BOMBAY HIGH COURT

S.N. Srikantia

Vs.

Union of India

Award No. 33 of 1965

Tulzapurkar, J.

24.12.1965

JUDGMENT

Tulzapurkar, J.

1. This notice of motion raises a very interesting question- whether a Court has a power to grant interest on the principal sum adjudged by an award from the date of the award till payment and it arises in the following circumstances : By agreements dated 28th December 1956 and 27th June 1957 the construction work of the new Churchgate station building in Fort, Bombay was entrusted by the President of India acting for the Western Railway Administration to M/s. S. N. Srikantia and Co. (Plaintiffs) on terms and conditions contained therein and as per the specifications, plans and drawing annexed thereto, Pursuant to the said contract the plaintiffs firm carried out the said work, completed the same and the certificate of completion was issued but in connection with the plaintiffs' final bill disputes and differences arose between the parties and as provided for in the contract the same were referred to the joint arbitration of two arbitrators. However, since there was disagreement between the two arbitrators the matter was referred to umpire Shri A. C. Mukerji, who after hearing the parties and considering the evidence, made and published his award on 12th March 1965. By his award the Umpire adjudged that in addition to the amounts already paid to the plaintiffs, the defendants (Union of India and the General Manager, Western Railway) were liable to pay a sum of Rs. 1,17,212.73 to the plaintiffs in full settlement of all their claims and outstanding. By their Attorneys' notice dated 24th March 1965 the plaintiffs informed the defendants that they had accepted the award of the umpire and further called upon the defendants to pay the said sum of Rs. 1,17,212.73 within 4 days from the receipt of the notice and the plaintiffs also gave notice that if the payment was not made within 4 days from the receipt thereof interest on the principal sum adjudged by the award at the rate of 9 percent per annum till payment will be claimed. By his reply dated 1st April 1965 the 2nd defendant stated that the parties had agreed that the award should be filed in Court and that the plaintiffs should write to the umpire to expedite the filing of the award and as regards the claim

for interest it was stated that the same was untenable. The award was thereafter filed in Court by the arbitrator and notices about the filing of the award were issued by this Court on 15th June 1965 and the same were served on both the parties on 26th June 1965. Neither of the parties filed any petition for either setting aside or remitting the award within 30 days from the date of service of the notice. After obtaining the Prothonotary's certificate to that effect the plaintiffs have taken out the present notice of motion for a decree in terms of the award in their favour. While asking for a decree in terms of the award the plaintiffs have also prayed that the Court should award interest on the principal sum adjudged by the award viz. on Rupees 1,17,212.73 at the rate of 9 per cent per annum from the date of the award till the date of the decree and further interest on ; the said principal sum at the rate of 6 per cent per annum from the date of the decree till payment. The defendants have resisted the plaintiffs' prayer for interest from the date of the award till the passing of the decree on the ground that under Section 29 of the Arbitration Act the Court has power to award interest at such rate as it deems reasonable on the principal sum adjudged by the award from the date of decree onwards and no interest from the date of the award could be granted.

2. Mr. Nariman, appearing on behalf of the plaintiffs raised a three-fold contention. In the first place, he contended that Section 29 of the Arbitration Act, which dealt with the subject of interest on awards is merely an enabling provision, inasmuch as it confers power and discretion upon the Court to grant interest "from the date of the decree at such rate as the Court deems reasonable to be paid on the principal sum as adjudged by the award and confirmed by the decree" where and in so far as the award is for payment of money, but that does not mean that the Court has no power to award interest for the prior period, namely, from the date of the award onwards till the passing of the decree and the question whether the Court could award such interest in favour of a party would depend upon whether the party is entitled to claim such interest, either an the basis of an agreement or any provision of substantive law. He urged further that the plaintiffs in the present case would be entitled to claim such interest under provisions of Interest Act (Act XXXII of 1839). He pointed out that Section 1 of the said Act. under which the Court may allow interest to a creditor upon all debts or sums certain payable at certain time or otherwise at a rate not exceeding the current rate of interest, consists of two parts viz. (1) where such debts or sums are payable by virtue of some written instrument at a certain time, then from the time when such debts or sums certain were payable or (2) where such debts or sums are payable otherwise, than by written instrument, then from the time when demand of payment shall have been made in writing and in the present case the plaintiffs are entitled to claim interest under both the parts. He urged that the award was a written instrument where under a sum adjudged was payable by the defendants to the plaintiffs forthwith, inasmuch as no time limit was specified and the Umpire had merely directed that the defendants "do pay to the claimants" the said sum. He also urged that after the publication of the award the plaintiffs had given a written notice to the defendants on 24th March 1965 whereby the plaintiffs bad categorically stated that in default of payment of the amount within 4 days from the receipt of the notice interest at 9 percent per annum would be claimed on the sum awarded to them by the award. He, therefore contended that the plaintiffs'

