

CORRECTED
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4176 OF 2006

QAZI ABDUL HAMID & ORS.

... APPELLANT(S)

VS.

QAZI GHULAM NABI dead through LR's
as ordered on 24.7.2014

... RESPONDENT(S)

O R D E R

1. A property dispute between the appellants and the respondent, was referred to arbitration on 12th July, 1999. The District Judge, Budgam, appointed Mr. M. Qasim Shah, the President of the Bar Association, Budgam, as the sole arbitrator. The aforesaid arbitrator entered upon the reference, and after holding arbitration proceedings, passed his award on 7th March, 2000. The aforesaid award was admittedly rendered, by placing reliance on a compromise arrived at between the parties, dated 14th March, 1974. Based on the above compromise, Suit No.147/1974 had been disposed of on 18th March, 1974, by passing a compromise decree.

2. The respondent herein-Qazi Ghulam Nabi, did not accept the arbitral award dated 7th March, 2000, and accordingly, filed objections before the District Judge,

Srinagar, which eventually came to be transferred to the Additional District Judge, Srinagar. The Additional District Judge, Srinagar, by his order dated 29th September, 2003, upheld the arbitral Award. Dissatisfied with the order passed by the trial court, the respondent-Qazi Ghulam Nabi approached the High Court, by preferring C.I.A.No.134/2003. The prayer made by the respondent, in raising a challenge to the arbitral Award, was accepted by the High Court, vide its impugned order dated 14th February, 2005. While accepting the contention raised on behalf of Qazi Ghulam Nabi, the High Court, with reference to the compromise dated 14th March, 1974, recorded as under :

"The Arbitrator has referred to the compromise deed and has relied on it and based his findings on it. No doubt the court can not go to the reasons given by the Arbitrator in support of its award as the court has not to sit as an appellate court and reappraise the evidence, the court has also not to go as to whether due reasons have been given by the Arbitrator but the court will definitely not allow to act upon on an award which does not deal with the actual controversy between the parties.

The object of arbitration is to finally decide a dispute which has arisen between the parties. An award on an arbitration must, therefore, comprise a decision by the Arbitrator on all the issues referred with which it deals. It must be a complete decision without leaving matter to be dealt with subsequently.

The Arbitrator in the present case has relied upon the compromise deed without going to the issue as to whether there was any

misrepresentation or fraud in obtaining the compromise deed. This was the most material issue and the Arbitrator should have given its findings on this issue. Determination and finding on this issue has a direct bearing on the findings of the Arbitrator. Since the Arbitrator's finding is based on the said compromise, if it is found that the same was not effected through fraud or misrepresentation, the compromise was definitely a good piece of evidence but if the finding is otherwise, placing reliance on such a compromise is not proper.

Since the Arbitrator has not gone to this important aspect the award is not a valid award."

(emphasis is ours)

3. The instant determination rendered by the High Court, is the subject matter of challenge at the hands of the appellants. The contention of learned counsel for the appellants was, that the veracity of the compromise dated 14th March, 1974, could not have been assailed, by the respondent-Qazi Ghulam Nabi. In order to substantiate the instant contention, our attention has been invited to Civil Suit No.71 of 1978, filed by the respondent, before the Court of the District Judge, Srinagar. In the aforesaid Suit, the prayers made at the hands of the respondent were as under :

"It is therefore prayed that the plaintiff may be granted the following reliefs :-

a) decree of declaration that the compromise and decree passed thereon dated 17.4.74 is inoperative, ineffective and not

binding on the plaintiffs interests with a further declaration that the said compromise does not in any way effect the properties mentioned in the said compromise. The compromise decree passed on the fraudulent deed of compromise is inexecutable and is sham document, non-existent so far the plaintiff is concerned.

b) A decree of perpetual injunction against the defendants that they should not give effect to the compromise and decree dated 17.4.74 and should not take any steps to execute the said decree in respect of the properties mentioned in the said compromise; and

