Present : Wood Renton C.J. and De Sampayo J.

1916.

THAHA *v.* SAIBO.

138—D. C. Galle, 13,629.

Voluntary reference to arbitration—Action to enforce award—Civil Procedure Code (s. 679) no bar to action.

The parties to case No. 11,704 agreed by deed to refer the whole dispute to arbitration. The deed provided that in the event of either party refusing to be bound by the decision of the arbitrator, he should pay Rs. 10,000 damages to the party accepting it. In accordance with this agreement action No. 11,704 was dismissed. The arbitrator made award finding that a sum of Rs. 13,500 was due by the defendant to the plaintiff. Plaintiff brought this action to enforce the award.

Held, that section 697 of the Civil Procedure Code did not bar the action, and that the plaintiff was entitled to recover the full sum of Rs. 13,500 (and not merely the sum of Rs. 10,000).

THE facts are set out in the judgment.

Bawa, K. C. (with him *Samarawickreme*), for defendant, appellant.

A. St. V. Jayewardene, for plaintiff, respondent.

June 6, 1916. WOOD RENTON C.J.—

The plaintiff and the defendant are Muhammadan traders. They were engaged in a litigation—D. C. Galle, No. 11,704—on questions of account. By deed No. 8,465 of May 21, 1914, they agreed to refer the whole dispute to one of their ecclesiastical authorities, Sego Abdulameeh. The deed provided that, in the event of either party refusing to be bound by the decision of the arbitrator, he should pay Rs. 10,000 damages to the party accepting it. In accordance with this agreement the action D. C. Galle, No. 11,704, was dismissed, and the arbitrator, after hearing the parties, made his award, finding that a sum of Rs. 13,500 was due by the defendant to the plaintiff. The present action is brought by the plaintiff to enforce the award. The District Judge has held that the plaintiff is entitled to Rs. 10,000 damages. The defendant appeals, and the plaintiff, by a notice of objections, contends that he was entitled to judgment for the full sum awarded to him by the arbitrator. Various points were argued in the Court below. But at the hearing of the appeal our attention was mainly directed to

1916.

WOOD RENTON C.J.

Thaha v. Saibo

the question whether an action of this character is maintainable. It was strongly urged on behalf of the defendant that, in the case of voluntary references out of Court, the only remedy of the successful party is to move, under section 696 of the Civil Procedure Code, within six months of the making of the award, and that the award should be filed in Court. In support of this contention, it was pointed out that section 29 of the Arbitration Ordinance, 1866,[1] which provides that, if there be no cause pending in Court, and the submission has not been made a rule of Court, the mode of enforcing the award is by action on the bond of submission, has been repealed by the Civil Procedure Code, and also that the application by petition in the way of summary procedure, by which section 697 of the Civil Procedure Code directs that application shall be made, is itself an " action " in view of the provisions of sections 7 and 8 of the Code.

There is a good deal of *primâ facie* force in these contentions. But I do not think that we can give effect to them, in view of the Indian authorities, including at least one decision by the Privy Council, on the corresponding provisions of section 525 of the old Indian Code of Civil Procedure. Under the Indian Limitation Act, 1877, applications under section 525 of the Civil Procedure Code for the filing of an award had to be made within a prescribed period. The Indian legislation on the point under consideration is, therefore, substantially identical with our own. In *Muhammad Newaz Khan v. Alam Khan* [2] the Privy Council held that the refusal of an application for the filing of an award under section 525 of the Civil Procedure Code merely left the award to have its own ordinary legal effect, and the Indian Courts have consistently held that, in spite of the provisions of the Code of Civil Procedure, an action lies to enforce a voluntary reference of the character with which we are here concerned. See, for example, *Palaniappa Chetty v. Rayappa Chetty*,[3] *Gopi Reddi v. Mahanandi Reddi*,[4] and *Kunji Lal v. Durga Prasad*.[5] I do not think that we should be justified in attempting to distinguish these authorities. The view taken by the learned District Judge of the law is, in my opinion, correct; but I see no reason why the relief given to the plaintiff should be limited to Rs. 10,000. I would set aside the decree of the District Court, and direct judgment to be entered up in favour of the plaintiff for Rs. 13,500, with the costs of the action and of the appeal.

DE SAMPAYO J.—I agree.

Defendant's appeal dismissed.

Cross appeal upheld.

[1] *No. 15 of 1866.*

[2] *(1891) I. L. R. 18 Cal. 414.*

[3] *(1868) 4 Mad. H. C. 119.*

[4] *(1891) I. L. R. 15 Mad. 99.*

[5] *(1916) I. L. R. 32 Cal. 481.*