

SATISH KUMAR & ORS.

v.

SURINDER KUMAR & ORS.

September 27, 1968

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Indian Arbitration Act (10 of 1940)—Award in respect of property over Rs. 100—Registration if compulsory.

Indian Registration Act (16 of 1908), s. 17(1)(b)—Award in respect of immovable property over Rs. 100—Registration if compulsory.

An arbitrator appointed by the appellants and respondent partitioned their immovable property exceeding the value of Rs. 100. The arbitrator applied under s. 14 of the Indian Arbitration Act, 1940 to the Court for making the award a rule of the court. On the question whether the award was admissible in evidence as it was not registered,

HELD : (*per* Full Court.) The award required registration.

(*Per* Sikri and Bachawat, JJ.) All claims which are the subject matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and after an award has been pronounced, the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the said award. After an award is pronounced, no action can be started on the original claim which had been the subject matter of the reference. The position under the Act is in no way different from what it was before the Act came into force. Therefore, the conferment of exclusive jurisdiction on a court under the Arbitration Act does not make an award any less binding than it was under the provisions of the Second Schedule of the Code of Civil Procedure. The filing of an unregistered award under s. 49 of the Registration Act is not prohibited : what is prohibited is that it cannot be taken into evidence so as to affect immovable property falling under s. 17 of the Registration Act. It cannot be said that the registration does not in any manner add to its efficacy or give it added competence. If an award affects immovable property order the value of Rs. 100 its registration does get rid of the disability created by s. 49 of the Registration Act. The award in question was not a mere waste paper but had some legal effect and it plainly purports to affect or affects property within the meaning of s. 17(1)(b) of the Registration Act [248 F-H; 249 F, 250 E]

M/s. Uttam Singh Dugal & Co. v. Union of India, C.A. No. 162 of 1962 dated 11-10-1962, *Champalal v. Mst. Samarath Bai*, [1960] 2 S.C.R. 810, 816 and *Kashinathsa Yamosa Kabadi v. Narsinga Baskarsa Kabadi*, [1961] 3 S.C.R. 792, 806, followed.

Sheonarain Lal v. Prabhu Chand, I.L.R. 37 Pat. 252 and *Sardool Singh v. Hari Singh*, I.L.R. [1967] 1 Punj. & Har. 622 disapproved.

Chamanlal Girdhar Ghanchi v. Dhayabhai Nathubhai Ghandi A.I.R. 1938 Bom. 422, *M. A. M. Salamullah Khan v. M. Noorullah Khan*, A.I.R. 1939 Nag. 233, *Keltaha v. U. Pannawa* A.I.R. 1940 Rang. 228, *Nani Bela Saha v. Ram Gopal Saha*, A.I.R. 1945 Cal. 19 and *Bhajahari Saha Banikya v. Behary Lal Basak*, 33 Cal. 881, approved.

(*Per* Hegde, J. concurring) : It is one thing to say that a right is not created, it is an entirely different thing to say that the right created can-

- A not be enforced without further steps. An award does create rights in that property but those rights cannot be enforced until the award is made a decree of the Court. For the purpose of s. 17(1)(b) of the Registration Act, all that had to be seen is whether the award in question purport or operate to create or declare, assign, limit or extinguish whether in present or future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property. Since it does, it is compulsorily registerable. [252 B-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 822 of 1966.

Appeal by special leave from the judgment and order, dated April 27, 1965 of the Punjab High Court in Civil Revision No. 841 of 1964.

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Sarjoo Prasad, D. N. Mishra and Ravinder Narain, for the appellants.