case could come under either of the two parts of Section 1 of Interest Act and as such the Court should award interest to the plaintiffs on the principal sum adjudged by the award from the date of the award till the passing of the decree. Secondly. Mr. Nariman contended that the provisions of the Interest Act a substantive law under which a creditor was entitled to claim interest if the conditions of the said Act were fulfilled-has not been superseded or repealed by the Arbitration Act. In this behalf he invited my attention to Section 49 of the Arbitration Act and the Third and Fourth Schedules to the said Act before Section 49 itself was repealed by Act V of 1945, and pointed out that among the several enactments that were either wholly or partially repealed by Section 49, the Interest Act, 1839 had not been mentioned. In other words, he contended that the provisions of the Interest Act were neither repealed nor intended to be repealed when the Arbitration Act, 1940 was enacted and that therefore, the Court should award interest to the plaintiffs on this principal sum adjudged by the award from the date of the award till the passing of the decree under the provisions of the Interest Act, in asmuch as all the conditions of the said Act had been fulfilled and Section 29 of the Arbitration Act was no bar to awarding such interest. He sought to urge that in the absence of any express repeal of the Interest Act, Section 29 of the Arbitration Act could not be read as having impliedly repealed the provisions of the Interest Act. Lastly, he contended that if on proper construction of Section 1 of the Interest Act the Court came to the conclusion that interest under the said substantive provision of law was claimable only up to the time the plaintiffs commenced their action to recover the said debt, then the Court should at any rate award interest on the principal sum adjudged by the award to the Plaintiffs from the date of the award till the date when the Plaintiffs have taken out this notice of motion for a decree in terms of the award.

3. On the other hand, in support of his contention that interest on the principal sum adjudged by an award could not be granted from the date of the award till the passing of the decree under Section 29 of the Arbitration Act. Mr. Sorabjee on behalf of the defendants strongly relied upon the manner in which Section 29 came to be ultimately enacted by the Parliament. He specifically pointed out that the Bill as originally drafted contained a provision for interest on awards as from the date of the award, but when the Bill was referred to the Select Committee, the Select Committee suggested a deliberate change to the effect that interest should run from the date of the decree and this suggestion came ultimately to be incorporated in Section 29. In view of such deliberate change that was made while finally enacting Section 29, he urged that the Court could not award interest from the date of the award. Secondly, he contended that under Section 29 of the Arbitration Act, the Court was empowered to grant interest from the date of the decree onwards and since the Arbitration Act was both amending and consolidating Act and therefore, exhaustive, the Court would have no power to award interest for any period prior to the passing of the decree in terms of the award. As regards the provisions of Interest Act on which reliance was placed by the Plaintiffs, Mr. Sorabjee raised 2 or 3 contentions. In the first place, he contended that the Arbitration Act being a special Act must prevail over the general enactment like the Interest Act and therefore, in so far as granting of interest on awards was concerned the Court was bound to give effect to the previsions of the Arbitration Act and should not resort to

the provisions of the Interest Act and therefore, the plaintiffs could not claim interest under the Interest Act. Secondly, he contended that the provsions of the Interest Act were inapplicable inasmuch as this Court not having adjudicated upon the debt or sum payable in question was not "the Court before which such debts or sums may be recovered" within the meaning of Section 1 of that Act and in support of this contention he relied upon a decision of the Calcutta High Court reported in *Hogarth Shipping Co. Ltd. v. Mitsui Bussan Kaisha Ltd*[1]. Thirdly, he urged that since one of the parties to the dispute was the Union of India, the provisions of the Interest Act did not bind the Government and therefore, the plaintiffs were not entitled to claim interest under the said Act from the defendants. Lastly, he contended that since Section 1 of the Interest Act merely indicated the point of time from which interest could he awarded by a Court under the Act, but did not indicate the other point of time up to

