L. Pearey Lal Vs. Mahesh Chandra

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Court : Allahabad

Decided On : Jan-23-1934

Reported in : AIR1934All493

Appellant : L. Pearey Lal

Respondent : Mahesh Chandra

Judgement :

Thom, J.

1. This is a first appeal from the order of the learned Subordinate Judge of Aligarh, dated the 4th of November 1932. The order is in the following terms:

The award, dated 29th of September 1931 shall be filed and a decree shall be framed according to the award. The award shall form part of the decree. The plaintiffs shall get their costs from the defendant.

2. Lala Laeq Chand, plaintiff 1, was the Government Treasurer, in the district of Aligarh. Plaintiff 2, Lala Gulab Chand is a brother of Laeq Chand. Plaintiff 3, Lala Krishen Kunwar, a minor is anooher brother of Laeq Chand. The defendant Lala Pearey Lal is the agent of Lala Laeq Chand. He acted as agent to Lila Phul Chand who died in 1929. He has acted since 1929 as agent to Lala Liaq Chand, Lala Phul Chand was the Government Treasurer in the district Aligarh. Lila Laeq Chand succeeded his father as Treasurer in 1929. The Treasurer appoints tahsildars who, in various tahsils in the district of Aligarh, received dues on behalf of the Government Treasury. The defendant supervised the tahsildars and also acted as agent for Lxla Phul Chand and Lala Lieq Chand in connection with their private affairs the collection of rents and so forth. In the year 1931 there was a dispute between the plaintiffs and the defendant on the question as to how much was due by the defendant to the plaintiffs on an accounting. The dispute was referred to arbitration and the learned District Judge appointed Rai Bahadur Babu Sohan Lal pleader in Aligarh as arbitrator. In the words of the arbitrator's award the dispute between the parties was in respect of some matters relating to the Aligarh treasuries and other private affairs. The arbitrator having heard evidence and arguments on behalf of both parties issued his award on 22nd September 1931. In this award he found on an accounting Rs. 16,953-6-3 due by the defendant to the plaintiffs. The defendant refused to obtemper this award thereupon the plaintiff applied in the Court of the learned Subordinate Judge of Aligarh for the preparation of a decree embodying the award. The learned Subordinate Judge after hearing arguments of parties ordered the preparation of the decree embodying the arbitrator's award. This is the order against which the defendant has preferred the present appeal.

3. Learned Counsel for the appellant has challenged the order of the learned Subordinate Judge on the ground that the award which to be embodied in the decree is invalid for certain reasons. He contends that the award is invalid under Rule 14, Schedule 2, Civil P.C. and that the award should be set aside. In support of this contention learned Counsel has drawn our attention to the fact that in the course of the award the learned arbitrator has found a sum of Rs. 4,000 due to the plaintiffs by the defendant. It appears clear to us from a consideration of the record that this sum of Rs. 4,000 which is alleged to be due under certain promissory notes and hundies is connected with the transactions between the defendant and the plaintiff's firm Man Singh Jawahar Lai. Dealing with the accounts between the defendant and the plaintiff's firm, the arbitrator in the course of his award states:

I find that Lala Pearey Lal, second party, is not responsible for rendition of the account relating to the firm Man Singh Jawahar Lal or the firm in Sarai Khirni and no amount is due by him in respect of both the firms aforesaid. After this decision there is no need of recording a finding on Issue 5 which relates to the fact that the amounts of the said firm are barred by limitation.

4. Despite the finding of the learned arbitrator that the plaintiffs are not entitled to rendition of accounts in respect of the firms already mentioned by the defendant and his refusal therefore to consider Issue 5, he awards sums amounting to about Rs. 4,000, which are sums covered by the defendant's plea of bar. In our opinion, therefore, the learned arbitrator has clearly been guilty of an irregularity under Rule 14, Schedule 2, Civil P.C. inasmuch as he has left undetermined some of the matters referred to arbitration. The question whether the loan in respect of which he awarded the plaintiffs the sum of rupees 4,000, were time-barred was raised by the parties in Issue 5. The arbitrator has neglected to consider and decide this issue and we are of opinion, therefore that his award is vitiated by this fact.

5. Learned Counsel for the appellant further challenged the award of the arbitrator on the ground that he had not allowed the sum of Rs. 2,000 which was alleged to have been admitted by the plaintiffs to be due to the defendant's mother to be set off against the sums due by the defendant to the plaintiffs although it was a matter of agreement between the parties that this set-off should be allowed. From the information before us it is not clear that the arbitrator was informed that this sum of Rs. 2,000 was by consent of parties to be allowed to be set off against the sums due by the defendant to the plaintiffs. In these circumstances we are not prepared to hold that the arbitrator's award is vitiated because this sum has not been set off. The award of the arbitrator was challenged upon another ground which is embodied in the defendant's grounds of objection to the order of the learned Subordinate Judge. This objection is stated as follows:

Seventhly : Because the sum of Rs. 18,000 admittedly consisted of bribery items and was not proved by any direct evidence, the action of the arbitrator in allowing the said sum in utter disregard of its immoral nature amounted in law to misconduct on his part.

6. In the course of the proceedings before the arbitrator the parties admitted that a substantial portion of the sum of rupees 18,000, which the arbitrator has found to be due by the defendant to the plaintiffs consisted of bribes taken from persons who paid dues to the Government sub-treasuries. It appears that the treasurer who is appointed by the Collector of the district himself appoints an agent whose duty is to

arrange for the collection of the sums which are due by members of the public to the Government. This agent in the present case is the defendant. He is in charge of the tahsildars who actually make the collections from the public. These tahsildars, it would seem, are in the habit of taking bribes from members of the public who come to pay Government dues. A proportion of the bribes collected is passed on from the tahsildars to the agent who is expected to pass on a proportion thereof to the treasurer. In the present case the defendant appears to have collected from the tahsildars large sums in respect of the bribes taken from the public by them. He has failed to account for a proportion of the sum so collected by him to the treasurer. In this instance a large proportion of the sum of Rs. 18,000 is claimed by the treasurer as his share in the bribes taken from the public by the tahsildars. All this is a matter of admission by the parties.

