

Lachhman Dass

Vs

Ram Lal and Another

Civil Appeal No. 2104 of 1989 with Cmp No. 26956 of 1988

(S. Natarajan, Sabyasachi Mukharji JJ)

30.03.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted.

2. This appeal is from the judgment and order of the High court of Punjab and Haryana dated April 22, 1988. The dispute was between the two brothers. Both the parties appointed one Shri Ajit Singh as the arbitrator on March 7, 1974 for settlement of the dispute about 2 1/2 killas of land situated near Chandni Bagh, Panipat in the State of Haryana. The said land stood in the name of the appellants. According to the respondent, Ram Lal, it was benami in the name of the appellants. That was the dispute. The arbitrator gave his award on May 22, 1974 and moved an application on September 23, 1974 before the Court of Sub-Judge II Class, Panipat, for making the award the rule of the court. The application was registered in the said court and notice was issued to the appellants herein on November 7, 1974. Objections were filed by the appellants taking various grounds. It was contended that the appellants had informed the sole arbitrator through registered notice and by a telegraphic notice that he had no faith in the said arbitrator and had thus repudiated his authority to proceed with the arbitration proceedings. It was also contended that the award was lop-sided, perverse, and totally unjust and against all canons of justice and fair play. It was alleged that the arbitrator had acted in a partisan manner. He never heard the claim of the appellants and never called upon him to substantiate his claim and had acted as an agent of the respondent. It was, therefore, prayed by the appellants that the award be set aside. It may be mentioned that no point was raised that the award was bad and unenforceable because it was not properly stamped nor any plea was taken that the award was an unregistered one as such could not be made the rule of the court.

3. Several issues were framed. No issue was, however, framed on the ground that the award was bad because it was not properly stamped or that it was not registered. The appellants, who were respondents 2 in the said proceedings before the learned trial Judge, gave his version about the repudiation of the authority. The learned trial Judge had, however, held that the appellants had failed to prove that he had repudiated the authority of the arbitrator to enter upon the arbitration through registered notice or otherwise before the arbitrator announced his award. It was further held that the award of the arbitrator was not liable to be set aside on the grounds taken. The objections were treated as objection under Section 33 of the Arbitration Act, 1940 and it was filed within the limitation period. In that view of the matter, the learned Sub-Judge II Class, Panipat by his order dated July 28, 1977 dismissed the objections under Section 14 of the Arbitration Act, 1940 and made the said award the rule of the court.

4. Aggrieved thereby, the appellant went up in first appeal before the Additional District Judge, Karnal. The learned Additional District Judge, while dealing with the contentions of the appellant, held that the application was properly filed. A point was taken before the first appellate court that the award was on an unstamped paper and as such could not be made the rule of the court.

5. The learned District Judge held that the award has not been properly stamped and as such could not be made the rule of the court. It was also contended before the learned District Judge that the award was unregistered and as such it could not be made the rule of the court as it affected immovable property of more than Rs. 100. The learned District Judge After analysing the provisions of Section 17 of the Registration Act, 1908 (hereinafter referred to as 'the Act') came to the conclusion that the award declared right in immovable property and since it was unregistered, it could not be made the rule of the court. The learned District Judge, however, also came to the conclusion that the authority of the arbitrator had been repudiated. This learned District Judge allowed the appeal on the ground that the award was unregistered and unstamped and as such could not be made the rule of the court and set aside the order of the learned trial Judge.

6. There was a second appeal to the High Court. The High Court upheld the award. The High Court noted that the necessary stamp was purchased on August 8, 1974 before the award was filed on September 9, 1974. And that being so, it could not be argued successfully that the award was unstamped. In that view of the matter, the High Court held that the learned District Judge was in error in allowing the stamp objection to be taken.

7. As regards the registration, it was held by the High Court that the award did not create any right as such in immovable property; it only admitted the already existing rights between the parties and hence it did not require any registration. In that view of the matter, the High Court was of the opinion that the first appellate court was wrong. The High Court was further of the view that no right was created in favour of Shri Ram Lal, the respondent herein when he was declared the owner. Both Lachhman Das, the appellant and Ram Lal, the respondent, had claimed their ownership and, according to the High Court, they had the existing rights. The award only made it clear, according to the High Court, that the ownership would vest in one of the brothers, Ram Lal. In the aforesaid view of the matter, the High Court was of the view that it did not require registration. The High Court allowed the appeal and directed the restoration of the order of the learned trial court and the award be made the rule of the court.

8. Aggrieved thereby, the appellant has come up to this Court. The question is - was the High Court right in the view it took ?