[1] AIR 1926 Cal 1119

which such interest could be awarded the plaintiffs could not claim interest from the date of the award till the passing of the decree or till payment.

4. At the outset I may observe that though all the rival contentions that were urged by Counsel on either side have been set out by me in extenso above, I do not think that for the purpose ,of deciding the question raised in the present notice of motion, it is necessary to discuss and deal with each one of these contentions. For instance, on the questions as to whether the Interest Act binds the Crown or not and whether on a proper and true construction of Section 1 of the said Act interest could be awarded by the Court only for a period prior to the commencement of the action to recover the debt or upto the passing of the decree or even till payment. Rival views were strongly canvassed before me by the Counsel on either side and both Mr. Nariman and Mr. Sorabjee submitted arguments with great ability and each one tried to support his view by reference to a number of decided cases, but these ancillary questions arising under the Interest Act were argued by them obviously not knowing what view the Court would ultimately take regarding the proper construction or interpretation of Section 29 of the Arbitration Act. I shall, there fore, deal with only such of the contentions which concern the proper construction or interpretation of Section 29 of the Arbitration Act and which are necessary or sufficient for disposal of the main question raised in this notice of motion.

5. As I have said above, the principal question which has been raised in this notice of motion is as to whether the Court under Section 29 of the Arbitration Act, 1940 has power to grant interest on the principal sum adjudged by an award from the date of the award onwards till the passing of the decree in terms of the award and this question undoubtedly depends upon true and proper construction of Section 29, which occurs in Chapter V containing general provisions applicable to all kinds of awards runs as follows.

> "29. Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by

the decree".

6. It will appear clear that the above section is an enabling section, which confers power or discretion upon a Court to award interest at such rate as the Court may deem reasonable on the principal sum adjudged by an award and confirmed by the decree "from the date of the decree" onwards, where and in so far as the award is for payment of money. In other words, the section expressly makes a provision for awarding interest on awards from the date of decree onwards and it is absolutely silent as to whether interest could be awarded on the principal sum adjudged by the award for any period prior to the passing of the decree. Mr. Sorabjee not only relied upon the above position which emerges from the plain reading of the section, but went on to point out that admittedly the section was based upon a similar provision which is to be found in Section 11 of the English Arbitration Act of 1934, but that a deliberate departure from the English law has been made and that under this enactment such interest was made payable from the date of the decree onwards. He further pointed out that even in England the first English Arbitration Act of 1889 did not contain any provision for interest on awards, but that for the first time in the English Arbitration Act, 1934 Section 11 was incorporated, which made a provision for payment of interest on awards "as from the date of the award". After referring to the legislative history pertaining to the law of Arbitration in this country, he further pointed out that none of the earlier enactments, contained any provision for payment of interest on awards, but that for the first time a provision for interest on awards was made by enacting Section 29 in the Indian Arbitration Act, 1940. He referred me to the original Bill, being L. A. Bill No. 34 of 1939, in which Clause 30, which dealt with interest on awards had been drafted, on the lines similar to Section 11 of the English Act, that is to say, the said clause provided for interest on awards as from the date of the award : but when the bill was referred to the Select Committee, the Select Committee suggested a deliberate change and a departure from the English Law. He specifically relied upon the recommendation of the Select Committee on this aspect of the matter, which runs as follows :

> "Clause 29 (clause 30 in the Bill as introduced). Instead of fixing by the Act the rate of interest which an award shall bear and enacting that interest shall run from the date of the award, we have provided in accordance with the analogous provision in the Code of Civil Procedure that the Court may fix the rate of interest, but we have made the date from which the interest shall run from the date of the decree."

