

PATNA HIGH COURT

Seonarain Lal

Vs

Prabhu Chand

A.F.O.O. No. 186 of 1952

(Sinha, Choudhary and Dayal, JJ.)

10.01.1958

JUDGMENT

Sinha, J.

1. This Full Bench has been constituted to consider the following questions of law:

1. Is an award on reference to arbitration without the intervention of a Court made subsequent to the coming into force of the Indian Arbitration Act, 1940, deciding questions of title to the immovable property worth one hundred rupees and upwards compulsorily registrable?
2. Can such award, if not registered, be enforced so as to enable the Court to pronounce judgment according to it under Section 17 of the Indian Arbitration Act, 1940? and
3. Can an objection to the award that, for want of registration or for any other reason, it could not be enforced filed after the expiry of the time for making an application to set it aside, be entertained, and if not, is the Court bound to pronounce judgment according to it under Section 17 of the Indian Arbitration Act, 1940?

2. I would like to indicate the brief facts which gave rise to this reference.

3. On 6th July, 1950, the plaintiff and the defendant agreed to refer their dispute to the arbitration of five named persons, who gave their award in favour of the plaintiff. The award was filed in Court on 15th May, 1951, and notice of the filing of the award was served on the defendant on 21st June, 1951. He objected to the award by filing a written statement on 7th September, 1951. The objection was on various grounds, one of which was that the award, not having been registered, could not be enforced, as it purported to affect title to immovable properties of value of more than one hundred rupees. The Court below overruled these objections, and pronounced judgment according to the award. The defendant, being aggrieved by the order of the Court below rejecting his objections, preferred this appeal to this Court. The matter was heard by Choudhary and Dayal JJ., and, in view of several decisions of this Court and of other Courts,

with which their Lordships did not agree, the matter was referred to the Hon'ble the Chief Justice for referring the questions mentioned above to a larger Bench, and this Full Bench has been constituted accordingly.

4. The Indian Arbitration Act, 1940 will hereafter be referred to as the Act.

5. So far as the first point is concerned, it has to be seen whether an award, without the intervention of the Court, made subsequent to the coming into force of the Indian Arbitration Act, 1940 deciding questions of title to immovable property worth one hundred rupees and upwards is compulsorily registrable. We have, therefore, to consider the provisions of Section 17 of the Registration Act, which falls under Part III "Of Registrable Documents", the relevant portions of which are contained in Section 17 (1) (b), which reads thus :

"Documents of which registration is compulsory

1. The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. 16 of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely,

(b) ether non-testamentary instruments which purport or operate 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 one hundred rupees and upwards, to or in immoveable property."

We have to find out whether an award in respect of immovable property worth one hundred rupees and upwards requires registration. In other words, whether such an award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest to or in immovable property. It has to be mentioned that the exception to the general rule provided in the section, namely, sub-section (2) of Section 17, does not now, after the amendment of the Registration Act of 1929, expressly refer to an award. The relevant exception, however, in sub-section (2) will read as follows :

(2) Nothing in Clauses (b) and (c) of sub-section (1) applies to (vi) any decree or order of a Court 'except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding'." The important words have been underlined (here into ' ') by me, and they were introduced by Section 10 of Act 21 of 1929 in place of the words "and any award". Before the amendment, the exception was in respect of any decree or order by a Court and any award. We have, therefore, to consider whether an award made without the intervention of the Court concerning immovable property worth one hundred rupees and upwards by its own force purports or operates to create, declare, assign, limit or extinguish any right, title or interest in such property; in other words, whether such awards in any manner affect immovable property. The matter has to be considered in the light of the provisions of the Arbitration Act (10 of 1940) which came into force on 1st of July, 1940. Chapter II, commencing with Section 3, relates to arbitration without the

intervention of a Court.