A. K. Sen, S. V. Gupte, B. P. Maheshwari and R. K. Maheshwari, for respondent No. 1

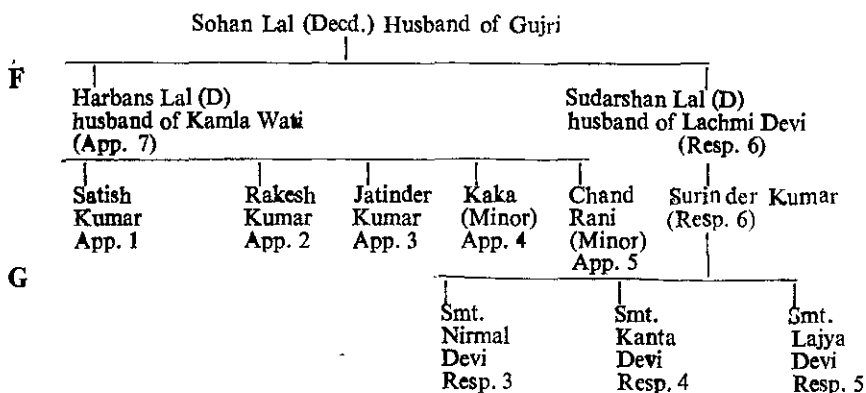
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The Judgment of S. M. SIKRI and R. S. BACHAWAT was delivered by SIKRI, J. K. S. HEGDE, J., delivered a separate Opinion.

Sikri, J. This appeal by special leave is directed against the judgment, dated April 27, 1965, of the High Court of Punjab at Chandigarh (*S. B. Capoor, J.*) dismissing Civil Revision No. 841 of 1964. The Civil Revision arose out of the following facts.

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The following pedigree table shows the relationship between the parties :



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On the death of Sohan Lal, Behari Lal was appointed as arbitrator by Harbans Lal, Surinder Kumar (then a minor through his mother Smt. Lachmi Devi) and Smt. Gujri, widow of Sohan Lal, for partition of the joint property. Behari Lal, by his award dated October 21, 1956, divided the property into two equal

shares, between Harbans Lal and Surinder Kumar. Harbans Lal and Surinder Kumar signed the award. Harbans Lal died on May 20, 1960, upon which Surinder Kumar filed a suit for partition of the properties, the subject-matter of the award. This suit was dismissed as withdrawn on March 13, 1962. On March 11, 1962, Behari Lal, arbitrator, filed an application under s. 14 of the Indian Arbitration Act, 1940 (X of 1940)—hereinafter referred to as the Act—for filing the award in Court and for making the same a rule of the Court. Surinder Kumar entered appearance and filed objections under s. 30 of the Act. One of the objections was that the award dated October 21, 1956, was not admissible in evidence for want of proper stamp and registration and could not, therefore, be made a rule of the Court. On January 31, 1963, the objections were dismissed by Miss Harmohinder Kaur, Subordinate Judge, First Class, Ludhiana, as time-barred, but she did not make the award a rule of the Court as there was a further objection to the effect that the award not having been executed on a properly stamped paper and not having been registered, was not admissible in evidence. This objection was dealt with by Shri Om Parkash Saini, Subordinate Judge, First Class, Ludhiana, who, by his order, dated June 5, 1963, held that the award in question was not admissible in evidence as it was executed on deficiently stamped paper and was not registered. He accordingly dismissed the application.

An appeal was taken to the District Judge, and the Additional District Judge by his order, dated November 23, 1964, upheld the order of the Subordinate Judge. A revision was then taken to the High Court. Capoor, J., held that the award actually effected a partition and required registration under s. 17(1)(b) of the Indian Registration Act, 1908. The learned Judge dissented from the decision of a Full Bench of the Patna High Court in *Seonarain Lal v. Prabhu Chand*⁽¹⁾, and preferred to follow the view expressed by the Bombay High Court in *Chimanlal Girdhar Ghanchi v. Dahyabhai Nathubhai Ghandhi*,⁽²⁾ by the Nagpur High Court in *M. A. M. Salamullah Khan v. M. Noorullah Khan*,⁽³⁾ by the Rangoon High Court in *U. Keltaha v. U. Pannawa*,⁽⁴⁾ and by the Calcutta High Court in *Nani Bela Saha v. Ram Gopal Saha*⁽⁵⁾. He accordingly dismissed the revision petition.

The decision of the Patna High Court was, however, later followed by a Full Bench of the Punjab and Haryana High Court in *Sardool Singh v. Hari Singh*⁽⁶⁾, judgment, dated November 8, 1966.

