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HARI KRISHAN WATTAL

v.

VAIKUNTH NATH PANDYA

JULY 18, 1973

[D. G. PALEKAR AND A. ALAGIRISWAMI, JJ.]

B *Arbitration Act* (10 *of* 1940) *s.* 28 *and cl.* (3) *of Schedule—Scope of.*

Disputes having arisen between the appellant and the respondent, they were referred to arbitration in accordance with the agreement entered into between the parties. The arbitrator gave his award. The appellant applied for filing of the award into Court and for making it a rule of Court. The validity of the award was challenged by the respondent, and the trial Court and the High Court set it aside on the grounds :

C (1) that the award was made after the prescribed period and (2) that the agreement for arbitration was defective on account of vagueness and uncertainty.

Allowing the appeal to this Court and remanding the matter to the High Court for disposal.

HELD : (1) Under cl. (3) of the Schedule to the Arbitration Act, 1940, the arbitrator is expected to make his award within four months of his entering D on the reference or on his being called upon to act or within such extended time as the Court may allow. Reading the clause with s. 28 of the Act the power to enlarge the time for making the award is vested in the Court and not in the arbitrator. Section 28(2), however, indicates an exception, namely when the parties agree to such enlargement *after* the arbitrator enters on the arbitration. But the section does not require that the parties should stipulate in the arbitration agreement itself, for such enlargement of time by a subsequent agreement. Even in a case where there is no such stipulation in the original agreement the arbitrator is entitled to enlarge the time if *after entering* E *on the reference* the parties to the arbitration consent to such enlargement. [261G—H; 262A—D]

In the present case, the enlargement of time for making the award was on the request and mutual consent of the parties *during* arbitration, and therefore, the award made within the extended time must be deemed to be valid. [263A—C]

F (2) A perusal of the agreement in the background of the disputes that had arisen shows that the agreement was neither vague nor uncertain. In fact, the parties never complained before the arbitrator of any such vagueness or uncertainty. [263C; 264B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1433 of 1967.

Appeal by special leave from the judgment and order dated December 7, 1966 of the Allahabad High Court in F.A.F.O. 31 of G 1963.

B. D. Sharma, for the appellant.

Hardayal Hardy, Madhav Prasad and M. V. Goswamy, for respondents 1(a) to 1(e).

The Judgment of the Court was delivered by

H PALEKAR, J.—This is an appeal by special leave from an order of the High Court at Allahabad dated December 7, 1966, by which the Court. in agreement with the trial court, superseded a Reference to Arbitration.

Hari Krishna Wattal and Vaikunth Nath Pandya carried on business in partnership under the name and style of 'Wattal & Co.'. Differences having arisen between them, a reference was made to the Arbitrator in accordance with the agreement under the partnership deed. The Arbitrator, Shri Bagchi, Advocate, gave an award and Hari Krishna Wattal applied under section 14 of the Arbitration Act for filing of the award and for making it a rule of the Court. Objections were filed by Vaikunth Nath Pandya. The award was challenged on several grounds. The Court of the first instance held *inter-alia* that the award dated February 27, 1959 was invalid on the ground, firstly, that the award had been passed after the prescribed period for making the award and secondly that the reference agreement was defective on account of vagueness and uncertainty. Hari Krishna Wattal filed an appeal in the High Court. The learned Single Judge who heard the appeal agreed with the trial-court on the two above grounds and superseded the reference.

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It is contended by Mr. Sharma that both the Courts were in error in holding that the award was invalid on the aforesaid grounds.

Ex. 13 is the agreement to refer the disputes between the parties. The agreement is dated 5-2-1958 and the award, as already stated, was made much beyond four months from the date of the reference. *Prima-facie* it will be invalid unless the time for enlargement for making the award was legally extended. It is contended for the appellant that the time had been legally extended by the mutual written consent of the parties and hence the award was not liable to be set aside. It will appear from the record that the time was extended not less than six times. The first extension was from 31-5-1958 to 31-7-1958 and the last extension was from 29-1-1959 to 28-2-1959. None of these six extensions was for the benefit of the appellant. Five extensions were given for the convenience of the respondents and one for the convenience of the Arbitrator. On each occasion, however, the appellant and the respondents had mutually agreed to the extension in writing. The agreement for enlargement of time was generally in the following terms :

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"IT IS THEREFORE AGREED BETWEEN THE PARTIES AS BELOW :—

(1) That Shri A. K. Wattal, constituted attorney for Shri H. K. Wattal and Shri Vaikunth Nath Pandya agree to give further time to the Arbitrator to give his award on any date till the 31st of July, 1958.

(2) That the said parties further agree that they would accept such award, if given on or before 31st of July 1958, as a valid award, and would not raise any objection on the score of its having been delivered beyond four months of the reference to arbitration."