This Chapter, ends with Section 19. Although the reference to arbitration under this Chapter is without the intervention of a Court, it appears that the scheme of the Act is that, once a reference is made to arbitration, the control of the Court, without any party to the dispute inviting such a control, starts immediately, and Section 5 makes the authority of the appointed arbitrator or umpire irrevocable except by leave of the Court. "Court" is defined as "a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit. (Section 2 (c) So, although the reference is made without the intervention of the Court, the authority of the arbitrator or umpire to arbitrate becomes absolutely irrevocable, and, if any alteration has to be made, it can only be made with the leave of the Court. Section 8 defines the power of the Court to appoint arbitrator or umpire in cases covered by that section. Section 9 gives power to the Court to set aside any appointment as sole arbitrator made under Clause (b) of Section 9. Section 11 gives power to the Court to remove arbitrators or umpire in certain circumstances mentioned in that section. Section 12 speaks of power of the Court where the arbitrator is removed or his authority is revoked. These sections illustrate the fact that, though the reference to arbitration is without the intervention of the Court, the Court has power to intervene in matters referred to in the aforesaid sections; in other words, from the very start, the scheme of the Act is that the Court must have effective control over the arbitration proceedings. Before we come to the important sections, namely, 14, 15, 16 and 17, I should like to refer to Sections 18 and 19. Section 18 gives power to the Court, after filing of the award, to pass interim orders of the nature mentioned in that section. Section 19 gives power to the Court to supersede arbitration altogether when the award becomes void under sub-section (3) of Section 16, or when it has been set aside. We find, therefore, that, before and after the filing of the award, the Court is given control over the arbitration proceedings. Now, Section 14 directs that the arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court, cause the award or a signed copy of it to be filed in Court, and the Court, thereupon, shall give notice to the parties concerned (I am omitting the details of the provision). Section 14 (3) is as follows :

"Where the arbitrators or umpire state a special case under Clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion shall be added to, and shall form part of, the award." Section 15 gives power to the Court to modify or correct an award in suitable cases provided for in that section. Section 16 enacts that the Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit in cases mentioned therein.

6. Chapter III relates to arbitration with intervention of a Court where there is no suit pending, and consists of only one section, namely, Section 20.

7. Chapter IV deals with arbitration in suits, and consists of Sections 21 to 25.

8. Chapter V is general, and contains sections 26 to 38. Some of the sections mentioned in Chapter V have got to be considered as they give clue to the answer to be given to the question in hand. Section 26 says that, save as otherwise provided in this Act, the provisions of this Chapter

shall apply to all arbitrations, which will include arbitration without reference to the court. Section 28 gives power to the court to enlarge the time for making the award. Section 30 enumerates the grounds for setting aside an award. Section 31 relates to jurisdiction, and it reads as follows :

"1. Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

2. Notwithstanding anything contained in any other law for the time being in force and save as "otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

3. All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

4. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court." I have exhaustively reproduced this section, as, in my view, it limits the jurisdiction in respect of awards to one Court and one Court alone where all questions regarding the validity, effect or existence of an award or an arbitration agreement could be decided, and that Court is the Court defined in the Act by Section 2 (c). Section 32 emphasises the fact that no suit shall lie on any ground whatsoever for a decision

"upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act." Section 33 speaks of the means of contesting the arbitration agreement or award, and it reads as follows :

"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 questions on affidavits :

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit."

9. These sections, therefore, namely, Sections 31 and 32, give exclusive jurisdiction to the Court under the Arbitration Act to deal with the questions regarding the existence, effect or validity of an arbitration agreement or award, and it says that such arbitration agreement or award cannot be set aside, amended, modified or in any way affected otherwise than as provided in this Act, and this aspect of the matter is emphasised by Section 34, which contains provisions relating to stay of proceedings in other Courts in respect of matters referred to in any arbitration agreement, and,

in suitable cases, provided for in that section, the proceedings in the suit have to be stayed.

10. I have attempted to show that, once a matter has been referred to arbitration, it comes within the immediate control of the Court under the Act, and no other authority has any jurisdiction to deal with the matter. There is only one exception to this rule provided for in Section 35 of the Act, and it says

"No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but where 'legal proceedings' upon the whole of the subject-matter "of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending, reference shall, unless a stay of proceedings is granted under Section 34, be invalid."

I have underlined (here into ' ') the important expression. In other words, where the matter for which the reference has been made is the subject-matter of a decision of a Court between all the parties concerned and a notice thereof has been given to the arbitrators or umpire, then alone the reference or award shall be rendered invalid, otherwise not.

11. It is thus apparent from a review of the sections of the Act of 1940 that, once a reference has been made to arbitration, the Court under the Act has got exclusive jurisdiction in regard to the validity, effect or existence of the reference and the award, and the jurisdiction of all other Courts is ousted.