9. Mr. A. K. Sen, learned counsel for the appellant contended that the High Court was clearly in error in the facts and circumstances of this case to have made this award the rule of the court and to have looked upon this award which at all relevant and material time was unregistered. It may be mentioned that when this matter came up before this Court on December 5, 1988, the matter was adjourned for two months and it was recorded "In the meantime, the parties may take steps". Thereafter, it appears that the award was filed for registration on December 19, 1988 before the Sub-Registrar, Panipat and was registered actually on February 3, 1989. Mr. Sen contended that the registration of the award subsequently made in the manner indicated hereinbefore did not validate it retrospectively in view of the relevant provisions of the Act. The award being an unregistered one could not have been looked into by the High Court. Mr. Sen tried to urge before us that the award was got registered by misrepresentation of the order of this Court dated December 5, 1988. This Court did not, on December 5, 1988, direct that the registration could be made. All that this

Court observed was that the parties might take steps.

10. It may be mentioned that on or about December 18, 1988, it appears at page 75 of the present paper book that an application was made for registration of award which was said to have been applied by Shri Ajit Singh, son of Shri Beer Singh. In the said letter, it was mentioned that Mr. Justice J. V. Gupta of the Hon'ble High Court of Punjab and Haryana had held in favour of the said writer and it was further stated that on December 5, 1988, this Court dismissed the case of Lachhman Singh, the appellant herein, copy whereof was enclosed. The award was filed for registration on December 18, 1988. The statements contained in the letter were incorrect and misleading inasmuch as this Court did not dismiss the case of the appellant on December 5, 1988. On the other hand, this Court, as mentioned hereinbefore on December 5, 1988, merely observed that the appellant would be at liberty to do what was needful. Mr. Ashri, learned counsel for the respondent, submitted that the registration was done in view of provisions of Sections 23 and 25 of the Act. Mr. Sen, on the other hand, submitted before us that this was wholly irregular to have obtained registration by misleading the Sub-Registrar and this was of no effect. Furthermore, in any event, according to Mr. Sen, the registration having been beyond the period of four months as enjoined by the relevant provisions was wholly bad.

11. The first question that requires consideration in the instant case is whether the court could have looked into the award for the purpose of pronouncing judgment upon the award. In order to deal with this question, it is necessary to refer to Section 17 of the Act. Section 17 deals with documents of which registration is compulsory. Section 17 of the said Act mentions the documents which must be registered. Section 17(1)(e), inter alia, provides :

non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of the one hundred rupees and upwards, to or in immovable property.

Section 23 of the said Act provides as under :

Subject to the provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

Section 25 of the said Act provides as under :

If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

Section 49 of the said Act provides as under :

No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall -

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered.

The proviso to this section deals with a suit for specific performance with which we are not concerned.

12. Shri Ashri contended that the document in question was one which did not require registration. He submitted that the High Court was right in the view it took. He further submitted that property in dispute was in the joint name of the appellant and the respondent. The dispute was whether the half of the property held by the appellant was benami for the respondent or a declaration to that effect could be made by the arbitrator. Mr. Ashri further submitted that it was the case of the appellant that he was the owner of the property in question. The award in question recites that Shri Ajit Singh had been appointed as arbitrator by an agreement dated March 7, 1974 by both the parties. The award further recites that he was appointed arbitrator to adjudicate through arbitration "their disputes regarding property against each other". The arbitrator thereafter recites the steps taken and the proceedings before him. It was further stated that the appellant did not orally reply to the contentions of the respondent nor did he submit his claims in writing. In these circumstances, the award was bad. The award stated, inter alia :

Land of Tibbi comprising of rect. No. 13 Killa No. 23 (3-11), 26(1-11), 16(5-15), 17(5-14), 25(4-4), 23/27 and 26/1 situated in Mauz Ugra Kheri, near Chandni Bagh, which is in the joint name of Shri Ram Lal, party 1 and Shri Lachhman Dass, party 2. The half ownership of Shri Lachhman Dass shall be now owned by Shri Ram Lal in addition to his half share owned by him in these lands.

The award gave certain other directions. Regarding other claims, it was held that lands were allotted in the names of both the brothers and in that context Rs. 16,000 were spent by the respondent from his own sources. The arbitrator stated that he admitted these expenses at Rs. 10,000 and awarded that an amount of Rs. 5000 equal to half at Rs. 10,000 and awarded that an amount of Rs. 5000 equal to half share should be paid by the appellant to the respondent. The other claims were also decided by the award with which it is not necessary to deal in the present appeal. The question is - does this award purport or operate to create, declare or assign, limit or extinguish any right, title or interest in immovable property ? Shri Ashri submitted that as his client was the real owner and as respondent 1 was mere benamidar, and the arbitrator merely declared the true position the award did not as such create, declare or assign any right, title or interest in any immovable property by the aforesaid clause in the award.