G H

It is not disputed that if such mutual agreement between the parties to the arbitration was capable of legally effecting the enlargement of

A time for making the award then the award could not be challenged on the particular ground that it had been delivered beyond four months of the reference.

Section 3 of the Arbitration Act, 1940 provides :

> "An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions
B set out in the First Schedule in so far as they are applicable to the reference."

The First Schedule has 8 clauses describing the implied conditions of an arbitration agreement. Clause 3 reads as follows :

> "The arbitrators shall make their award within four
C months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow."

The power of the Court to extend time contained in section 28, which is as follows :

D "28. *Power to Court only to enlarge time for making award.* (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

> (2) Any provision in an arbitration agreement whereby
E the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."

The High Court was of the opinion that there are only two methods for enlarging the time. The first method is securing an order from the Court and the second method is to stipulate in the arbitration agreement for extension of time by a subsequent agreement. The High
F Court held that the general plan of section 28 suggested that the Legislature did not contemplate any third method for extension of time. Since, in the present case, the arbitration agreement itself did not stipulate for extension of time by a subsequent agreement and there was no order of a Court extending the time the award was invalid.

G The question depends upon the true construction of section 28. There is no doubt that the Arbitrator is expected to make his award within four months of his entering on the reference or on his being called upon to act or within such extended time as the Court may allow. Reading clause 3 of the Schedule along with section 28 one finds that the power to enlarge the time is vested in the Court and not in the Arbitrator. Clause 3 and section 28(1) exclude by necessary
H implication the power of the Arbitrator to enlarge the time. This is emphasised by section 28(2) which provides that even when such a provision giving the Arbitrator power to enlarge the time is contained in the agreement, that provision shall be void and of no effect. The

headnote of section 28 brings out the force of this position in law by providing that the power is of the Court *only* to enlarge time for making the award. A

Sub-section 2 of section 28; however, indicates one exception to the above rule that the Arbitrator cannot enlarge the time, and that is when the parties agree to such an enlargement. The occasion for B the Arbitrator to enlarge the time occurs only after he is called upon to proceed with the arbitration or he enters upon the reference. Hence, it is clear that if the parties agree to the enlargement of time after the Arbitrator has entered on the reference, the Arbitrator has the power to enlarge it in accordance with the mutual agreement or consent of the parties. That such a consent must be a post-reference consent, is also clear from setcion 28(2) which renders null and void a provision in the original agreement to that effect. In a sense where a provision C is made in the original agreement that the Arbitrator may enlarge the time, such a provision always implies mutual consent for enlargement but such mutual consent initially expressed in the original agreement does not save the provision from being void. It is, therefore, clear that the Arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on the arbitration the parties to the arbitration agreement consent to such enlargement of D time.

The question, however, is whether it was necessary to stipulate in the arbitration agreement itself for the enlargement of time by a subsequent agreement. In our opinion, sub-section 2 of section 28 does not say that such a stipulation should be in the arbitration agreement itself. It only tells us in which specific case of mutual consent E a provision for enlargement of the time for making the award, if inserted in the agreement, will have the provision from being null and void. It does not purport to lay down that such a specific case of mutual consent should, in order to become effective, be part of the original agreement between the parties.

The above interpretation is in consonance with the fundamental F principles of arbitration. The arbitrator gets his jurisdiction to make a binding award on an agreement between the parties to refer a dispute to him. The agreement between the parties is the foundation of the jurisdiction of the Arbitrator. Like any contract by mutual consent of the parties, the terms of the contract can be modified. Even in a case where the Arbitrator enters on the reference on an invalid agreement it is open to the parties to enter into a fresh agreement to G refer the dispute to the Arbitrator while it is pending adjudication and in such an event the proceedings before the Arbitrator can be upheld as referable to that agreement and the award will not be open to attack as without jurisdiction. See : *Weverly Jute Mills Co. Ltd.* v. *Raymon & Com. (India) Private Ltd.*(1) Such being the power of mutual consent of the parties in the sphere of arbitration one does not see why by mutual agreement the parties cannot enlarge the time for H making the award when the Arbitrator has entered on the reference and is proceeding with the arbitration.

(1) [1963] 3 S. C. R. 209, 226.

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In our view, therefore, section 28(2) does not provide that the Arbitration agreement alone should stipulate that the Arbitrator may extend the time on a subsequent agreement between the parties. Even in a case where there is no such stipulation in the original agreement, the Arbitrator is entitled to enlarge the time if after entering on the reference the parties to the arbitration consent to such enlargement. B In the present case, the enlargement of time for making the award was on the request and mutual consent of the parties during arbitration and, therefore, the award made within the extended time must be deemed to be valid.