C) Any other relief which the court considers just and equitable may also be granted to the plaintiff with costs of the suit."

emphasis is ours

4. It is submitted, that once the aforesaid suit with the above-said prayers, came to be dismissed for non-prosecution, it was not open to the respondent to reagitate the issues, which must be deemed to have become final, with the dismissal of the Suit. In support of the instant contention, learned counsel for the appellants has invited our attention, to the order dated 12th May, 1981, passed in Civil Suit No.71/1978, which is extracted hereinbelow :

"ORDER

None is present. The suit is dismissed for non-prosecution, file be consigned to record room.

Date: 12.5.1981"

5. The contention advanced on behalf of the appellants, is seriously contested by learned counsel for the respondent. It was submitted, that the appellants are not entitled to any benefit of the order dated 12th May, 1981, (extracted above) for the reason that Civil Suit No.71/1978 itself, was rendered infructuous, as the compromise decree dated 18th March, 1974, was held to be beyond the pecuniary jurisdiction of the court which had passed the compromise decree. In order to support her contention, learned counsel for the respondent pointed out to the order dated 11th May, 1981, by which the decree dated 17th April, 1974, was held to be non-executable.

6. We have given our thoughtful consideration to the contentions advanced at the hands of learned counsel for the rival parties. Even if the contention advanced at the behest of the respondent-Qazi Ghulam Nabi, is to be accepted, on the basis of order dated 11th May, 1981, (extracted above), that would only negate the validity of compromise decree dated 17th April, 1974, and, not the compromise dated 14th March, 1974.

7. In our view, the submission based on the order passed by the concerned court, that the compromise decree had been issued by a court which did not possess the pecuniary jurisdiction to issue the same, would not have any effect or impact on the compromise itself (which was executed on

14th March, 1974). We have examined the prayers in the suit filed by the respondent. The prayers in the above suit have been extracted above. The prayers made by the respondent-Qazi Ghulam Nabi, in Suit No.71/1978 reveal, that the respondent had not only assailed the compromise decree dated 17th April, 1974, but had also assailed the compromise (dated 14th March, 1974). Accordingly, even though it may not be open to the appellants to assail the contention advanced at the hands of learned counsel for the respondent, that the order passed by the City Judge on 11th May, 1981, rendered the compromise decree otiose, yet the aforesaid order dated 11th May, 1981, could not, and did not, render the compromise itself (dated 14th March, 1974) a nullity. Therefore, in our considered view, with the disposal of the suit finally by the City Judge on 12th May, 1981, the claim raised by the respondent, as against the compromise decree dated 14th March, 1974 must have been decided finally. Since the suit was dismissed the claim of the respondent against the compromise decree must also be deemed to have been rejected. Thus, it was no longer open to the respondent-Qazi Ghulam Nabi, to assail the validity of the compromise decree dated 14th March, 1974, either on the ground that it was obtained by fraud or by misrepresentation, or on any other ground.

8. In the above view of the matter, the determination of the High Court, that the arbitrator, while passing the arbitral award, did not examine the validity of the compromise dated 14th March, 1974, on the ground of fraud or misrepresentation, was wholly unjustified. For the reasons recorded hereinabove, we hereby set aside the impugned order dated 14th February, 2005 passed by the High Court while disposing of C.I.A.No.134/2003. The Award dated 7th March, 2000, is hereby affirmed and upheld. The civil appeal is disposed of accordingly.

.....CJI.
[JAGDISH SINGH KHEHAR]

.....J.
[N.V. RAMANA]

.....J.
[D.Y. CHANDRACHUD]

New Delhi;
16th February, 2017.

ITEM NO.102

REVISED
COURT NO.1

SECTION XVIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).4176/2006

QAZI ABDUL HAMID & ORS.

