

PRIVY COUNCIL

Durga Prosad Chamria

Vs.

Sewkishendas Bhattar

P.C.A.No.19 of 1948

(Lord Simonds, Lord Radcliffe and Sir Malcolm Macnaghten JJ.)

28.07.1949

JUDGMENT

LORD RADCLIFFE J.

1. The purpose of this appeal is to secure the setting aside of an interim award made on 9th January 1941, by Sir Manmatha Nath Mukherjee, sitting as sole arbitrator appointed by agreement of the parties to a partnership suit. An application by appellant 1 to set aside, remit or modify the award was dismissed by the High Court at Calcutta on 7th March 1941, and on 10th March 1941, the same Court made a decree that the award should be carried into effect. An appeal was taken to the High Court in its appellate jurisdiction and on 28th May 1946, that appeal was dismissed. It is from the judgment and orders made on that appeal that the present appeal reaches this Board.

2. It is necessary to make some reference to the facts that led up to the arbitration in order to appreciate what it is of which the appellants complain. The arbitration concerned the affairs of a partnership business known as Hurdutroy Chamria "or Hurdutroy Chamris and Co. The business seems to have been originally in the sole bands of Hurdutroy Chamria, but at any rate by 6th October 1910, he had made a written agreement associating with him as a partner his nephew Ramprotap. Hurdutroy married three times, his third wife being Anardeyi Sethani, whose legal personal representative is respondent 1 in this appeal. By her he had two sons, Radhakissen Chamria, respondent 3 and Motilal Chamria, respondent 4. The appellant Durga Prosad was an adopted son of Hurdutroy, the adoption having been effected during the period of Hurdutroy's first marriage. The appellant Keshardeo Chamria is by birth a son of Durga Prosad but became the adopted son of Amolakchand, Ramprotap's

brother, by an adoption effected after Arnolakchad's death by his widow Surji, respondent 5.

3. The crucial year for the purpose of this narrative is the year 1916. On 2nd December of that year Hurdutroy died. It is apparent from what has been said previously that the interest in Hurdutroy Chamria and Co. was divided between his branch of the family and the branch represented by Ramprotap. It is also apparent that there were possibility of disputes in his own family owing to the presence of an adopted elder son and two younger sons by his third marriage.

4. Three written agreements were made shortly before Hurdutroy's death in 1916, It is not necessary to give any details of their respective contents but in order to understand the arbitrator's award and the objections made to it it is necessary to state what they were, On 1st October 1916, Hurdutroy and Ramprotap entered into a new partnership agreement, under which the partnership business was to be continued for SO years from that date, an 11 anna share going to Hurdutroy and a 5 anna share to Ramprotap. On 16th November 1916, a memorandum, which has been referred to as "the family settlement," was signed by Anardeyi, and by Hurdutroy as father and guardian of Radhakissen and Motilal, both of whom were then minors. It was witnessed by Ramprotap and it contained certain terms defining the interests of Hurdutroy's family in his various properties, including his share in the partnership business of Hurdutroy Chamria and Co. On the same day another memorandum was drawn up. This, which has been referred to as "the partnership arrangement," was signed by Ramprotap for himself and Surji, by Durga Prosad and by Hurdutroy as father and guardian of Radhakissen and Motilal. Its main purpose was evidently to specify the shares in the partnership business on and from 1st January 1917. The shares were set out in the usual division of 16 annas, but nothing was allotted to Anardeyi. It also contained the words "Neither Rai Hurdutrai Chamria Bahadur nor his estate will have any interest in the said business of Hurdutrai Chamria and Co."

5. It is the significance of this partnership arrangement and its true place in the intended dispositions of the members of these two families that have since proved one of the main subjects of dispute between them.

6. For disputes there certainly have been Prior to the institution of the suit in which the arbitration took place (1840 of 1930), there were two partnership Suits (120 of 1922 and 2472 of 1928) instituted by Ramprotap and Keshardeo respectively. There was also a Suit (367 of 1924) instituted by Motilal to obtain partition of Hurdutroy's estate.

For various reasons no final result seems to have emerged from any of these proceedings, but it is to be noted that in Molilal's Suit (367 of 1924), to which the appellant Durga Prosad was a party, a decree was made by consent that scheduled terms of settlement should be carried out, and that these terms contained undertakings to abide by the family settlement of 1916; while in Keshardeo's Suit (2472 of 1928), to which Durga Prosad, Radhakissen, Motilal and Surji were parties, a decree was made by consent that terms of settlement defining the shares in the partnership business according to the partnership agreement of 1916 should be carried into effect.

