

APPELLATE CIVIL.

Before Mr. Justice Blagden.

DAW TOKE AND ONE (APPELLANTS)

1947

Dec. 9.

v.

MAUNG PO CHA AND OTHERS (RESPONDENTS).*

Arbitration Act, 1944, ss. 32, 33.

Held: In view of ss. 32 and 33 of the Act no suit lies on any ground whatsoever for a decision upon the validity of an award or to set it aside. The procedure laid down in the Act must be followed.

Saw Hla Pru for the appellants.

Kyaw Htoon for the respondents.

BLAGDEN, J.—This is an appeal from an order of the District Judge of Meiktila reversing an order of the 2nd Subordinate Judge of that District sitting at Thazi. The suit was commenced by a plaint in the latter Judge's Court on the 22nd of October 1946 and the plaint set out a previous suit between the parties, a reference to arbitration, and the making of an award, and proceeded to allege misconduct by the arbitrators and to pray for cancellation of the award, costs and further or other reliefs.

The Court of First Instance dismissed the suit on its merits and the learned District Judge reversed that decision and made an order as prayed for.

The Arbitration Act, 1944, came into force by virtue of a notification on the 1st of March 1946 and section 32 of that Act provides (omitting immaterial words) that "no suit shall lie on any ground whatsoever for a decision upon the validity of an award, nor shall any award be set aside or in any way affected

* Civil 2nd Appeal No. 84 of 1947 against the decree of the District Court of Meiktila in Civil Appeal No. 7 of 1947.

1947

DAW TOKE
AND ONE
V.
MAUNG PO
CHA
AND OTHERS.
BLAGDEN, J.

otherwise than as provided in this Act." The following section, 33, contemplates questions of the kind raised in this suit being decided by the Court as a general rule on affidavits and section 44 empowers the High Court to make rules consistent with the Act for the purpose of all proceedings in Court under the Act.

It seems to me clear that, for some reason, the Legislature intended to bar suits such as the present suit and that the plaintiffs ought to have applied to the Court in a summary manner on affidavits. To my regret, therefore, I have no option but to allow the appeal on this technical ground and restore the order of the learned trial Judge.

The appellants are entitled to their costs here and in the District Court. Advocate's fee before me five gold mohurs.