13. The Division Bench of the Madras high Court in Ramaswamy Ayyar v. Thirupathi Naik (ILR 27 Mad 43 : 13 MLJ 356) has observed that the criterion for purposes of registration under the Registration Act, 1877 (3 of 1877), which was in the same terms as the provision of the present Act, was what was expressed on the face of the document, not what incidents might be annexed by

custom to a grant of the kind. Therefore, we have to see not what the document intends to convey really, but what it purports to convey. In other words, it is necessary to examine not so much what it intends to do but what it purports to do.

14. The real purpose of registration is to secure that every person dealing with the property, where such document requires registration, may rely with confidence upon statements contained in the register as a full and complete account of all transactions by which title may be affected. Section 17 of the said Act being a disabling section, must be construed strictly. Therefore, unless a document is clearly brought within the provisions of the section, its non-registration would be no bar to its being admitted in evidence.

15. On a proper construction of the award, it does appear to us that the award did create, declare or assign a right, title and interest in the immovable property. The award declares that half share of the ownership of Shri Lachhman Dass shall "be now owned by Shri Ram Lal, the respondent in addition to his half share owned in those lands". Therefore, the said award declares the right of Ram Lal to the said share of the said property mentioned in that clause. It is not in dispute that the said property is immovable property and it is not merely a declaration of the pre-existing right but creation of new right of the parties. It is significant to bear in mind that the section enjoins registration wherever the award "purports or operates to create, declare, assign, limit or extinguish" whether in present or in future any right, title or interest of the value of Rs. 100 or upwards in immovable property.

16. Shri Ashri tried to submit that while reading the award reasonably and fairly, it must be construed that there was no creation or declaration of any new right in the immovable property. What was done was only, according to Shri Ashri, a declaration of existing right, that is to say, Ram Lal's full ownership of the property in question. The section, however, enjoins registration in respect of any document, which purports not which intends to create a right in immovable property or declare a right in immovable property. It is not a question of declaration of an existing right. It is by this award that a new right was being created in favour of Ram Lal, the respondent herein. In that view of the matter, in our opinion, it cannot be contended that the award did not require registration. This question was considered by this Court in *Satish Kumar v. Surinder Kumar* ((1969) 2 SCR 244). There an arbitrator appointed by the appellants and the respondents partitioned their immovable property exceeding the value of Rs. 100. The arbitrator applied under Section 14 of the 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 it was held that the award required registration. It was further held by Justice Sikri, as the Chief Justice then was, the Justice Bachawat that all claims which were the subject matter of a reference to arbitration merged in the award which was pronounced in the proceedings before the arbitrator and after an award had been pronounced, the rights and liabilities of the parties in respect of the said award. After an award be determined only on the basis of the said award. After an award was pronounced, no action could be started on the original claim which had been the subject matter of the reference. The position under the Registration 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 did not make an award any less binding than it was under the provisions of the Second Schedule of the Code of Civil Procedure. It was further held that the filing of an unregistered award under Section 49 of the Act was not prohibited. What was prohibited was that it could not be taken into evidence so as to affect immovable property falling under Section 17 of the Act. It was further reiterated that it could not be said that the registration did not in any manner add to its efficacy or give it added competence. If an award affected immovable property above the value of Rs. 100, its registration would not rid of the disability created by Section 49 of the Act. The award in question was not a mere waste paper but

had some legal effect and it plainly purported to affect or affected property within the meaning of Section 17(1)(b) of the Act. Justice Hegde gave a separate but concurring judgment. He observed that it was one thing to say that a right was not created, it was an entirely different thing to say that the right created could not be enforced without further steps. An award did create rights in that property but those rights could not be enforced until the award was made a decree of the court. For the purpose of Section 17(1)(b) of the Act, all that had to be seen was whether the award in question purported or operated 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. It was incorrect to state that an award which could not be enforced was not an award and the same did not create any right in the property which was the subject matter of the award. An award whether registered or unregistered, according to Justice Hegde, does create rights but those rights could not be enforced until the award is made the decree of the court. The learned Judge made it clear that for the purpose of Section 17(1)(b) of the Act, all that had to be seen was whether the award in question purported or operated 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 Rs. 100 and upwards in the immovable property. If it does, it is compulsorily registrable. A document might validly create rights but those rights might not be enforced for various reasons. The court found that the award in that case created right in immovable property and it required registration.