Appellant(s)

VERSUS

QAZI GHULAM NABI dead through LR's as ordered
on 24.7.2014
(With office report)

Respondent(s)

Date : 16/02/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Appellant(s) Mr. Faheem Nisar Shah,Adv.
Ms. Stuti Gupta,Adv.
For Mr. Arvind Kumar Gupta,Adv.

For Respondent(s) Ms. Purnima Bhat,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is disposed of in terms of the
signed order.

Corrected order is uploaded on the website.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

(Corrected Signed order is placed on the file)

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2. The respondent herein-Qazi Ghulam Nabi, did not accept the arbitral award dated 7th March, 2000, and accordingly, filed objections before the District Judge, Srinagar, which eventually came to be transferred to the

Additional District Judge, Srinagar. The Additional District Judge, Srinagar, by his order dated 29th September, 2003, upheld the arbitral Award. Dissatisfied with the order passed by the trial court, the respondent-Qazi Ghulam Nabi approached the High Court, by preferring C.I.A.No.134/2003. The prayer made by the respondent, in raising a challenge to the arbitral Award, was accepted by the High Court, vide its impugned order dated 14th February, 2005. While accepting the contention raised on behalf of Qazi Ghulam Nabi, the High Court, with reference to the compromise dated 14th March, 1974, recorded as under :

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compromise does not in any way effect the properties mentioned in the said compromise. The compromise decree passed on the fraudulent deed of compromise is inexecutable and is sham document, non-existent so far the plaintiff is concerned.

b) A decree of perpetual injunction against the defendants that they should not give effect to the compromise and decree dated 17.4.74 and should not take any steps to execute the said decree in respect of the properties mentioned in the said compromise; and

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suit filed by the respondent. The prayers in the above suit have been extracted above. The prayers made by the respondent-Qazi Ghulam Nabi, in Suit No.71/1978 reveal, that the respondent had not only assailed the compromise decree dated 17th April, 1974, but had also assailed the compromise (dated 14th March, 1974). Accordingly, even though it may not be open to the appellants to assail the contention advanced at the hands of learned counsel for the respondent, that the order passed by the City Judge on 11th May, 1981, rendered the compromise decree otiose, yet the aforesaid order dated 11th May, 1981, could not, and did not, render the compromise itself (dated 14th March, 1974) a nullity. Therefore, in our considered view, with the disposal of the suit finally by the City Judge on 12th May, 1981, the claim raised by the respondent, as against the compromise decree dated 14th March, 1974 must have been decided finally. Since the suit was dismissed the claim of the respondent against the compromise decree must also be deemed to have been rejected. Thus, it was no longer open to the respondent-Qazi Ghulam Nabi, to assail the validity of the compromise decree dated 14th March, 1974, either on the ground that it was obtained by fraud or by misrepresentation, or on any other ground.

8. In the above view of the matter, the determination of the High Court, that the arbitrator, while passing the arbitral award, did not examine the validity of the compromise dated 14th March, 1974, on the ground of fraud or misrepresentation, was wholly unjustified. For the reasons recorded hereinabove, we hereby set aside the impugned order dated 14th February, 2005 passed by the High Court while disposing of C.I.A.No.134/2003. The Award dated 7th March, 2000, is hereby affirmed and upheld. The civil appeal is disposed of accordingly.

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[JAGDISH SINGH KHEHAR]

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.....J.
[D.Y. CHANDRACHUD]

New Delhi;
16th February, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s) .4176/2006

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Appellant(s)

VERSUS

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(With office report)

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CORAM :

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HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE DR. JUSTICE D.Y. CHANDRACHUDFor Appellant(s) Mr. Faheem Nisar Shah,Adv.
Ms. Stuti Gupta,Adv.
For Mr. Arvind Kumar Gupta,Adv.

For Respondent(s) Ms. Purnima Bhat,Adv.

UPON hearing the counsel the Court made the following
O R D E RThe civil appeal is disposed of in terms of the
signed order.(Sarita Purohit)
Court Master(Renuka Sadana)
Assistant Registrar

(Signed order is placed on the file)