It appears that the recommendation of the Select Committee was ultimately accepted by the Parliament and Section 29 came to be enacted accordingly. Mr. Sorabjee relied upon the manner in which Section 29 came to be ultimately enacted by the Parliament as a result of acceptance of the recommendation of the Select Committee and contended that what the plaintiffs were seeking to do by their present prayer was to substitute the words "from the date of the award" for the words "from the date of the decree", which occur in the section and that the Court should not put such a construction on the Section. Mr. Nariman on the other hand contended that these facts pertaining to the history of the legislation and vicissitudes through which the bill passed before it

finally came to be enacted could not be looked at and were in admissible as aids to the construction of a statute. Mr. Sorabjee however, relied upon 2/3 decisions of the Supreme Court to show that legislative history of an enactment and the Statement of Objects and Reasons were the matters which could be legitimately taken into consideration by a Court and he has relied, upon a decision of this Court reported in *Pukhraj Champalal Jain v. D. R. Kohli*[2], where even the speech made in Parliament by the sponsor of a Bill was also referred to and taken into consideration by the Court. After going through the several cases relied upon by Mr. Sorabjee it appears to me clear that the use which a Court can make of the legislative history of an enactment, the statement of objects and reasons, which led to the passing of the enactment and even the speech made by a sponsor of a Bill is very limited and these matters cannot be brought in as aids to construction of the statute. In *Gujarat University v. Krishna Ranganath*[3], Mr Justice Saha has observed as follows :

> "Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a Statute, but in interpreting the Statute they must be ignored."

In the case of *State of West Bengal v. Union of India*[4], Chief Justice

[2](1959) 61 Bom LR 1230 [4] AIR 1963, SC 1241

[3] AIR 1963 SC 703

Sinha in para 13 of his judgment has observed as follows :

> "It is however well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owners of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a minister of the intention and objects of the Act cannot be used to cut down the generality of the words used in statute."

Strong reliance was placed by Mr. Sorabjee on the observations of Mr. Justice Kapur in the case of *S. C. Prashar v. Vasantsen Dwarkadas*[5]. The relevant observations appear in paragraph 38 of the judgment of Mr. Justice Kapur and they run as follows :

> "In construing an enactment and determining its true scope it is permissible to have regard to all such factors as can legitimately be taken into account to ascertain the intention of the legislature such as the history of the Act, the reason which led to its being passed, the

> mischief which had to be cured as well as the cure as also the other provisions of the statute." However, in the same case S. K. Das J. has observed as follows :
> "It is indeed true that the Statement of Objects and Reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used therein are clear enough. But the Statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at."

The decision of this Court reported in (1959) 61 Bom LR 1230 on which reliance was placed by Mr. Sorabjee in my view makes very clear the purpose for which even the speech made by a sponsor of a Bill could be taken into account. This Court after setting out the Supreme Court's observations in the case of *State of West Bengal v. Subodh Gopal*[6]. held that a speech made in Parliament by the sponsor of a Bill may be referred to by the Court for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce it and the extent and urgency of the evil which he sought to remedy, just as a statement of Objects and Reasons could be looked into for such limited purpose. In my view the aforesaid decisions clearly indicate the limited use which a Court can made of the legislative history of an enactment, the Statement of Objects and Reasons which led to the passing of it and even the speech made by a sponsor of the Bill and it is clear that these matters cannot be brought in as aids to construction of the substantive provisions of the statute. In this connection a reference

[5] AIR 1963 S C 1356
[6] AIR 1954, SC 92

to the Supreme Court decision in *Aswini Kumar Ghose v. Arabinda Bose*[7], would be very apposite. In that case a question specifically arose as to whether the fact that certain words or phrases were added to or were omitted from the original Bill could be looked at for the purpose of construing that statute and the Court held that fact was not admissible as an aid to construction of the statute. Chief Justice Patanjali Shastri has observed as follows :

> "As regards the propriety of the reference to the statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute.