17. This Court in *Ratan Lal v. Purshottam Harit* ((1974) 1 SCC 671 : (1974) 3 SCR 109) had to consider the question of registration and the effect of non-registration of an award. The appellant and the respondent therein had set up a partnership business in the year 1962. The parties, however, thereafter fell out. At the time the disputes arose, the running business had a factory and various movable and immovable properties. On August 22, 1963, by agreement in writing, the parties referred "the disputes of our concern" to the arbitration of two persons and gave "the arbitrators full authority to decide their dispute". The arbitrators gave their award on September 10, 1963. The award made an exclusive allotment of the partnership assets, including the factory, and liabilities to the appellant. He was "absolutely entitled to the same" in consideration of a sum of Rs. 17,000 plus half the amount of the realisable debts of the business to the respondent and of the appellant's renunciation of the right to share in amounts already received by the respondent. The award, stipulated that the appellant should not run the factory unless he had paid the awarded consideration to the respondent. The arbitrators filed the award in the High Court on November 8, 1963. On September 10, 1964, the respondent filed an application for determining the validity of the agreement and for setting aside the award. On May 27, 1966, a learned Single Judge of the High Court dismissed the application as time-barred. But he declined the request of the appellant to proceed to pronounce judgment according to the award because in his view : (i) the award was void for uncertainty and (ii) the award, which created rights in favour of the appellant over immovable property worth over Rs. 100 required registration and was unregistered. From this part of the order, the appellant filed an appeal which was dismissed as not maintainable by the Division Bench of the High Court. The appellant preferred an appeal by special leave to this Court against the decision of the Single Judge declining to pronounce judgment in accordance with the award. He also filed a special leave petition against the judgment of the Division Bench. In the appeal before this Court, the appellant contended that the award was to void for uncertainty and that the award sought to assign the respondent's share in the partnership to the appellant and so did not require registration and that under Section 17 of the Arbitration Act, the court was bound to pronounce judgment in accordance with the award after it had dismissed the respondent's application for setting it aside. It was held that the share of a partner in the assets of the partnership, which had also immovable

properties, was movable property and the assignment of the share did not require registration under Section 17 of the Act. But the award in the instant case, this Court observed, did not seek to assign the share of the respondent to the appellant, either in express words or by necessary implication. The award expressly makes an exclusive allotment of the partnership assets including the factory and liabilities to the appellant. It went further and made him "absolutely entitled to the same", in consideration of a sum of Rs. 17,000 plus half of the amount of Rs. 1924.88 to the respondent and the appellant's renunciation of the right to share in the amounts already received by the respondent. In express words above Rs. 100 in favour of the appellant. It would require accordingly registration under Section 17 of the Act. As the award was unregistered, the court could not look into it. The award being inadmissible in evidence for want of registration the court could not pronounce judgment in accordance with it. Section 17 of the Arbitration Act presupposes an award which could be validly looked into by the court. The appellant could not successfully invoke Section 17. The award is an inseparable tangle of several clauses and cannot be enforced as to the part not dealing with immovable property.

18. In the instant case also, it appears to us that the award affects immovable property over Rs. 100 and as such was required to be registered. Shri Ashri, however, contended that the fact that the award was unregistered had not been taken before the learned trial Judge. Indeed, this was not urged within 30 days and the time for filing of application for setting aside an award under Section 30 of the Arbitration Act, was 30 days and as such this not having been taken, the appellant was not entitled to take this point at a later stage. It is true that in the application for making the award a rule of the court before the learned trial Judge this point had not been taken.

19. Section 33 of the Arbitration Act provides that :

Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the court and the court shall decide the question on affidavits.

It has been held by the majority of three learned Judges in a Full Bench decision of the Calcutta High Court in the case of Saha & Co. v. Ishar Singh Kirpal Singh & Co. (AIR 1956 Cal 321) that under the Indian Arbitration Act, there was no distinction between an application for setting aside of an award and an application for adjudgement of the award as a nullity and all applications must be under Section 30 within the time stipulated for that application. The existence of an award and validity of the reference both have to be challenged in the same manner. But the next question that arises, is, whether an unregistered award can be set aside or not. It was submitted by Mr. Ashri that the award was otherwise invalid, under Section 30(c) of the Arbitration Act. It is, however, not necessary for the present purpose to decide this question. It is sufficient to emphasise that an award affecting immovable property of the value of more than Rs. 100 cannot be looked into by the court for pronouncement upon the award on the application under Section 14 of the Arbitration Act unless the award is registered. Section 14 enjoins that when an award of an arbitrator has been filed, the court should give notice to the parties and thereupon the court shall pronounce judgment upon the award and make it a rule of the court. But in order to do so, the court must be competent to look into the award. Section 49 of the Act enjoins that the award cannot be received as evidence of any transaction affecting immovable property or conferring power to adopt, unless it is registered. In that view of the matter, no judgment upon the award could have been pronounced upon the unregistered award.