7. The arbitrator by awarding the sum of Rs. 18,000 to the plaintiffs has enabled the plaintiffs by process of law to recover tainted money. It is quite clear from the information before us that the treasurer, the agent and the tahsildars have been engaged in a nefarious scheme to loot an ignorant and helpless public. The plaintiffs claim their share in the loot. It is a well decided principle of law that Courts will not assist litigants to recover moneys which are so tainted. It appears to us that the plaintiffs and the defendant have been guilty of an offence under Section 161, I.P.C. The money which the plaintiffs claim in respect of these bribes is simply loot taken dishonestly from the public. The position of the plaintiffs is little better than that of a dacoit who sues his partner in crime for his share in the loot. Indeed the position of the plaintiffs in some respects is more contemptible than that of a dacoit. The dacoit at least comes into open conflict with the forces of law and order, and risks, it may be, his life in the course of his depredations. The plaintiffs in the present case however have conducted their nefarious activities under the authority and protection of the Government. They do not appear before us in a white sheet of unimpeachable moral rectitude but rather in the guise of self-confessed criminals. It is a well-known legal maxim that he who comes into court must come with clean hands. The parties to this dispute appear before us with-hands dripping with the grease and slime of bribery and corruption. We make bold to say that there has seldom been a more impudent and arrogant claim preferred by a litigant in a Court of justice. The impudence and audacity of the plaintiffs are only equalled by the brazen effrontery of the defendant. No litigant is entitled to maintain a suit which has its origin in a disgraceful cause ex turpti causa non-oritur actio. It is clear to us that for the reasons we have given the arbitrator ought never to have undertaken this arbitration and the plaintiffs are not entitled to maintain an application upon the basis of the arbitrator's award. It is true that the result is that the defendant is left with a large sum in his hands which under his arrangement with the plaintiffs he should have handed to them. He is entitled to take what satisfaction he can out of the other equally well-known maxim in pari delicto potior est eonditso possidentis. The Court if it upheld the order of the learned Subordinate Judge would be conniving at a widespread dishonest scheme for extorting bribes from the public; though the practice is widespread it is nonetheless criminal. The law upon this matter has been long established in our British System of jurisprudence. It was laid down so far back as the year 1725 in a case which is mentioned in Lindley on partnership, 9th edition, p. 124. The learned author's note upon this case is as follows:

(a) Everet v. Williams, 2 Pothier on Obligations by Evans p. 3 note citing Europ. Mag. 1787, Vol. 2, p. 360. Some interesting particulars relating to the case will also be found in the Law Quarterly, Vol. IX, p. 197. It was a suit instituted by one highwayman

against another for an account of their plunder. The bill stated that the plaintiff was skilled in dealing in several commodities, such as plate, rings, watches, &c.; that the defendant applied to him to become a partner; that they entered into partnership, and it wag agreed that they should equally provide all sorts of necessaries, such as horses, saddles, bridles, and equally bear all expenses on the roads and at inns, taverns, alehouses, markets and fairs; that the plaintiff and the defendant proceeded jointly in the said business with good success on Hounslow Heath, where they dealt with a gentleman for a gold, watch; and afterwards the defendant told the plaintiff that Finchley in the country of Middlesex, was a good and convenient place to deal in, and that commodities were very plentiful at Finchley, and it would be almost all clear gain to them; that they went accordingly, and. dealt with several gentlemen for divers watches, rings, swords, canes, hats, cloaks, horses, bridles, saddles and other things that about a month afterwards the defendant informed the plaintiff that there was a gentleman at Blackheath, who had a good horse, saddle, briddle, watch, sword, cane and other things to dispose of which he believed, might be had for little or no money; that they accordingly went and met with the said gentleman, and after some small discourse they dealt for the said horse, &c; that the plaintiff and the defendant continued their joint dealings together until Michaelmas, and dealt together at several places, viz., at Bagshot, Salisbury, Hampstead and elsewhere to the amount of 2,000, and upwards. The rest of the bill was in the ordinary form for a partnership account. The bill is said to have been dismissed with costs to be paid by the counsel who signed it; and the solicitors for the plaintiff were attached and fined 50 apiece. The plaintiff and the defendant were it is said both hanged, and one of the solicitors for the plaintiff was afterwards transported.

8. This case has been followed in a number of subsequent; decisions in the Courts in England. Applying the principle we hold that the plaintiffs cannot by process of law recover any share of the bribes taken from the public. The result is that we hold that the arbitrator's award is vitiated in the first instance because he has neglected to decide an issue which was referred to him by the parties to the arbitration and in the second place because he has awarded a sum of money to one of the parties to the arbitration which represented the proceeds of bribes extorted from the public. It follows that the award cannot stand and that the order of the learned Subordinate Judge that a decree be prepared embodying the award must be set aside. We, therefore, allow, this appeal, set aside the decree of the Court below and dismiss the application of the plaintiffs for making the award a rule of the Court. Under the circumstances we order the parties to bear their own costs. That however does not conclude the matter. It would appear to us from the admissions of the parties to this appeal that both the parties have been guilty of an offence under Section 161, I.P.C. We forbear at this stage to consider the evidence against the parties. We feel bound however in the circumstances to direct that the parties be ordained to show cause why they should not be prosecuted for an offence under Section 161, I.P.C. Notice will be issued to the parties to show cause on 19th February 1934, why proceedings should not be instituted against them under Section 161, I.P.C.