

1914.

*Present: Pereira J.*

ABANCHI APPU v. FERNANDO.

395—C. R. Matala, 10,961.

*Compulsory reference to arbitration—Action relating to matters of account—  
Appeal from order entering up judgment according to award on a  
compulsory reference—Court of Requests.*

To justify a compulsory reference of the matters in dispute in an action to arbitration, it is insufficient that the action merely relates to matters of account. It is further necessary that it should be found by the Judge that the matters of account are of an intricate and complicated character, and that therefore the action cannot conveniently be tried in the ordinary way.

An appeal lies from an order by a Court of Requests entering up judgment according to an award on a compulsory reference to arbitration to the same extent that an appeal lies generally from orders and judgments of Courts of Requests.

**T**HE facts appear from the judgment.

*Wadsworth*, for defendant, appellant.—The order of reference was *ultra vires*. Section 5 of Ordinance No. 15 of 1866 states under

what circumstances matters of account can be compulsorily referred to arbitration. In this case the simple question was whether a certain payment was made on a certain day, and thus acted as a bar to prescription. This could have been conveniently tried in the ordinary way. There was no evidence before the arbitration of the payment pleaded by the plaintiff.

*Vernon Grenier*, for respondent.—There is no appeal from a judgment based on an award of an arbitrator. The evidence given before the arbitrator is not governed by the rules of evidence in the Evidence Act (section 1 of Ordinance No. 14 of 1895). If the arbitrator was satisfied that there was the payment, his finding is conclusive, whatever the nature of the evidence may have been.

*Wadsworth*, in reply.—An appeal lies from an award in the case of compulsory reference to arbitration (section 28 of Ordinance No. 15 of 1866). The Civil Procedure Code deals only with voluntary reference by the parties to arbitrator. Section 5 of the Ordinance lays down that the award of the arbitrator should be treated as if it were a finding of the Court on the particular matter, and therefore an appeal would lie in accordance with the rules laid down as to appeal from orders in Courts of Requests. Section 1 of the Evidence Act also refers to voluntary reference to arbitration, and not to compulsory reference.

*Cur. adv. vult.*

November 24, 1914. PEREIRA J.—

In this case the matters in dispute between the parties appear to have been compulsorily referred by the Commissioner to the arbitration of Mr. Gould, Proctor. The order of reference is as follows: "The matter is one of accounts, with a simple question of law as to prescription. The Court can compel arbitration in this case. Issue commission to Mr. Gould to decide all matters of law and fact in the case on deposit of funds." This order was clearly *ultra vires*. Under section 5 of Ordinance No. 15 of 1866 it is only when it appears to the satisfaction of the Court that an action relates wholly or in part to matters of mere account of an intricate and complicated character, which cannot conveniently be tried in the ordinary way, that the Court is given the power to order that such matters, either wholly or in part, be referred to arbitration. The order of the Commissioner cited above shows that the case did not fall within the scope of Ordinance No. 15 of 1866. However that may be, it has been argued that the defendant had no right of appeal from the order of the Commissioner entering up judgment in terms of the award. Section 2 of the Civil Procedure Code repeals sections 20 to 29 of Ordinance No. 15 of 1866 as regards voluntary references, and it is provided in section 28 of the Ordinance that when judgment is given in any case of compulsory reference, "such judgment shall be subject to appeal." The appeal

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1914. here contemplated is not an appeal involving questions of fraud, misconduct, or the like on the part of the arbitrator, but an appeal on the question of the soundness of the judgment. Section 5 of the Ordinance provides that the award of the arbitrator, subject to the subsequent provisions of the Ordinance, should be treated as if it were a finding of the Court on the particular matter referred to arbitration. That being so, rules of appeal generally applicable to appeals from orders of Commissioners of Requests would be applicable to a judgment entered up in terms of an award in an arbitration on a compulsory reference; in other words, such order would be appealable on any matter of law in an action for the recovery of some debt, damage or demand.

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 Abanchi  
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 Fernando

In the present case, as matter of law, objection has been taken to the judgment on the ground that the arbitrator had no evidence before him of the payment by the defendant to the plaintiff of the sum of Rs. 30 on the 16th October, 1913. It was, of course, necessary to prove this payment as a bar to prescription. I think that the objection is well founded. On the objection being taken, it was argued by the respondent's counsel that according to section 1 of the Evidence Ordinance that Ordinance did not apply to proceedings before an arbitrator. I am not sure that the word "arbitrator" here was intended to include an arbitrator in the case of a compulsory reference. The provision has been taken bodily from the Indian Evidence Act, and I am not sure that there is any law in India providing for a compulsory reference to arbitration. Anyway, I find in *The Law of Evidence applicable to British India*, by Ameer Ali and Woodroffe, that the learned authors in their comments on section 1 observe as follows: "Though the Act does not apply to proceedings before an arbitrator, yet the latter must not receive and act upon evidence or decide upon grounds which render his award utterly unfair or worthless."

Now, as regards the merits of the objection, I see no evidence whatever that the sum of Rs. 30 was paid by the defendant. The plaintiff himself vaguely refers to a payment of Rs. 30 made to him, and a receipt being issued by his clerk to the defendant. He does not pledge himself to the statement that the payment was made by the defendant, or that the receipt was handed to or received by the defendant. It is clear that the defendant himself did not pay the money, because the witness Wimalasuriya says that it was paid "on behalf of the defendant." He gives no particulars as to who paid the money, or as to why the defendant should be identified with the alleged payment. The entry in the book stands without corroboration. For these reasons I quash all proceedings on and after the 9th September, 1914, and remit the case for trial by the Commissioner in due course. Each party will bear his own costs incurred so far.

*Proceedings quashed.*