

Udoychand Pannalal - - - - - *Petitioner*

v.

P. E. Guzdar and Company - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL ON A PETITION FOR SPECIAL LEAVE
TO APPEAL, DELIVERED THE 27TH MARCH, 1925.

Present at the Hearing :

VISCOUNT HALDANE.

LORD DUNEDIN.

LORD DARLING.

[*Delivered by* LORD DUNEDIN.]

The question raised by this petition is as to the meaning of section 110 of the Civil Procedure Code. The circumstances which have given rise to it are peculiar and complicated. They arise out of a contract for sale of goods made by the respondents with the petitioner. In the contract of sale there was a provision that all disputes arising out of the sale should be settled by arbitration. A dispute did arise and cross-claims were made. The parties commenced arbitration proceedings, but disagreed as to appointment of arbitrators. An arbitrator appointed by the respondents made an *ex parte* award in their favour, but this was set aside by the Court. New arbitrators chosen in a manner ordered by the Court were then appointed. Another *ex parte* award was made and this also was set aside. Against this order setting it aside the respondents appealed. The petitioner then filed a suit claiming the damages he had sought in the arbitration. This was met by an application to stay the suit pending the disposal of the above-mentioned appeal, or otherwise until the matter was settled by arbitration. The High Court granted the stay. The petitioner

appealed against that order. The Court of Appeal then took up this appeal and the appeal before mentioned and it dismissed both appeals, the date of the dismissal of the last-mentioned being the 28th July, 1922. The parties then again betook themselves to arbitration. Again the arbitrators were unable to agree and *ex parte* awards were made, one in favour of the petitioner for Rs. 81,000 odd, the other in favour of the respondents for Rs. 3,900 odd.

On the 5th December, the High Court, on the application of the respondents, set aside the award in favour of the petitioner. The petitioner then raised a suit to set aside the award in favour of the respondents, and it is in this suit that the petition comes before the Board. The High Court in its original jurisdiction set it aside, but on appeal the Appeal Court reversed and dismissed the suit. The petitioner applied for leave to appeal, but this was refused upon the ground that the sum involved was neither directly nor indirectly of the value of Rs. 10,000.

The only question, therefore, is whether the case falls within the words of section 110 ; that section is as follows :—

110. In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount of value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must evolve some substantial question of law.

Now, it is clear that the present case does not fall under the first paragraph because the actual subject of the suit is only Rs. 3,000 odd. Nor does it fall under sub-section (c) of section 109, which is as follows :—

(c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council,

because it has not been certified. It is, therefore, if at all, under the second paragraph of section 110. The learned Judges of the High Court have held that it does not so fall upon the ground that here what is affected directly or indirectly is not property. The appellant argued that it must be property because the right which the petition has to make good was the claim of right which, in the nomenclature of English law, is called a *chose in action*, and because the transference of such rights is dealt with in the Transfer of Property Act.

Their Lordships are not inclined to attempt any precise definition of the word "property." The Civil Procedure Code has not done so, and any definition might not be found in the future precisely to fit the circumstances which the kaleidoscope of actual experience may produce. But they think that the present is not a case where the issue of this suit can be said directly or indirectly to involve other property. Let the situation be

considered. If this appeal were allowed and were successful, what would be the position? The petitioner would indeed get rid of his present liability to pay Rs. 3,000, but that is the subject-matter of the suit and is not of the value of Rs. 10,000. What, then? The first thing that he would have to do would be to get rid of the judgment of the 28th July, 1922, staying his suit. Against that judgment he did not appeal, and he feels that so much that he has appended to the present petition a further prayer to be allowed to appeal against that order. He would have to be successful in that appeal and then also he would have to succeed on the merits of his suit, and not till then would he be in possession of anything tangible in the way of money.

Their Lordships think that this is not really consequential on the present decree and too remote to be entitled to the description of being property indirectly involved in the issue of this suit. It must always be kept in view that no real mischief can arise from not allowing a very wide construction of the section, because such cases, if worthy of being tried by a higher tribunal, can always be dealt with under sub-section (c) of section 109.

Their Lordships will humbly advise His Majesty to refuse the prayer of the petitioner with costs.

In the Privy Council.

UDOYCHAND PANNALAI.

††.

P. E. GUZDAR AND COMPANY.

DELIVERED BY LORD DUNEDIN.

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