

Dewan Singh

Vs

Champat Singh and Others

Civil Appeal No. 1369 of 1966

(J.C. Shah, K.S. Hegde JJ)

17.10.1969

JUDGMENT

HEGDE, J. -

1. This appeal by special leave arises from an arbitration proceeding. The appellant, the 1st respondent and one Sukh Lal who died during the pendency of these proceedings referred their disputes to five arbitrators as per the written agreement executed by them on September 9, 1955. Arbitrators made their award on October 11, 1955. They duly served on the parties to the arbitration agreement, notice of making and signing the award. The award was thereafter registered. On November 1, 1955 the appellant filed a suit in the Court of Munsiff Hawali Meerut praying that the award in question be made a rule of the court and decree passed in accordance with the same. It is said that the notices taken in that suit could not be personally served on the defendants as they refused to accept the same. That fact was reported to the court by the process server as per his report dated 19-11-1955. Thereafter the defendants filed their written statements on February 3, 1966, wherein they challenged the validity of the award on various grounds. They contended that the award was vitiated because of misconduct on the part of the arbitrators inasmuch as the arbitrators decided the disputes referred to them primarily on the basis of their personal knowledge. They also contended that the arbitration agreement was obtained from them by exercise of undue influence. Their further contention was that the subject-matter of the dispute could not under law be referred to arbitration in view of the provisions of U. P. Act 1 of 1951. It was also contended by them that the suit was barred by time.

2. The Trial Court accepted the contention of the defendants that the arbitrators were guilty of misconduct. Dealing with the issue of undue influence, it came to the conclusion that the arbitration agreement was not executed by the defendants according to their free will. But it held that the plea of undue influence was not made out. It upheld the contention of the defendants that the subject-matter of the dispute could not have been referred to arbitration in view of the provisions of U. P. Act 1 of 1951.

3. In appeal the learned Civil judge reversed the decree of the Trial Court. While agreeing with the Trial Court that the arbitrators had used their personal knowledge in deciding the disputes referred to them, that Court held that under the terms of the agreement, it was open to the arbitrators to decide the disputes in question on the basis of their personal knowledge. Dealing with the question of the arbitrators' competence to decide the dispute, that Court held that the question whether the dispute came within the scope of U. P. Act 1 of 1951 or not is a question of law and the same could have been referred to arbitration. It went further and held that as the defendants had not taken their objection to the award within the time prescribed, the same could not have been entertained by the

Trial Court.

4. The High Court in revision differed from the appellate court on all the points mentioned above. It came to the conclusion that the arbitration agreement did not specifically empower the arbitrators to decide the disputes referred to them on the basis of their personal knowledge; they having utilized their personal knowledge in deciding the disputes, they were guilty of legal misconduct and consequently the award made by them is vitiated. It also came to the conclusion that the disputes in question could not have been referred to arbitration in view of the provisions of U. P. Act 1 of 1951. It overruled the decision of the appellate Court that the defendants had not taken their objections to the award within the prescribed time.

5. We may at this stage mention that the contention that the suit was barred by time was not pressed before the Trial Court or in any other Court.

6. There is no basis for the finding of the appellate Court that the objection taken by the defendants to the award was barred by time. As seen earlier, the suit to make the award a rule of the Court was brought by one of the parties to the arbitration agreement and not by any arbitrator. The plaint filed does not disclose that the award given had been produced along with it. There was some controversy as to whether that award was produced along with the plaint. There is no need to go into that question as we shall presently see. It is not said that along with the plaint copy, a copy of the award had been sent to the defendants. Nor is it said that notice of the suit sent to the defendants mentioned the fact that the award had been filed into Court along with the plaint. Article 158 of the Limitation Act, 1908 gives to party 30 days' time for applying to set aside an award or get an award remitted for reconsideration from the date of the service of the notice of filing of the award. There is absolutely no proof in this case that a notice of the filing of the award into Court had ever been given to the defendants. Hence the objections taken by the defendants to the award could not have been rejected on the ground of limitation.

7, Now coming to the question of misconduct on the part of the arbitrators, that allegation is founded on the fact that the arbitrators decided the disputes referred to them on the basis of their personal knowledge. That allegation has been accepted as true both by the Trial Court as well as the appellate Court. In fact the award says :

"We gave our consideration to the entire dispute which is in full knowledge of us, the panchas".

Therefore there is hardly any room to contest the allegation that the arbitrators had decided the disputes referred to them primarily on the basis of their personal knowledge. Under these circumstances all that we have to see is whether the appellate Court was right in concluding that under the arbitration agreement, the arbitrators had been empowered to decide the disputes referred to them on the basis of their personal knowledge.

8. The material portion of the arbitration agreement which is in Hindi translated into English reads thus :

"All the Panchas and Sarpanchas are residents of village Keli Pargana Sarawa. The power is given to them that the said Panchas and Sarpanch, whatever decision, in whatever manner will give in relation to our land described below, whatever land may be given to any party or whatever party may be decided to be the tenant of the

entire land, whatever compensation they may decide to be given to any party. whatever decision they will give that will be final and acceptable and they will have the right to inform us of their decision, unanimous or of majority and get the same registered and we will fully comply with their decision."

9. This agreement does not empower the arbitrators either specifically or by necessary implication to decide the disputes referred to them on the basis of their personal knowledge. The recital in that agreement that the arbitrators may decide the disputes referred to them in "whatever manner" they think does not mean that they can decide those disputes on the basis of their personal knowledge. The proceedings before the arbitrators are quasi-judicial proceedings. They must be conducted in accordance with the principles of natural justice. The parties to the submission may be in the dark as regards the personal knowledge of the arbitrators. There may be misconceptions or wrong assumptions in the mind of the arbitrators. If the parties are not given opportunity to, correct those misconceptions or wrong assumptions, grave injustice may result. It is, nobody's case that the parties to the submission were informed about the nature of the personal knowledge, the arbitrators had and that they were given opportunity to correct any misconception or wrong assumption. Further in the present case there were as many as five arbitrators. It is not known whether the award was made on the basis of the personal knowledge of all of them or only some of them. Arbitration is, a reference of a dispute for hearing in a judicial manner. It is true that parties to an agreement of reference may include in it such clauses as they think fit unless prohibited by law. It is normally an implied term of an arbitration agreement that the arbitrators must decide the dispute in accordance with the ordinary law-see *Chandris v. Isbrandtsen Moller Co. Inc.*((1957) KB 240.) That rule can be departed from only if specifically provided for in the submission.

10. The appellate Court, in our opinion has misread the arbitration agreement and hence it erroneously came to the conclusion that the arbitrators had been empowered to decide the dispute on the basis of their personal knowledge.

11. It was contended on behalf of the appellant that in exercise of its powers under Section 115 of the Code of Civil Procedure, the High Court could not have corrected the erroneous interpretation placed by the appellate Court as to the scope of the arbitration agreement. We have not thought it necessary to go into that question as, in our opinion, the decision reached by the High Court is an eminently just one. Hence we do not feel called upon in exercise of our discretionary power under Article 136 of the Constitution to interfere with the decision of the High Court. In view of our above conclusion, there is no need to go into the question whether the subject-matter of the disputes could have been referred to arbitration.

12. In the result this appeal fails and the same is dismissed, with costs.

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