The omission of part (a) of the proviso to clause (2) of the Bill seems to us to stand on no higher footing. It sought to exclude from the purview of the Bill the right of an Advocate of the Supreme Court to plead or to act in any High Court in the exercise of its original jurisdiction. Its omission was strongly relied on by the petitioner as indicating the intention of Parliament that the right of a Supreme Court Advocate to plead and to act should prevail also on the Original Side of a High Court. It was urged that acceptance or rejection of amendments to a Bill in the course of Parliamentary proceedings forms part of the pre-enactment history of a statute and as such might throw valuable light on the intention of the legislature when the language used in the statute admitted of more than one construction. We are unable to assent to this proposition. The reason why a particular amendment was proposed or accepted or rejected is often a matter of controversy, as it happened to be in this case, and without the speeches hearing upon the motion, it cannot be ascertained with any reasonable degree of certainty. and where the legislature happens to be bicameral, the second chamber may or may not have known of such reason when it dealt with the measure. We hold accordingly that all the three forms of extrinsic aid sought to be resorted to by the parties in this case must be excluded from consideration in ascertaining the true object and intention of the Legislature." In view of the position which emerges from the aforesaid decision it seems to me quite clear that for construing the provisions of Section 29 of the Arbitration Act, it will not be permissible to bring in aid the fact that the clause as it originally stood in the Bill which provided for interest on awards from the date of the award, had been specifically and deliberately altered as a result of the acceptance of the recommendation of the Select Committee and finally in the section itself interest on awards was provided for "from the date of the decree". This fact which in the words of Chief Justice Patanjali Shastri "forms part of the pre-enactment history of a statute" would be inadmissible as an aid to the construction of the said section

[7]1953 SCR 1

and will have to be excluded from consideration.

7. It was next contended by Mr. Sorabjee that Section 29 expressly confers power upon the Court to award interest on the principal sum adjudged by the award from the date of decree onwards and the section is silent and makes no provision for awarding of interest by the Court for any period prior to the date of the decree and since the Arbitration Act is a self-contained Code and therefore, exhaustive, the Court would have no power to award interest for any such prior period. He referred me to 3/4 decisions of various High Courts, including a decision of this Court reported in *Bai Narbadabai v. Natvarlal Chunilal*[8], where it has been held that the Arbitration Act of 1940 is exhaustive and since it is consolidating Act, the enactment not merely declares the law upon some particular subject, but declares in the form of a Code the whole of the law upon the particular subject. He, therefore, urged that by necessary implication it should be held that the Court has no power to award interest on awards for any period prior to the date of the passing of the decree. There is considerable force in this submission of Mr. Sorabjee, Mr. Nariman on the other hand contended that while enacting the Arbitration Act when the Parliament thought of repealing the provisions of any other law it did so by enacting Section 49 in the Act and the said

Section read with 3rd and 4th Schedules to the said Act (before Section 49 itself was repealed by Act V of 1949) clearly indicated what statutes were repealed either wholly or partially and the Interest Act of 1839 was not mentioned therein. He, therefore, urged that unless there was something in Section 29 itself which impliedly suggested that the provisions of a substantive law like the Interest Act were intended to be repealed the Court should not interpret Section 29 in that manner and according to him, there was nothing in Section 29, which even impliedly warranted the repeal of the provisions of the Interest Act. It is difficult to accept Mr. Nariman's contention, for in my view, if the Arbitration Act, being both an amending and consolidating Act was intended to be a self-contained Code and therefore exhaustive of the law on the subject or on some particular point (and there could be no dispute that the Act is a self-contained code and exhaustive) a corollary would fellow that it declares the whole of the law upon a particular subject or point and would carry with it a negative import that it shall not be permissible to do what is not mentioned in it and further that what is permissible thereunder will be done only in the manner indicated and no other. In this behalf, I may refer to the following passages in Craies on Statute Law At page 60 in relation to Codifying and Consolidating Acts, the learned author has observed as follows :

> "Codifying Acts are Acts passed to codify the existing law That is, not merely to declare the law upon some particular point, but to declare in the form of a code the whole of the law upon some particular subject .....

Consolidating Acts, Analogous to these are consolidated in one Act the provisions contained in a number of statutes.....They may be regarded as Acts codifying the statute law upon a subject."

