

CALCUTTA HIGH COURT

Bhowanidas Ramgobind

Vs

Harsukhdas Balkishendas

(Mookerjee, C.J. Ranikn, J.)

24.04.1923

JUDGMENT

Mookerjee, C.J.

1. This is an appeal by the plaintiffs from the judgment of Mr. Justice Buckland in a suit to set aside an arbitration award made by the tribunal of the Bengal Chamber of Commerce.

2. The contract contained an arbitration clause in the following terms: "Any disputes to be settled by arbitration under the rules of the Bengal Chamber of Commerce, or at the option of the sellers by the arbitration of two European Sugar Importers of Calcutta, one to be appointed by the sellers and one by the buyers, with power to appoint a European Merchant as Umpire. The decision of the Chamber, Arbitrators or Umpire shall be final and binding on both parties, either of whom may make the same a rule or order of Court. If the buyers shall fail to join in such arbitration or to appoint an arbitrator within three days after being required to do so, the arbitration may at the option of the sellers, proceed ex parte, and the award thereon shall be binding on the buyers, and the sellers may make the same a rule or order of the Court."

3. On the 1st September 1920, the buyers made a reference to the Chamber. Thereupon correspondence followed. On the 4th October 1920, the Registrar of the Chamber intimated to the sellers that the reference had been received and requested them to send their papers on or before the 12th October, failing which arbitration would be proceeded with in their absence. On the same date the sellers stated that they wanted time for a fortnight after which they would be able to send their statement and papers. On the 12th October, the Registrar sent an intimation that unless the statement and the papers were received, on or before the 30th October, the arbitration would be proceeded with ex parte. It was also intimated that no further extension would be granted under any circumstances whatever. On the 13th October, time was extended till the 11th November 1920. There was later a further extension till the 10th December 1920. It does not appear that the sellers took any steps whatever to join in the reference and to assist the arbitrators. On the other hand, on the 13th December 1920, they intimated that they would not submit to the jurisdiction of the tribunal of arbitrators, as the tribunal could not possibly have any jurisdiction over the matter. The result was that the arbitrators proceeded ex parte, and on the 23rd December 1920, an award was made. The sellers thereupon instituted the present suit to have the award set aside, on the ground amongst others, that it had been made without jurisdiction. Mr. Justice

Buckland overruled this contention, investigated the other objections against the award, and dismissed the suit in view of the terms of Clause 17 of the contract. We agree with Mr. Justice Buckland that the sellers had the option to make a reference to the arbitration of two European Sugar Importers, of Calcutta, but they never exercised that right. Consequently, the objection to arbitration by the Bengal Chamber of Commerce is futile and the award must be regarded as made with jurisdiction. In these circumstances, the contention of the appellant has been limited to two grounds, namely, first, that the award should be set aside as proper notices were not given, and, secondly, that the arbitrators had no authority to allow interest after the date of the award.

4. As regards the first point it need not be disputed that arbitrators should give notice of their intention to proceed ex parte if one of the parties should not appear; *Crompton & Co., v. Mohan Lal¹ Sukhamal Bunsidhar v. Babulal Kedia & Co². and Udaichand Panna Lal v. Debibux Jivaram³* But it is plain that the complainant has not been prejudiced in any manner by the failure of the arbitrators to give such notice; as was stated in *Udaichand Panna Lal v. Debibux Jivaram⁴* the true test is, has the complainant who has taken exception to the validity of the award, been, in fact, prejudiced by the omission of the arbitrators to serve the special notice on him? If it is established that notwithstanding such warning, he would not have appeared before the arbitrators, he has really no grievance and cannot invite the Court to set aside the award on the ground of the alleged defect in procedure. In the present case, there can be no doubt that the appellants had no intention to appear before the arbitrators. Indeed, up to the 13th December, they had taken no steps whatever to appear before the arbitrators. They might, on that date, have formulated their objections to the jurisdiction of the arbitrators, and under protest, filed their statements. This course they did not adopt, and we agree with Mr. Justice Buckland that the appellants have not been prejudiced by the course taken by the arbitrators.

5. As regards the second point, reference has been made to the decision of Mr. Justice Greaves in the case of *Sowdutra Narsaria v. Tata Sons, Ltd.⁵* as an authority for the proposition that the arbitrators exceeded their authority when they allowed interest after the date of the award. If Mr. Justice Greaves intended to lay this down as an inflexible rule of law, we are not prepared to follow his ruling. On the other hand, we find that in *Uttamchand Saligram v. Mahmood Jawa Mamooji⁶* interest was allowed as has been done by the arbitrators in this case. The decision in *In re Morphett (1845) 2 D. & L. 967 : 69 R.R. 888 : 14 L.J.Q.B. 259 : 10 Jur. 546(SUPRA)* proceeded upon its special facts, and *In re Badger⁷* shows that the arbitrators have authority to make a decree for such damages as might have been assessed by the Court; see also *Edwards v. G.W. By. Co⁸. Sherry v. Oke⁹ and Beaham v. Wolfe¹⁰* In the case before us, there is no controversy that if the matter in dispute went to trial, the Court would in ordinary course have allowed interest as has been awarded by the arbitrators. The second point fails equally with the first.

6. The result is that the judgment of Mr. Justice Buckland is affirmed and this appeal dismissed with costs.

Cases Referred.

125 Ind. Cas. 391 : 41 C. 313

259 Ind. Cas. 75 : 42 A. 525 : 18 A.L.J. 652 : 2 U.P.L.R. (A) 243

360 Ind. Cas. 987 : 47 C. 951

460 Ind. Cas. 987 : 47 C. 951

577 Ind. Cas. 769 : 27 C.W.N. 494
654 Ind. Cas. 285 : 23 C.W.N. 704 : 46 C. 534
7(1819) 2 B. & Ald. 691 : 21 R.R. 455 : 106 E.R. 517
8(1851) 11 C.B. 588 : 21 L.J.C.P. 72 : 138 E.R. 603
9(1835) 3 D.P.C. 349 : 1 H. & W. 119
10(1832) 1 Al. & Na. 233