12. I came back to Section 17 again to show that, when the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration (S. 16) or to set aside the award (S. 30), the Court shall, after the time for making an application to set aside the award has expired (under Article 158 of the Limitation Act) or if such application has been made and refused, proceed to pronounce judgment according to the award, and, upon the judgment so pronounced, a decree shall follow. This shows in unmistakable terms that an award, though given without the intervention of the Court, has to be made a rule of the Court, and the Court will pronounce judgment on the basis of the award, and a decree shall follow, that is to say, the award by itself is of no effect. Effect to the award is given only when a judgment has been pronounced on its basis followed by a decree. In the second schedule to the Code of Civil Procedure there were also similar provisions for passing a judgment on the basis of the award and thereupon a decree was to follow, but what distinguishes the present provision from the earlier one in the Code of Civil Procedure is that the 1940 Act bars-jurisdiction of all Courts to pronounce upon the validity, effect or existence of an award or arbitration agreement except the Court under the Act itself. What I have said above, therefore, is sufficient to show that an award, as such, does not "purport or operate 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 one hundred rupees and upwards, to or in immoveable property (Section 17(1) (b) of the Registration Act) and, therefore, an award, even though it be in respect of immovable property worth one hundred rupees and upwards, does not require registration. Looked at from another point of view, namely, that an award is only effective when a decree follows the judgment upon the award, such an award may be covered by the exception mentioned in Section 17 (2) (vi) (any decree or order of

a Court) of the Registration Act.

13. In the light of the discussions mentioned above, the second question, in my opinion, must be answered in the affirmative.

14. A large number of authorities have been cited at the bar, in the view which I have taken, I do not think it necessary to consider all those authorities except only a few of them, and I do so presently.

15. I would first refer to the cases of this Court which have considered the present Act of 1940, as I do not consider it at all necessary or useful to refer to the decisions given on the previous state of the law. In *Dewaram v. Harinarain*¹, it was held that, under Section 32 of the Act, no Court can entertain any independent suit for a decision that a certain award existed or was valid, or to set aside, amend or modify or to affect the award in any way otherwise than as provided in the Act itself, but this, in the view of their Lordships did not mean that the provisions of Section 49 of the Registration Act had been abrogated, as it was further held that an award made without the intervention of a Court amounted to a non-testamentary instrument purporting to create, declare, assign, etc., any interest of the value of over one hundred rupees in immovable property. I have held that an award, without being made a rule of the Court, is of no effect by itself, and, in my view, no other interpretation of the law, as contained in that Act, is possible. In that view of the matter, Section 49 does not come in the picture at all. If the parties to an arbitration agreement desire that the award should have any legal effect, they must necessarily have to file the award in Court so that a judgment may be pronounced upon it and a decree should follow. With great respect to the learned Judges, who decided that case, I do not agree that an award, without the intervention of a Court, requires registration under Section 17 of the Registration Act, and, therefore, Section 49 of that Act has no application. The case reported as *Jagdish v. Sunder*², decided that a private award, without the intervention of a Court, fell within the mischief of Section 17 (1) (b) and (c) of the Registration Act and that the position as to registration of such an award was not affected by the Arbitration Act of 1940. His Lordship Reuben J. (as he then was), with whom Mukharji J. agreed, held that, on a comparison of the provisions of Schedule II of the Code of Civil Procedure with the relevant provisions of the Arbitration Act, it appeared that there was no substantial difference. With great respect, I do not agree with this view also. In the previous law, as contained in Schedule II of the Code of Civil Procedure, 1908, where an award was made on a reference to arbitration without the intervention of a Court, it was laid down in paragraph 20 that "any person

¹ ILR 26 Pat 437

² ILR 27 Pat 86

interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court", and, thereupon, under paragraph 21, after the parties were heard the Court was to proceed to pronounce judgment according to the award. Under the present Act, as already pointed out, no other Court except the Court under the provisions of the Act can pronounce upon the award and if no proceeding is taken under the Act, the award is a mere waste paper, and further, under the Act, the Court also can call upon arbitrators or umpire to file the award in Court. On a consideration of the different sections of the Act of 1940, as already indicated, I am of the opinion that the principle behind the present Act is that all awards made on reference to arbitration, whether with or without the intervention of the Court, have been brought on the same level so that any uncertainty about the awards made on reference to arbitration

without the intervention of the Court may not exist and that every award, to be effective and enforceable in law, must be made a rule of the Court under the Act. Their Lordships pointed out that the pow of the Court is rather more under the prese. law, with which I agree with respect, but I do not agree with their decision which says that private awards are subject to registration under Section 17 of the Registration Act. In *Ramchander v. Munshi*³, it was held as follows :