The second ground on which the reference was superseded was that the arbitration agreement was defective on account of vagueness and uncertainty. C We have carefully gone through the arbitration agreement Ext. 13 dated 5-2-1958 and we think that the High Court was in error in thinking that the agreement was vague and uncertain. It will be seen that the agreement is between Hari Krishna Wattal on the one hand and Shri Vaikunth Nath Pandya on the other. The long preamble shows that they were doing business in the name of Wattal & Co. and disputes had arisen between them with regard to certain amounts which were put to the debit of Vaikunth Nath Pandya and D his sons which Wattal insisted must be paid to him. But Vaikunth Nath Pandya was challenging the correctness of the entries in the accounts about the business of Wattal & Co. It may be stated here that Vaikunth Nath Pandya had two sons. One son named Rishi Nath Pandya was the Manager of Kailash Carpet Co. a proprietory concern of Hari Krishna Wattal. There were accounts in the name of Rishi Nath both in Kailash Carpet Co. and Wattal & Co. The second E son Ravinder Nath was doing business as Ravindra Bros. He had a cash credit account with Wattal & Co. It appears that some dispute was raised with regard to the correctness of the accounts in the names of the two sons in the books of Wattal & Co. but if the accounts were held to be correct there was no dispute that the father Vaikunth Nath Pandya had agreed to accept the liabilities on behalf of the sons. So, the agreement of reference contained these four clauses :

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"1. That the said Arbitrator shall determine what amounts, if any, are due to the first party (Wattal) from the second party (Pandya) and his sons including Ravindra Brothers, and how the same should be paid by the second party (Pandya).

2. That the arbitrator shall allow the second party to G check and examine the accounts of Wattal and Co. not only from 1-5-55 but also for any such earlier period as the arbitrator thinks fit.

3. That the Arbitrator shall be entitled to hear and determine the other grievances of the parties, if any.

4. That the Arbitrator shall determine the amount pay- H able by one party to the other after taking into consideration the sums due to or due by the second party or his sons including Ravindra Brothers from or to the first party respectively."

We have failed to understand what was vague and uncertain about the agreement. It appears from the record that the Arbitrator had called upon Wattal to formulate his claims and then replies on behalf of Pandya were duly filed. Accounts were inspected from time to time by Pandya, full opportunity being given to him to do so as per the reference agreement itself. Arguments were also filed in writing by both the sides. It does not appear that any complaint was made on behalf of the parties before the Arbitrator about anything vague or uncertain in the agreement. Once it is remembered that the arbitration was with reference to the business of Wattal & Co. of which the parties were the partners, it is clear that the four clauses referred to above must be read against the background that all of them are in the context of the business of Wattal & Co. The mere fact that the Arbitrator had looked into accounts of Kailash Carpet & Co. in order to verify any entries made in the books of the business of Wattal & Co. would not mean that some how the accounts of Kailash Carpet Co. would be interpolated into the books of Wattal & Co. The learned Judge agrees that if one looks at the preamble of the agreement, that gave the impression that the Arbitrator had to decide merely the disputes relating to the business of Wattal & Co. We must say with respect that this impression is the correct impression. We do not see how clauses 1 and 4 enlarged the scope of arbitration proceedings. There were entries in the books of Wattal & Co. relating to the two sons of Pandya. The father had undertaken by the agreement to accept the true liabilities of his sons as disclosed in the books of the business of Wattal & Co. That was a perfectly legal liability the father was entitled to undertake on behalf of his sons. The Arbitrator had to deal with the disputes between the two parties in relation to business of Wattal & Co. And, if for deciding the matter he required verification of the entries in the books of accounts, we do not see why the Arbitrator should not examine any other accounts, even the accounts of Kailash Carpet Co. Nor can we find any sufficient objection to clause 3 of the agreement referred to above. That clause says that the Arbitrator shall be entitled to hear and determine the other grievances of the parties, if any. It may be that the wording of the clause is rather loose, but once you remember that there are disputes with regard to the business of Wattal & Co. that clause must be understood in that context. The 'grievances' mean nothing more than disputes. Two specific disputes were mentioned in clauses 1 and 2, clause 3 made provision for any other dispute which may legitimately arise on an examination of the accounts of the business. In other words, all disputes between the parties relating to the debits and the credits in the accounts of the business of Wattal & Co. were the subject-matter of the arbitration. We do not agree with the learned Judge that it was possible to bring in any dispute of the parties within the scope of the arbitration proceedings. We do not, therefore, think that the agreement was bad on account of vagueness or uncertainty.

The two grounds on which the High Court superseded the reference had not been substantiated. The award cannot be challenged either on the ground that it was made after the prescribed period or

A that the agreement for arbitration was defective on account of vagueness and uncertainty. Since the other points arising in the appeal before the High Court had not been dealt with, the case will have to go back to the High Court to be disposed of in accordance with law after hearing the parties on points not agitated before the High Court. The appellant shall get his costs from the respondents in this appeal.

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V.P.S.