(1) I.L.R. 37 Pat. 252.

(2) A.I.R. 1938 Bom. 422.

(3) A.I.R. 1939 Nag. 233, 235.

(4) A.I.R. 1940 Rang. 228.

(5) A.I.R. 1945 Cal. 19, 21-22.

(6) I.L.R. [1967] 1 Pun. & Har. 622.

- A The question which arises before us is whether an award given under the Act on a private reference requires registration under s. 17(1)(b) of the Indian Registration Act, if the award effects partition of immovable property exceeding the value of Rs. 100. The main reason given by Sinha, J. speaking for the Patna Full Bench in *Seonarain Lal v. Prabhu Chand*⁽¹⁾, for holding that
- B such an award does not require registration is that under the scheme of the Act a private award, unless a decree is passed in terms of the award, has no legal effect. This, according to him, follows from the conclusion that once a matter has been referred to arbitration, it comes within the immediate control of the Court under the Act, and no other authority has any jurisdiction to deal with the matter except as provided for in s. 35 of the Act. He
- C thought that what distinguishes the provisions in the Arbitration Act from the provisions in the Second Schedule in the Code of Civil Procedure is that the Act bars jurisdiction of all Courts to pronounce upon the validity, effect or existence of an award or arbitration agreement except the Court under the Act itself. Sinha, J., looking at it from another point of view, namely, that an award
- D is only effective when a decree follows the judgment upon the award, observed that such an award may be covered by the exception mentioned in section 17(2)(vi) (any decree or order of a Court) of the Registration Act.

- E The Punjab Full Bench has followed this reasoning, and indeed reproduced paras 5 to 15 of the Patna Full Bench judgment in its own judgment. Mahajan, J., with whom the two other Judges agreed, observed :

"I am in respectful agreement with the entire line of reasoning in the Patna case barring the underlined observations :—

- F "... an award is only effective when a decree follows the judgment on the award such an award may be covered by the exception mentioned in section 17(2)(vi) (any decree or order of a Court) of the Registration Act."

- G If these observations are meant to convey that award as such is covered by the exception (vi) of section 17(2) of the Registration Act, I am unable to agree. But the decree that follows the award when it is made a rule of the Court, no exception can be taken to the view that such a decree is covered by the exception."

The Punjab Full Bench gave two additional reasons :

- H "(1) If an award is registered, it is still a waste paper unless it is made a rule of the Court. Thus registration does not, in any manner, add to its efficacy or give it any added competence. Section 32 of the

(1) I.L.R. 37 Pat. 252.

Arbitration Act is specific for no right can be founded on an award as such after coming into force of the 1940 Arbitration Act;

(2) It is not disputed and indeed it could not be that the Court has the power, under section 16, to remit the award from time to time. If registration of an award is an essential pre-requisite, before it could be made a rule of the Court under section 17, every time an award is remitted and a new award is made, the new award will require registration. The result would be that, in the same controversy, there can be not only one registration but a number of registrations regarding the same title, a situation which is not even envisaged by the Registration Act."

It seems to us that the main reason given by the two Full Benches for their conclusion is contrary to what was held by this Court in its unreported decision in *M/s. Uttam Singh Dugal & Co. v. The Union of India*⁽¹⁾. The facts in this case, shortly stated, were that M/s. Uttam Singh Dugal & Co. filed an application under s. 33 of the Act in the Court of the Subordinate Judge, Hazaribag. The Union of India, respondent No. 1, called upon respondent No. 2, Col. S. K. Bose, to adjudicate upon the matter in dispute between respondent No. 1 and the appellant company. The case of M/s. Uttam Singh Dugal & Co. was that this purported reference to respondent No. 2 for adjudication on the matters alleged to be in dispute between them and respondent No. 1 was not competent because by an award passed by respondent No. 2 on April 23, 1952, all the relevant disputes between them had been decided. The High Court held *inter alia* that the first award did not create any bar against the competence of the second reference. On appeal this Court after holding that the application under s. 33 was competent observed as follows :

"The true legal position in regard to the effect of an award is not in dispute. It is well settled that as a general rule, all claims which are the subject-matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and that after an award has been pronounced, the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the said award. After an award is pronounced, no action can be started on the original claim which had been the subject-matter of the reference. As has been observed by Mookerjee, J. in the case of *Bhajahari Saha Banikya v. Behary Lal Basak*⁽²⁾ "the award is, in fact, a final

(1) Civil Appeal No. 162 of 1962—judgment delivered on October 11, 1962.