8. In this context, it would be useful to refer to the 3/4.....decisions on which reliance has been placed by Mr. Sorabjee. In *Gauri Singh v. Ramlochan Singh*[8] the question which arose for determination was whether a suit instituted for filing an

[8]55 Bom LR 408
[9] AIR 1948 Pat 430

award made upon an oral submission to arbitration was maintainable or not and it was held that Section 14 (2) of the Arbitration Act could only be read as referring to awards based on written arbitration agreements and since in that case there was oral submission to arbitration an application under Section 14 (2) was not maintainable. Justice Meredith after considering the preamble and other provisions of the Act observed as follows:

> "I think I am justified in holding, in view of these provisions, that the Act was intended to be exhaustive of the law and procedure relating to arbitration, I cannot imagine that the words "arbitrations" and 'awards" could have been used in such specific provisions without more, specially having regard to the definition of award, if it was intended to leave it open to the parties to an award based upon an oral submission to proceed to enforce it or set it aside by proceedings by way of suit altogether outside the Act. Let us

take it then that the Act intended that there should be no such proceedings."

In paragraph 28 of his judgment the learned Judge has observed as follows:

> "The only provision for enforcement of an arbitration award made without the intervention of the Court is Section 14 (2), I am of opinion that this section can only be read as referring to awards based upon written arbitration agreements."

In Paragraph 33 he has observed as follows:

> "If then, as I have held, the Act is intended to be exhaustive and contains no provisions for the enforcement of an award based upon an oral submission, the only possible conclusion is that the Legislature intended that such an award should not he enforceable at all, and that no such suit should lie."

A similar view has been taken by the Madras High Court in *Belli Gowder v. Joghi Gowder*[10], where the head-note runs as follows:

> "Section 14(2) Arbitration Act, prescribes the procedure for filing an award in court and it is made a condition of the exercise of the Court's power under the Section that an "Arbitration agreement as defined in Section 2 (a) must exist, which means that there must be a written agreement. The Act is exhaustive of the law of arbitration and hence an award passed on oral submission can neither be filed and made a rule of Court under the Act, nor enforced apart from the Act."

Both these decisions clearly take the view that any parole submission is not permissible and is invalid after the passing of the Arbitration Act, 1940 and that is because the said Act is a self-contained Code and exhaustive. Incidentally, it may be mentioned that a parole submission was regarded as valid prior to the passing of the Arbitration Act, 1940 not because the earlier Arbitration Act, 1899 or the provisions of Section 89 or Schedule 2 of the Civil Procedure Code contained a provision to that effect, but because neither the Act nor the Civil Procedure Code was regarded as exhaustive. This will be clear from the observations of Justice Meredith in paragraph 20 of his judgment in the Patna case. The

[10] AIR 1951 Mad 683

important point to note in this context is that without there being any express provision contained in the present Arbitration Act, 1940 barring any parole submission, and even when the Act is silent on the point, it has been held by both the Patna and Madras High Courts that since the Act is exhaustive such parole submission is barred or invalid.

9. I may now refer to a decision of this Court in 55 Bom LR 408 . In this case a suit to enforce an award governed by the Arbitration Act, 1940 was held to be not maintainable under Section 32 of the Act, which bars suits for contesting an award. The relevant observations which appear at

pages 414 and 415 of the report (Bom LR) run as follows:

> "Whatever the law on the subject may have been prior to the Indian Arbitration Act, X of 1940, it is clear that when this Act was passed, it provided a self-contained law with regard to arbitration. The Act was both a consolidating and amending law. The main object of the Act was to expedite and simplify arbitration proceedings and to obtain finality; and in our opinion when we look at the various provisions of the Arbitration Act, it is clear that no suit can be maintained to enforce an award made by arbitrators and an award can be enforced only by the manner and according to the procedure laid down in the Arbitration Act itself."

