

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Miscellaneous Jurisdiction
Miscellaneous Appeal No.382 of 2003

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Smt.Gayatri Devi, Wife of Sri Vijay Kumar Prasad, R/o Village-Rampatti,
P.S.-Rajnagar, District-Madhubani

... .. (Opp.2nd Party)...Appellant

Versus

1. Smt.Basanti Devi Wife of Shri Suresh Prasad, near Janaki Asthan, P.O., P.S. and District-Sitamarhi.
2. Smt. Sundari Devi, Wife of Late Jagarnath Prasad, R/o Janakpur Dham, Nepal.
3. Beena Devi @ Binda Devi W/o Bhola Prasad, R/o Village-Areraj, P.S.-Areraj, District-Motihari.
4. Meera Devi W/o Om Prakash Prasad, R/o Town Sitamarhi, Ward No.12, P.S.- Sitamarhi, District-Sitamarhi.
5. Meena Devi W/o Shri Bharat Prasad, R/o Village-Parsouni, P.S.-Birganj, District-Barachati (Nepal).

.....Applicants—Respondent 1st Party.

6. Shri Jagdish Narain Prasad @ Jagdish Prasad Sah.

7.Jagat Narain Prasad.

8.Jitendra Narain Prasad.

All sons of Late Haribansh Narain Prasad.

Resident of Village-Sapta, Ward No.3, Town, P.S. and District-Madhubani.

.....Opp. Ist Party... Respondent 2nd Party.

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Appearance :

For the Appellant/s : Mr.Anil Kumar Jha, Sr.Adv

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Mr.Sanjay Kumar Jha, Adv

For the Respondent/s : Mr.Shashi Nath Jha, Adv

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 10-01-2019

Heard the parties.

2. A brief background of the facts leading to filing of this civil appeal is that both sides are agnates. There were two full brothers Narsingh Narain Prasad and Haribansh Narain Prasad. Appellant is sole daughter of Narsingh Narain Prasad and the respondents are descendants of Haribansh Narain Prasad.



3. The case of the respondents is that there was property dispute between the parties and with written consent of the parties, the matter was referred for arbitration on 13.11.1991 before seven arbitrators. The reference is signed by the parties vide Annexure-A to the counter affidavit. The arbitrator passed its award on 05.03.1992 which is said to be signed by the husband of the appellant vide Annexure-C to the counter affidavit. On 15.09.1992, Suryamani Devi wife of Haribansh Narain Prasad filed Misc. Case No.08 of 1992 before the learned Subordinate Judge under Section 14 of the Arbitration Act, 1940 to make the award Rule of the Court. In the miscellaneous case, the appellant was noticed and by order dated 05.02.1994, the award was made Rule of the Court. On the same day, the appellant filed a petition vide Annexure-2 to the memo of appeal before the learned court below to recall the order and dismiss the miscellaneous application on different grounds including on the ground that the paper of reference of the matter to arbitration is not signed by the appellant, everything has been cooked up. Even the factum of appointment of umpire is wrong. Thereafter, by order dated 09.03.1994, the learned court below recalled the order dated



05.02.1994. When the proceeding was pending before the learned Sub Judge, on 21.11.2000, the appellant filed a time petition and the learned court below adjourned the matter for filing of counter affidavit by the appellant till 16.12.2000. On 16.12.2000, the parties were appearing in the matter, however, again the matter was adjourned for filing of the counter affidavit till 06.01.2001.

4. On 06.01.2001, the learned court below recorded the following order in Misc. Case No.08.1992 which is under challenge in this appeal.

“ Applicant moves the court to confirm the award. None turned up to move the petition filed for time. Objector had to file counter affidavit in compliance of the previous order of the court but the same has not been filed. From the record it appears that objector has been getting adjournments on flimsy grounds. Hence objection is dismissed and the award is confirmed.”



5. Learned counsel for the appellant submits that once the appellant had raised the issue that fraud was played while creating a document said to be agreement between the parties for referring the matter to the arbitration and said document was not signed by the appellant, the learned court below was bound to decide this issue based on material as to whether the reference agreement was in fact signed by the appellant. Moreover, the learned court below should not have passed composite order of rejection of the prayer of the appellant to grant time for filing counter affidavit and by the same stroke, confirming the award. Since valuable right of the appellant was involved in the first part of the order, rejecting the prayer to file counter affidavit, the appellant should have been allowed time to challenge the aforesaid order or otherwise.

6. Learned counsel for the respondents, who were applicants before the learned court below, submits that there is no infirmity with the impugned order, for the reason that the ordersheet of the learned court below would show that several adjournments were allowed to the appellant to comply the order of the court which the appellant did not comply. Hence,



the court was not powerless to proceed with the case and come to the conclusion which was arrived by the impugned order. Learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in ***B.V. Radha Krishna Vs. Sponge Iron India Ltd.***, reported in ***AIR 1997 SC 1324*** for his submission that the High Court cannot substitute its own view in place of the view of the arbitrators. The High Court cannot examine the matter as a regular appellate court.

7. It is made clear at the outset that the aforesaid case law is not applicable in the present facts and circumstances of this case because this Court is not going to entertain the correctness of the view expressed by the arbitrator rather is confined to see the correctness of the impugned order.

8. Section 14 and Section 17 of the Arbitration Act, 1940 are relevant for this purpose;

“14. Award to be signed and filed.-(1)

When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing



thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been, taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under clause (b) of section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.”



9. Section 17 of the Arbitration Act, 1940 reads as follows:

“ 17. Judgment in terms of award.-

Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.”

10. A conjoint reading of the aforesaid provisions makes it clear that the learned court below was required to pronounce on the objection of the appellant regarding genuineness of her signature on the reference agreement and if the learned court below would have been of the opinion that fraud was played, the award was fit to be set aside and if the



learned court below would have come to otherwise conclusion, the same should have been recorded to substantiate the confirmation of the award and making it Rule of the Court. Since an important matter has been ignored to be decided by the learned court below and has simply in one sentence, confirmed the award, the impugned order is not sustainable in law.

11. The impugned order being a composite order is not sustainable for this reason also. Once the learned court below decided to refuse the prayer for time to the petitioner and debar him from filing counter affidavit, it should have given opportunity of hearing before making the award Rule of the Court. The exercise to make the award Rule of the Court is not of formal exercise in the sense that only seal of the court is to be affixed on the award. The exercise involves application of judicial mind which includes opportunity of hearing to the parties and assignment of reason supported by material on the record. The learned court below has failed to follow the law and in one sentence recorded that the award is confirmed.



12. Hence, the same is set aside and this appeal stands allowed without cost in the facts and circumstances of this case.

13. The matter is remitted back to the learned court below to decide the matter expeditiously according to law.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	NA
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