(2) 33 Cal. 881 at p. 898.

- A adjudication of a Court of the parties' own choice, and until impeached upon sufficient grounds in an appropriate proceeding, an award, which is on the fact of it regular, is conclusive upon the merits of the controversy submitted, unless possibly the parties have intended that the award shall not be final and conclusive. . . . in reality, an award possesses all the elements of vitality, even though it has not been formally enforced, and it may be relied upon in a litigation between the parties relating to the same subject-matter." This conclusion, according to the learned Judge, is based upon the elementary principle that, as between the parties and their privies, an award is entitled to that respect which is due to the judgment of a court of last resort. Therefore, if the award which has been pronounced between the parties has, in fact, or can, in law, be deemed to have dealt with the present dispute, the second reference would be incompetent. This position also has not been and cannot be seriously disputed."
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This Court then held on the merits "that the dispute in regard to overpayments which are sought to be referred to the arbitration of respondent No. 2 by the second reference are not new disputes; they are disputes in regard to claims which the Chief Engineer should have made before the arbitration under the first reference." This Court accordingly allowed the appeal and set aside the order passed by the High Court.

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This judgment is binding on us. In our opinion this judgment lays down that the position under the Act is in no way different from what it was before the Act came into force, and that an award has some legal force and is not a mere waste paper. If the award in question is not a mere waste paper but has some legal effect it plainly purports to or affects property within the meaning of s. 17(1)(b) of the Registration Act.

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We may mention that an appeal was filed in this Court against the decision of the Division Bench of the Patna High Court, which had referred the case of *Sheonarain Lal v. Prabhu Chand*⁽¹⁾ to the Full Bench for opinion on certain questions and which decided the case in accordance with that opinion, and the same was dismissed by this Court in *Sheonarain Lal v. Rameshwari Devi*⁽²⁾ in which the judgment was delivered by the same Bench which decided the case of *M/s. Uttam Singh Dugal v. The Union of India*⁽³⁾. It is true that this Court in *Sheonarain Lal v. Rameshwari Devi*⁽²⁾ did not expressly rule on the validity

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(1) I.L.R. 37 Pat. 252.

(2) Civil appeal No. 296 of 1960—judgment delivered on December 6, 1962.

(3) Civil Appeal No. 162 of 1962—judgment delivered on October 11, 1962.

of the answer given by the Patna Full Bench in *Sheonarain Lal v. Prabhu Chand*⁽¹⁾ that such awards did not require registration, but decided the case on the point whether the award in dispute in that case in fact purported or operated to create a right, title or interest of the value of more than Rs. 100 in immovable properties. But, after holding that the document did not operate to create or extinguish any right in immovable property, this Court observed :

"The position would have been otherwise if the arbitrators had directed by the award itself that this shop would go to Prabhu Chand without any further document. In that case the award itself would have created in Prabhuchand a right to these properties. That is not, however, the provision in the award. In the absence of a registered document, Prabhu Chand would get no title on the award and Sheonarain's title would remain in the shop."

In this connection we may mention two other decisions of this Court. In *Champalal v. Mst. Samarath Bai*⁽²⁾, Kapur, J., speaking for the Court, observed as follows :

"The second question that the award required registration and would not be filed by the arbitrators before it was registered is equally without substance. The filing of an unregistered award under s. 49 of the Registration Act is not prohibited; what is prohibited is that it cannot be taken into evidence so as to affect immovable property falling under s. 17 of the Act. That the award required registration was rightly admitted by both parties."