I may mention that a contention was raised in that case that though Section 17 of the Act laid down the procedure by which a decree could be obtained on an award that Section gave a summary remedy to a party to an award for a judgment upon an award, but that such summary remedy did not bar a suit to enforce an award. This contention was negatived by this Court and it was held that for enforcing an award the procedure laid down in the Act itself could alone be availed of by a party to the award. It is no doubt true that Section 32 of the Act was referred to, which expressly barred suits "for a decision upon the existence, effect or validity of an award" and it was held that the expression "effect of the award" was wide enough, to cover a suit to enforce an award. At the same time this Court did take the view that since the Act was a self-contained) Code with regard to arbitration and was exhaustive, an award could be enforced only by the manner and according to the procedure laid down in Section 17 of the Act. In my view, these decisions and particularly the decisions of the Patna High Court and the Madras High Court clearly indicate the corollary which follows upon an Act being regarded as exhaustive viz., that it carries with it a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done. In my view, Section 29 of the Act also is exhaustive of the whole law upon the subject of "interest on awards" and since the said section enables the Court to award interest on the principal sum adjudged by an award from the date of the decree onwards, it must be held that it carries with it the negative import that it shall not be permissible to the Court to award interest on the principal sum adjudged by an award for any period prior to the date of the passing of the decree.

10. As regards the claim for interest made by the petitioners under the Interest Act, 1839 is concerned, in my view, there is a strong hurdle in the petitioner's way and that hurdle arises upon a true and proper interpretation of the words "the Court before which such debts or sums may be recovered" occurring in Section 1 of the said Act. Section 1 of the Interest Act runs as follows:

> "I, Power of Court to allow interest. - It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow- interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a

certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law."

11. Mr. Sorabjee contended that the words "the Court before which such debts or sums may be recovered" mean the Court before which such debts or claim could be and has been adjudicated upon and it is only such Court that is entitled to exercise the power conferred by Section 1 of the Interest Act. He pointed out that the petitioners' debt or claim in this case has been adjudicated upon by a domestic forum viz. an umpire and this Court not having adjudicated upon the same would not be the Court which could award interest to the petitioners under the Interest Act. In other words, he urged that since this Court had not adjudicated upon the petitioners' claim on merits, the provisions of the Interest Act are inapplicable to the present case and the petitioners cannot be awarded any interest under the said Act. In support of his contention, he relied upon a decision of the Calcutta High Court in AIR 1926 Calcutta 1119, where it was held that the words "the Court before which such debts or sums may be recovered" in Section 1 of the Interest Act meant the Court, which adjudicates on the actual debt or claim. In that case the appellant Hogarth Shipping Co., Ltd. sought to claim interest amounting to Rs. 1,680 upon the sum adjudged by an award on two grounds. In the first place, such interest was claimed on the basis that it was one of the terms on which the stay of execution of the award pending appeal had been granted; secondly such interest was claimed on the basis of the provisions of the Interest Act. The Court refused interest on either of the grounds and the reason for rejecting the claim for interest under the Interest Act was that the Court before which such claim was made was not "the Court before which such sum or debt may be recovered". The relevant observations of Justice Buckland, which appear at page 1120 run as follows:

"Then the claim is further based upon the Interest Act. That is a different proposition because such a claim, if sound, would entitle the applicant to interest on the award as and from the date of the award, but it does not appear that any such claim ever was made. Nevertheless as the point has been taken now as an alternative I must deal with it. It appears to me that as regards the award this Court is now in the position of an executing Court and is not a Court in which such sums or debts may be recovered, to employ the language of the section. Those words in my opinion refer to the Court which adjudicates as to actual debt or claim. There is no question but that the claim in other respects conforms to the terms of the section; but, for these reasons I do not think that it is open to this Court to grant interest at this stage to the applicant under the Interest Act." It will thus appear clear that though the demand for interest otherwise conformed to the terms of Section 1 of the Interest Act, Justice Buck-land took the view that the interest as claimed could not be awarded to the appellant because his was not the Court before which such sums or debts may be recovered. The learned Judge has interpreted those words to mean that they referred to the Court which adjudicates as to the actual debt or claim. In the

present case, the position in my view, is identical. The petitioners' actual debt was adjudicated upon not by this Court but by a domestic forum viz. the umpire and therefore, this Court not having adjudicated upon the actual debt payable by the respondents to the petitioners, it would not be possible for this Court to award interest to the petitioners under the Interest Act.