20. Mr. Ashri, however, relied on a decision of the learned Single Judge of the Calcutta High Court, in which one of us (Sabyasachi Mukharji, J.) had occasion to deal with the question whether an application for determination of the validity of an award could be entertained after the lapse of 30 days' time. It was held that an application challenging an award on the ground of non-registration must be by procedure under Section 30 of the Arbitration Act and the party not applying within the time under Section 30 was estopped from agitating the question subsequently. The relevant case-law was discussed and it was held that where an adjudication was necessary as to whether registration was required or not and it was emphasised that in the instant case also an adjudication was necessary because the High Court had held that registration was not necessary, while the appellant is contending and as we are inclined to agree that registration was necessary, in such a case, it must be done by means of an application within 30 days. It is true that where an application is made for determining the validity and effect of an award in such a case, as was the case in the application made to the Calcutta High Court for determination and admissibility of the award and for a declaration that the award was void, it is necessary that the application should be made within 30 days. But that problem does not arise here because here under Section 14 of the Arbitration Act, a judgment is sought in favour of the award. In order to pronounce that judgment, the award has to be looked into. The court cannot do it when the award affects the immovable property or purports to affect the immovable property of the value of more than Rs. 100 and it is not registered and as such it cannot be looked into. In that view of the matter, we are of the opinion that the High Court was in error in the order under appeal.

21. It may be appropriate in this connection to refer to the observations of Justice Vivian Bose, in the *Gangaprashad v. Mt. Banaspati* (AIR 1937 Nag 132). In that decision Justice Bose speaking for the Nagpur High Court observed at page 134 of the report, that it was argued before him that even though it was not possible for the plaintiff to challenge the fact that there was a reference to arbitration, and an award, and that there was no misconduct, etc., he could still question its validity on the ground that it had not been registered. But this question was barred by the rule of constructive *res judicata*. He referred to Mulla that if an application was made to the court to file an unregistered award which requires registration, then the court must reject it. It followed that this was one of the grounds which could be urged against the filing of an award. If it was not urged, and the award was filed, then that question was as such barred in a subsequent suit as the others.

22. In this case, however, this point that the award is not registered and as such it could not be filed, though not taken subsequently in argument before the trial Judge, it was urged before the first appellate court and it was held in favour of the present respondent. This is an appeal by special leave in subsequent decision from that decision where the filing of the award is being challenged on the ground that it is unregistered. Therefore, in our opinion, though it may not be possible to take the point that the award is bad because it is unregistered as such it could not be taken into consideration in a proceeding under Section 30 or 33 of the Arbitration Act, but can be taken in the proceedings under Section 14 of the Arbitration Act when the award is sought to be filed in the court and the court is called upon to pass a decree in accordance with the award. As the court, as mentioned hereinbefore, could not look into the award, there is no question of the court passing a decree in accordance with the award and that point can also be taken when the award is sought to be enforced as the rule of the court.

23. Mr. Ashri, however, contended that the award has been subsequently registered and unless the registration was set aside the award did not suffer from any defect. We have, however, to examine whether the High Court was right in accepting the award and in pronouncing the judgment in terms of the award. At the relevant time, the award was not registered. If that is the position, then the

subsequent registration of the award whether in conformity with Sections 23 and 25 of the Act or whether in breach or in violation of the same is not relevant. It is not necessary in the view that we have taken to go into the question whether the appellant was right in getting this document registered in the manner it has been done by making certain representation, which was not correct, to the Sub-Registrar.

24. Learned counsel for the respondent drew our attention to certain observations of this Court in *Raj Kumar Dey v. Tarapada Dey* ((1987) 4 SCC 398) where registration was permitted by the court after the lapse of four months as enjoined by Section 23 of the Act. But the facts and the circumstances and the grounds upon which registration was permitted, were entirely different from the present case.

25. In the premises, the observations made in the said decision are not relevant or germane for the present controversy.

26. In the aforesaid view of the matter, the decision of the High Court cannot be sustained. The appeal is, therefore, allowed. The judgment and/or order of the High Court are set aside. But in the facts and circumstances of the case, the parties will pay and bear their own costs.

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