Again in *Kashinathsa Yamosa Kabadi v. Narsinga Bhas-Karsa Kabadi*⁽³⁾ Shah J., speaking for the Court observed :

"The records made by the Panchas about the division of the properties, it is true, were not stamped nor were they registered. It is however clear that if the record made by the Panchas in so far as it deals with immovable properties is regarded as a non-testamentary instrument purporting or operating to create, declare, assign, limit or extinguish any right, title or interest in immovable property, it was compulsorily registerable under s. 17 of the Registration Act, and would not in the absence of registration be admissible in evidence."

(1) I.L.R. 37 Pat. 252.

(2) [1960] 2 S.C.R. 810, 816.

(3) [1961] 3 S.C.R. 792, 806.

A In view of the above decisions it is not necessary to refute the other reasons given by both the Full Benches, but out of respect for the learned Judges we will deal with them. We may mention that no comment was made in these cases on the provisions of para 7 of Schedule 1 to the Act. This para provides :

B “7. The award shall be final and binding on the parties and persons claiming under them respectively.”

If the award is final and binding on the parties it can hardly be said that it is a waste paper unless it is made a rule of the Court.

C We are unable to appreciate why the conferment of exclusive jurisdiction on a court under the Act makes an award any the less binding than it was under the provisions of the Second Schedule of the Code of Civil Procedure. The Punjab Full Bench held that the registration does not in any manner add to its efficacy or give it any added competence. We cannot concur with these observations. If an award affects immovable property over the value of Rs. 100, its registration does get rid of the disability created by s. 49 of the Registration Act.

D Regarding the difficulty pointed out by the Punjab Full Bench that there may be many registrations we are not called upon to decide whether these difficulties would arise because the language of s. 17 of the Registration Act is plain. It may be that no such difficulties will arise because under s. 16(2) of the Act what the arbitrator submits to the Court is his decision and it may be that the decision may not be registerable under s. 17 of the Registration Act. But as we have said before we are not called upon to decide this point.

E In our opinion, Capoor, J., was right in dissenting from the Patna Full Bench in *Sheonarain Lal v. Prabhu Chand*⁽¹⁾ and holding that the award in dispute required registration.

F In the result the appeal fails and is dismissed with costs.

We may make it clear that we are dealing only with an award made on a reference by the parties without the intervention of court.

G **Hegde, J.** I agree. But I would like to add few words. Arbitration proceedings, broadly speaking may be divided into two stages. The first stage commences with arbitration agreement and ends with the making of the award. And the second stage relates to the enforcement of the award. Paragraph 7 of the First Schedule to the Arbitration Act lays down that “the award shall be final and binding on the parties and persons claiming under them respectively”. Therefore it is not possible to agree with the Full Bench decisions of the Patna High Court

(1) I. L. R. 37 Part. 252.

and that of the Punjab and Haryana High Court that an award which is not made a decree of the Court has no existence in law. The learned Judges who decided those cases appear to have proceeded on the basis that an award which cannot be enforced is not a valid award and the same does not create any rights in the property which is the subject matter of the award. This in my opinion is not a correct approach. The award does create rights in that property but those rights cannot be enforced until the award is made a decree of the Court. It is one thing to say that a right is not created, it is an entirely different thing to say that the right created cannot be enforced without further steps. For the purpose of s. 17(1)(b) of the Registration Act, all that we have to see is whether the award in question purport or operate to create or declare, assign, limit or extinguish whether in present or future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property. If it does, it is compulsorily registerable. In the aforementioned Full Bench decisions sufficient attention has not been given to s. 17 of the Registration Act. The focus was entirely on the provisions of the Arbitration Act and there again on the enforcement of the award and not in the making of the award. A document may validly create rights but those rights may not be enforceable for various reasons. Section 17 does not concern itself with the enforcement of rights. That Section is attracted as soon as its requirements are satisfied. There is no gainsaying the fact that the award with which we are concerned in this case, at any rate, purported to create rights in immovable property of the value of rupees more than one hundred. Hence it is compulsorily registerable.

Y.P.

Appeal dismissed.