and further that there was no ground for the objections made on the merits to the award. The order was made under s. 16 of the Second Schedule to the Code already referred to. This section provides that—

“ (1) Where the Court sees no cause to remit the
“ award or any of the matters referred to arbitration
“ for reconsideration in manner aforesaid, and no
“ application has been made to set aside the award,
“ or the Court has refused such application, the Court
“ shall, after the time for making such application has
“ expired, proceed to pronounce judgment according to

“ the award. (2) Upon the judgment so pronounced
 “ a decree shall follow, and no appeal shall lie from such
 “ decree, except in so far as the decree is in excess
 “ of, or not in accordance with, the award.”

The respondents then presented an application to the Chief Commissioner under section 115 of the Code of Civil Procedure. This section provides that:—

“ The High Court may call for the record of any case
 “ which has been decided by any Court subordinate to
 “ such High Court, and in which no appeal lies thereto,
 “ and if such subordinate Court appears (a) to have
 “ exercised a jurisdiction not vested in it by law, or
 “ (b) to have failed to exercise a jurisdiction so vested,
 “ or (c) to have acted in the exercise of its juris-
 “ diction illegally or with material irregularity, the High
 “ Court may make such order as it thinks fit.”

The Chief Commissioner dismissed the application. He held that the point taken that the application to the Court for reference to arbitration was not signed by the guardian *ad litem*, was not a good one, having regard to the fact that the agreement itself was signed by all parties concerned. Moreover, he thought that it was for the minor or his guardian, and not for the applicants, to raise such an objection. He also held that even if an agreement or compromise entered into on behalf of a minor without the leave of the Court was voidable against all parties other than the minor, that did not make it necessarily void against the minor. As to the merits he was of opinion that there was nothing in the case made for the applicants, the present respondents, based on misconduct or irregularity on the part of the arbitrators and umpire.

The respondents then applied to the Court of the Chief Commissioner for a review of this order, relying on s. 114 of the Code

which, subject to such conditions and limitations as may be prescribed, allows a person aggrieved to apply for a review of any decree or order from which no appeal is allowed by the Code, and relying also on Order 47 (1) of the First Schedule to this Code which provides that he may apply for such review on:—

“the discovery of new and important matter or
 “evidence which, after the exercise of due diligence,
 “was not within his knowledge and could not be pro-
 “duced by him at the time when the decree was passed
 “or order made, or on account of some mistake or
 “error apparent on the face of the record, or for any
 “other sufficient reason.”

These rules are, under s. 121 of the Code, to have effect as if enacted in it, until altered as the Code provides.

This application for review was heard, not by Sir Elliot Colvin, the Chief Commissioner, but by Mr. Stratton, who was officiating in his absence. The appellants were not represented on this hearing. The main point urged was that in dismissing the application for review the High Court was in error in regarding the omission to sign the application for arbitration by the minor or his guardian as unimportant, and as covered by the agreement which all the parties had signed. The Officiating Chief Commissioner acceded to the application, and set aside the whole of the arbitration proceedings, on the ground, apparently, that this error in the proceedings, though technical only, was fatal. The only other arguments before him appear to have been that even if the umpire had proper jurisdiction his action was illegal, because he opened the case *de novo*, whereas all he had to do was to consider the points on which the arbitrators had failed to

agree, and because he had not taken evidence, although he called for it.

Their Lordships have had to hear the appeal *ex parte*, as the respondents, the plaintiffs in the suit, did not appear on the appeal, but they have examined closely the documents and the various judgments in the Courts below. They are of opinion that the decisions of the Trial Judge and of the Chief Commissioner were right, and ought not to have been interfered with by the Acting Chief Commissioner.

In the first place the Second Schedule to the Code of Civil Procedure, which provides by s. 1 that where the parties to a suit have agreed that the matter in difference shall be referred to arbitration they may apply in writing to the Court for an Order of Reference, does not require that the writing should of necessity be signed. As the guardian in this case was in Court and assented to the application it is plain that no injustice has arisen. They think, therefore, that there is no substance in the technical objection relied on. Nor can they find any defect on the face of the award, or any misconduct of the arbitrators or umpire, or concealment of facts by any of the parties which would bring the case within those provisions in the Second Schedule which might enable the Court to set it aside. They have accordingly arrived at the conclusion that the Acting Chief Commissioner was not justified in interfering with the Order refusing revision made by the Chief Commissioner.

They are, therefore, of opinion that the appeal must be allowed with costs here and in the Courts below, and they will humbly advise His Majesty to that effect.

In the Privy Council.

THAKUR UMED SINGH AND ANOTHER

v.

RAI BAHADUR SETH SOBHAG MAL
DHADHA AND ANOTHER.

JUDGMENT

DELIVERED BY VISCOUNT HALDANE.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY

1915.