

BOMBAY HIGH COURT

Chimanlal Girdhar Ghanchi

Vs

Dahyabhai Nathubhai Ghanchi

(Broomfield and Wassoodew, JJ.)

11.03.1938

JUDGMENT

Broomfield, J.

1. This is an application to review a decree of this Court in Appeal No. 2 of 1935 from Order. It was an appeal from an order of the Joint First Class Subordinate Judge of Ahmedabad directing an award to be filed and made a decree of Court. Several points were argued in the appeal, the principal one being whether the arbitrator was given authority to deal with the properties moveable and immoveable which were the subject of the award. It was not brought to the notice of the Court however that the award has not been registered, and we can only suppose that the learned Counsel engaged in the appeal had not realised the significance of the fact. As the law now stands, an award comes under Section 17(1) (b) of the Indian Registration Act, and when it purports or operates to create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, it is compulsorily registrable. Awards were formerly excepted from the operation of Section 17 under Clause (2)(vi) of the section. But by an amending Act passed in 1929 awards were deleted from the excepting clause. It is provided in Section 49 of the Act that no document required by Section 17 to be registered shall (a) affect any immoveable 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.

2. The learned advocate who appears for the applicants, who were defendants Nos. 1 to 3 in the trial Court, contends that the immoveable property dealt with by the award was of greater value than Rs. 100, that the award therefore is compulsorily registrable, that as it has not been registered, the Court was not competent to file it and pass a decree upon it, and that therefore this Court should review its decree passed in appeal and set aside that decree on the ground that there is an error apparent on the face of the record.

3. It is an extraordinary thing that the point apparently did not occur to the learned Counsel engaged in the appeal, or indeed to pleaders or parties at any stage of the proceedings hitherto. If the attention of the Court had been drawn to the fact that the award was not registered, a great deal of the time of the Court and also much expense to the parties would have been saved. But now that the point has been brought forward, there is, as far as I can set, no answer to it.

4. The learned Counsel who has argued the case for the opponents has attempted to meet the application for review in various ways. He says that it is not alleged in the review petition that the fact that the award was not registered was not discovered till after the decision of the appeal. That, however, is not material because the ground for interfering in review is not the discovery of any new fact but the existence of an error which is apparent on the face of the record, the error being that the Court has been misled into making an order which is contrary to the statute.

5. Mr. Bhagwati is also not prepared to admit that the award in this case is in fact compulsorily registrable. He says there is no valuation of the property in the award itself, and though the suit was valued at Rs. 8,000, the property included moveables and it is not apparent that the immoveable properties dealt with by the award which were not separately valued exceeded in value the sum of Rs. 100. The award, however, dealt with several houses in the City of Ahmedabad. One of the provisions of the award was that Bai Mangu was made the owner of a house at Kalupur after the death of Bai Kashi. The award also provides that another house at Kalupur is to belong to Dayabhai and Amratlal. There cannot be the slightest doubt in my opinion that the greater part of the valuation of Rs. 8,000 is due to the immoveable properties dealt with by the award.

6. Then it has been urged that the defendants themselves prevented the award being registered. The date of the award is August 14, 1932. On December 8, 1932, defendant No. 1 filed a criminal complaint against the arbitrator for cheating. During these criminal proceedings the award was produced in Court as an exhibit on December 2, 1932. The period during which the document had to be registered according to Section 23 of the Indian Registration Act is four months. For some short portion of this period therefore the document was in the custody of the criminal Court. But there is no force in this contention. Obviously there was plenty of time to get the document registered before it was produced in Court. Even after it had been produced steps could in all probability have been taken to get it registered. But there can be no doubt that the real position is that nobody had any idea that it was necessary to get it registered. From the beginning to the end of the case the point appears to have been overlooked.

7. Then the learned Counsel based an argument on the provisions of paragraphs 20 and 21 of the second schedule of the Civil Procedure Code. He urges that the scope of these provisions is not to enforce an award but to pronounce on the validity of it. The Court, he says, has only to

consider whether the award has been made and whether there is any objection to its being filed arising under paragraphs 14 and 15. Section 49 of the Indian Registration Act according to him does not come into operation at all. One of the matters which the Court has to consider under paragraph 14 of the second schedule is whether an objection to the legality of the award is apparent on the face of it. Apart from that, however, I cannot see that there is any force in this contention either. The argument really comes to this that it is not the award itself but the decree passed by the Court which affects immovable property and that therefore the award even though it deals with immovable property of a value exceeding Rs. 100 does not require registration. I find myself unable to follow this somewhat subtle distinction. It appears to me that the decree of the Court does enforce the award and give effect to it, and obviously before the Court can take action according to the provisions of the second schedule, the award must be looked at as evidence and that itself is prohibited by Section 49. There seems to be no possible way of getting out of the difficulty. If the Court files an award which is compulsorily registrable and has not been registered and makes it a decree of Court, it is acting contrary to the provisions of Section 49 of the Indian Registration Act.

8. It was somewhat faintly suggested that the award deals also with moveable property, and so far as the moveables are concerned, it would not require registration. But it is quite clear in my opinion that the award is not separable. The various provisions are interdependent and as a whole it clearly required registration.

9. Lastly it was suggested that the applicants should not be allowed to take this point in review because they abandoned it in their appeal. One of the grounds taken in the memo, of appeal was that there was an illegality on the face of the award. That point, however, was quite a different one. It had nothing to do with the question of registration. Moreover the point was not abandoned but was argued and disposed of by the judgment of this Court.

10. That it is impossible for the Court to file this award and base a decree upon it seems to me to be manifest from the terms of Section 49 of the Indian Registration Act itself. If authority is needed, however, it may be found in *Bachchanlal v. Narottam Datt*¹ and *Jitendranath De v. Nagendranath De*²

11. We must, therefore, allow the application for review, set aside the decree of this Court in the appeal and dismiss the suit.

12. The greater part of this litigation would have been avoided if the defendants had raised this point in the trial Court. They may be held responsible, therefore, for much of the expense which has been incurred, and under the circumstances we propose to order that the parties should bear their own costs throughout.

Cases Referred.

1(1932) 30 A.L.J.R. 1090

2(1934) I.L.R. 62 Cal. 201