12. Mr. Nariman sought to distinguish the aforesaid ruling of the Calcutta High Court from the facts of the present case by pointing out that that was a decision under the old Arbitration law and not an award made under the Indian Arbitration Act, 1940. He pointed out that under the Arbitration Act of 1899, an award on being filed in a Court was forthwith enforceable as if it were a decree of the Court, while under the present Arbitration Act of 1940, after the award is filed in Court, a party is required to take steps for getting a judgment and decree in terms of the award from the Court. He invited my attention to Section 17 of the present Arbitration Act of 1940, which provides that the Court when it sees no cause to remit an award or set aside the award, is required "to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow". He, therefore, urged that the Court which was required to pronounce a judgment in terms of the award could be said to have something to do with the adjudication about the actual debt or claim. He, therefore, urged that the ruling of the Calcutta High Court relied upon by the respondents could not be availed of for the purpose of defeating the petitioners' claim for interest. In my view the distinction that is sough to be pointed out by Mr. Nariman is really no distinction at all from the point of view as to how words "the Court before which such debts or claims may be recovered" occurring in Section 1 of the Interest Act should be construed, I do not think that the mere fact that under the present Arbitration Act an intermediate step of pronouncing of a judgment in terms of the award is required to be taken as has been provided for by Section 17 of the Arbitration Act of 1940, makes any difference and this will appear clear if the provisions of Section 17 of the present Act and the provisions of Section 15 of the Arbitration Act of 1899 are carefully scrutinized and compared. Under Section 17 of the present Arbitration Act, it has been provided that where the Court sees no cause to remit the award or to set aside the award the Court shall, after the time for making an application to set aside has expired or such application having been made, after refusing it proceed to pronounce judgment according to the award and upon the judgment so pronounced, a decree shall follow. Section 15 of the Arbitration Act of 1899 ran as follows:

> "15 (1) An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitractors or umpire, or sets it aside) be enforceable as if it were a decree of the Court." It will thus appear clear that both under the old Act as well as the present Act, before an award becomes enforceable either as if it were an executable decree as per Section 15 of the old Act or after pronouncement of a judgment in accordance with it and a decree following upon it as per Section 17 of the present Act, the Court has to see whether the award is liable to be remitted for reconsideration or is liable to be set aside. The provision

entitling the Court to either remit the award or set aside the award before such award becomes enforceable is common to both the enactments and in that case since before an award becomes enforceable or executable the Court has to deal with the award for the purpose of determining whether it is liable to be set aside or remitted back for reconsideration, but that does not mean that the Court in either case, adjudicates upon the actual debt or claim. It is quite clear that when parties refer their disputes to domestic forum, it is the domestic forum which really adjudicates upon the actual debt or claim and the Court in which the award is filed and which in due course pronounces a judgment or a decree in accordance with the award, is not the Court, which adjudicates as to the actual debt or claim. If therefore, the words "the Court before which such debt or claims may be recovered" occurring in Section 1 of the Interest Act refer only to that Court which adjudicates upon the actual debt or claim, then it is obvious that this Court is not such a Court. The plaintiffs' claim for interest under the Interest Act is, in my view, unsustainable.

13. In view of the above discussion, it will be clear that the plaintiffs' prayer for interest on the sum adjudged by the award for any period prior to the passing of the decree in terms of the award, will have to be rejected. Under Section 29 of the Arbitration Act, the plaintiffs would be entitled to get interest on the sum adjudged by the award from the date of the decree onwards, that is to say, from this date onwards till payment. However, I am informed at the Bar that the amount awarded by the umpire under his award has been paid by the defendants to the plaintiffs as early as 25th September 1965. In view of such payment, I feel that the only order that I should make upon the notice of motion is that there will be a decree in plaintiffs' favor in terms of the award dated 12th March 1965. The prayer for any interest is rejected. Since the amount has been paid I direct that the satisfaction of the decree should he entered.

14. Each party to bear its own cost of the motion.
Motion partly allowed.