7. Suit 1840 of 1930 was instituted originally by the Official Receiver as receiver appointed by the High Court in Suit 367 of 1924. Later Anardeyi was substituted as plaintiff. Its object was to obtain a declaration as to the shares in the partnership business, dissolution and winding up. By March 1936, sufficient progress had been made in preliminary proceedings to enable Panckridge J., in the High Court, to frame 12 issues. It will be convenient to defer until later any specific reference to what those issues were. On 29th June 1937, an order was made by consent of the parties that agreed terms of settlement set out in the schedule to the order should be carried into effect. These terms provided for reference to arbitration of "the outstanding matters in this suit." The primary reference was to three named arbitrators but if they should fail to make a unanimous award or should disagree or refuse or fail to act then Sir Manmatha Nath Mukherjee, a retired Judge of the High Court at Calcutta, was appointed to act as sole arbitrator. The terms of settlement conferred upon the arbitrators or arbitrator a list of special enumerated powers, of which it is sufficient to say that they were of such a nature as to show that the arbitration was not intended to be conducted either according to the ordinary rules that would govern the conduct of an action at law or upon the basis of legal rules as to the admissibility of evidence.

8. In the result the arbitration fell to the sole arbitrator. After a protracted hearing (one of the affidavits in these proceedings speaks of the arguments lasting "for a total length of near about 10 days"), the arbitrator published an interim award on 9th January 1941. The material parts of the award were as follows :

"(1) I find that by the deed of family settlement dated 16th November 1916, the plaintiff became co-owner in respect of all properties which belonged to Rai Bahadur Harduttroy Chamria on that date and also that she became a partner in the firm of Harduttroy Chamaria and Co., wherein, up to that date, leaving out such shares as outsiders may have had in particular transactions, Harduttroy had 11 as. and Ram Protap 5 as. share as specified in the deed of partnership dated

6th October 1910 and 1st October 1916.

(2) I find that the share of the plaintiff as such partner and co-owner as aforesaid was one quarter or a 4 as. share taking Hardutt Roy's 11 as. share as 16 as. in other words, as 11/64 ths or 2 as. 9 p. share in the whole.

(3) I find that under the deed of family settlement dated 16th November 1916, the business of the firm was to be carried on as before up to 31st December 1916, but under the Memorandum of Terms of Arrangement dated 16th November 1916, the partners of the said firm of Hardutt Roy Chamria and Co., with the exception of the plaintiff, together with some other persons were to carry on as from 1st January 1917 the business of the said firm under the firm's name and with certain shares for themselves as specified in the said Memorandum. I am unable to hold either of these documents invalid on any of the grounds on which their validity has been questioned. The two documents, in my opinion, have to be read together.

(4) I find that the arrangement last mentioned was binding as amongst the parties thereto but did not purport to disturb the plaintiff's status as a partner in the firm and that the assets which belonged to her as such partner were utilised for carrying on the business thereafter.

(5) I find that there has been no dissolution of the firm as it existed in 1916 nor any exclusion of the plaintiff, so as to bar the plaintiff's claim on the ground of limitation.

(6) I hold that in order to award reliefs to the plaintiff, accounts should be taken, (a) To ascertain the value of the assets which the plaintiff came to have by the deed of family settlement dated 18th November, 1916; (b) To ascertain what profits were earned by the said assets (i) up to 31st December, 1916 and (ii) from 1st. January 1917 till the business was closed.

(7) I. hold also that for ascertaining the assets as mentioned in para. 6 (a) above, a 2 as, share of profits should be deducted as belonging to Amlakchand in respect of such businesses in which he had that share but in respect of such transactions only whereof the origin may be attributed to a point of time when he was alive.

(8) I hold that the interests of the parties in the firm of Hardutt Roy Chamria and Co. were the following:

(a) From 1st October 1918, to 31st December 1916.

Ramprotap's branch 5 as.Sm. Anardei Sethani 1 Each 4 as. of 11 as.

Durga Prosad 11/64th eachRadhakissen Motilal 2 as. 9 pies each.

(b) From 1st January 1917 :

Sm. Anardei Sethai>Returns attributable to her 2 as. 9 p. share in the assets as on 31 December 1916.

Others-as per Memorandum of 16th November 1916, after deducting the amount due as aforesaid to Sm. Anardei Sethani.

Other questions arising in the suit will be dealt with hereafter."

9. Objections to the award were immediately raised by the appellant Durga Prosad, and on 29th January 1941, he filed a petition asking that it should be set aside, remitted or modified by the High Court. This petition was heard by Edgley J., exercising the Court's ordinary original civil jurisdiction, and by an order dated 7th March 1941, he directed that the petition should be dismissed. On 10th March 1941, a consequential order was made by the same Judge declaring that the award ought to be carried into effect and decreeing accordingly. From these orders Durga Prosad appealed to the High Court in its civil appellate jurisdiction and on 28th May 1946, Gentle and Das JJ. dismissed the appeals. Durga Prosad, who is joined in his appeal by Keshardeo, now appeals to His Majesty in Council.

10. Before the Courts in India numerous grounds were urged as reasons for interfering with the interim award. Before their Lordships the appellants' grounds were most clearly compressed into four points which may be stated as follows : (i) That the award ought to be set aside as showing error of law on the face of it, in that (a) the arbitrator had admitted as evidence the family settlement and the partnership arrangement of 1916, neither of which, though each related (it was said) to immovable property, had been registered as required by the Indian Registration Act, and (b) the arbitrator ought to have held that Anardeyi's suit was in any event barred by limitation, (2) That the arbitrator in his award had exceeded the scope of the reference. (3) That the award was so indefinite as to be incapable of execution,

11. Their Lordships do not take the view that this award ought to be set aside or remitted as showing error of law on the face of it. In their view, the reference was of such 9 nature that the arbitrator must be treated as having been appointed by the parties to decide, amongst others, those specific questions of law which he is now said to have decided wrongly. What are the facts? Before any submission to arbitration had been agreed upon by the parties certain issues had been settled by Panckridge J. in the High Court in the action that was then pending. of these issues two may be quoted :

"(1) (b) Is the agreement dated 16th November 1918, relating to the alleged family settlement valid or admissible in evidence ?* * * *

(9) Is the plaintiff's claim or any portion thereof barred by limitation?"

After these issues had been settled, the parties agreed to refer to arbitration "the outstanding matters in the suit." It is indeed true that at the conclusion of the hearing before the arbitrator he did, in the presence of counsel for the respective parties, reframe the issues before him and that in so doing he did not include an issue as to the admissibility in evidence of the 1918 family settlement. It is not suggested that, except for this, the issues as framed by him differed in substance from those originally framed by Panckridge J. It would need a fuller knowledge of the course of the arbitration proceedings than is available in these proceedings to know for certain why he did not at that time think it necessary to frame an issue as to the admissibility in evidence of either or both of the two 1916 documents. He may have been satisfied by that time that all the parties were agreed to regard them as admissible before him: or he may, not unreasonably, have supposed that having regard to the very special powers given to him by the terms of reference the admissibility of these documents was a question which he could decide for himself at his discretion. However that may be, their Lordships are satisfied that the two points of law as to which it is said that the arbitrator's error vitiates the award were specifically referred to him to decide : and, if this is so, it would be contrary to well-established principles such as are laid down in *In re King and Duveen*, and *F. R. Absalom Ltd. v. Great West (London) Garden Village Society*, (for a Court of law to interfere with the award even if the Court itself would have taken a different view of either of the points of law had they been before it.

12. But, apart from this conclusion, which by itself disposes of the first two grounds of objection that were urged upon the Board, their Lordships think it right to add that they do not accept that any error of law does appear on the face of the award in the reference to the family settlement or the partnership arrangement of 1916. Firstly, because the agreed terms of reference were such that an arbitrator acting under them was dispensed from observing legal rules of evidence, as he was dispensed from many of the ordinary rules of the conduct of a trial. Secondly, because the mere reference to these documents in the award is insufficient to establish that it was wrong in law to refer to them. During the course of the long hearing, admissions may have been made or other methods of proof resorted to that made it strictly proper for the arbitrator to take notice of the fact that the family settlement or the partnership arrangement was made. It is impossible to lay. But unless the appellants could demonstrate affirmatively that the law was departed from by the arbitrator in noticing the existence or contents of these documents they could not succeed in any event in establishing an error appearing on the face of the award,

13. It remains to deal with the other two grounds of appeal. It was said that the arbitrator had exceeded the scope of his reference in that he had made a finding in para. 1 of his award that Anardeyi became co-owner in respect of all properties which belonged to Hurdutroy Chamria at 16th November 1916, and in para. 9 had found what that share was. Their Lordships are not able to entertain this objection. They take the same view as that expressed by the Judges in both the Courts below. The arbitrator's references to the plaintiff's interest as co owner in Hurdutory Chamria's property are merely introductory to his finding that she enjoyed an aliquot share as a partner in the firm of Hurdutroy Chamria and Co., and are intended to explain the purpose and scope of the deed of family settlement. It is para. 8 of the award, which contains the arbitrator's findings as to the interests of the parties in the firm as different dates and is confined to their respective interests in that firm, that indicates and limits the scope of the award.

14. Finally it was urged that the award was so indefinite as to be incapable of execution. Stress was laid on the difficulty of reconciling the basis of the accounts directed by para. 6 of the award with the declaration of partnership interests which is contained in para 8. There is a difficulty. But it is not enough to detect a possible inconsistency in the terms of an award to enable a Court to set it aside or remit it. It must be "so indefinite as to be incapable of execution."

Their Lordships are unable to perceive any indefiniteness of this kind in the award which if it must be remembered, was framed and published as an interim award. The facts with which the arbitrator was faced were themselves complicated and the conception upon which is founded his interpretation of the respective legal rights of the parties in the assets of the respective legal rights of the parties in the assets of the partnership or partnerships is a subtle one. But there is neither indefiniteness nor ambiguity in his holding as to the interests of the parties in the firm of Hurdutroy Chamria and Co., which is set out in para, 8, and this is, after all, the essence of the matter. Neither of the Courts below has felt itself faced with any difficulty in interpreting the effect of the award and their Lordships do not think that it would be right for them to entertain an appeal to set aside or remit it on this ground.

15. In the result their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellants will pay the costs of those of the respondents who have appeared in the appeal.

Appeal dismissed.

Cases Referred.

1. (1918) 2 KB 82 : (82 LJ KB 783)
2. 1933) AC 592 : (102 LJ KB 648),