"In the present suit the question at issue clearly relates to existence and validity of the award made by the arbitrator. . . . The defendants maintained that even if the award was genuine the plaintiff was not entitled to enforce the award since it was illegal, invalid and inoperative. Upon these pleadings it is manifest that the suit raised the question as to the existence and validity of the award and such a suit is expressly prohibited by Section 32 of the Arbitration Act. The construction I have adopted is supported by three decisions : *Moolchand Jothajee v. Rashid Jamshed Sons and Co*⁴, *Deokinandan v. Basantlal*⁵, and *Ratanji Virpal and Co. v. Dhirajlal Manilal*⁶, In the last case it was held that under the Arbitration Act, 1940, till the award had been filed in Court it was not competent to a party to an arbitration to file a petition to set aside the award. Chagla J. states :

"Further, under the present Act no proceedings can be taken on the award till after it has been filed, and I fail to see how a party can possibly be prejudiced by the existence of an award which has not been filed in Court. Under the old Arbitration Act it was competent to a party who obtained an award without filing it to file a suit thereon. Further, the award became enforceable as a decree as soon as it was filed. But under the present Act all proceedings with regard to the arbitration agreement or the award have to be taken as provided by the Act and before the tribunal indicated by the Act. Section 32 specifically provides that no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified, or in any way affected otherwise than as provided in the said Act, and under Section 17 of the Act the Court has to pronounce judgment according to the award and a decree follows. It is only this decree that can be executed."

It is manifest that in view of the bar imposed by Section 32 of the Arbitration Act the

³ ILR 28 Pat 569

⁵45 Cal WN 881

⁴ AIR 1946 Mad 346

⁶ ILR 1942 Bom 452

Munsif had no jurisdiction to entertain the suit." I respectfully agree with the quotation from the judgment in ILR 1942 Bom 452, and with which their Lordships of this Court were in complete agreement. We then come to the case of *Sia Kishori Kuer v. Bhairvi Nandan Sinha*⁷, a judgment of Reuben, C.J. and Sarjoo Prosad J. I would like to make a reference to the observations which are, in my opinion, relevant for our present purpose; they are as follows : "The decisions to which I have referred illustrate the state of the law previous to the coming into force of the Arbitration Act, 1940. A valid award was an operative award by itself and there, were two ways in which it could be enforced. It might be made a rule of the Court by an application under the Civil Procedure Code or under the Arbitration Act, 1899, as the case might be, or the party might treat it as an independent source of title and enforce it by suit. In either case it was open to the opposite party to challenge the validity of the award. The remedy by suit was taken away by

Section 32 of the Arbitration Act, 1940..... The effect of this section was considered in ILR 28 Pat 569, in which Ramaswami J. relied on AIR 1946 Madras 346; . 45 Cal WN 881 and ILR 1942 Bom 452, for the proposition that a suit will not lie to enforce an award." The Hon'ble the Chief Justice criticised the reasons given by Manohar Lall, J. in ILR 26 Pat 437 (referred to above), and his Lordship in that connection said as follows:

"Manohar Lall J. also relied on the necessity for registration to pass title in the event of the parties accepting the award and acting on it without making it a rule of the Court. With respect, this reasoning appears to me to have no bearing on whether the award has an operative force without being made a rule of the Court. In ILR 27 Pat 86, in which the leading judgment was delivered by me, the learned Gounsel relied on the amendment, as between the 1940 Act and the second schedule of the Civil Procedure Code of 1908, in the procedure by which the award is made a rule of the Court. I rejected the contention as I considered that there was no substantial difference in the two sets of provisions. But my attention was not drawn in this connection to the effect of Section 32 of the 1940 Act." After considering the decision of this Court in I L R 28 Pat 569 , and the observations of Chagla J. (as he then was) in ILR 1942 Bom 452, it was observed as follows :

"In other words, the award only becomes operative when it is made a rule of the Court. In ILR 26 Pat 437 and ILR 27 Pat 86, the question at issue was whether a private award is exempt from the necessity for registration. If that question arises again it may be necessary to reconsider those decisions, but I do not regard them as authorities on the point now under consideration." These are the Patna cases cited before the Court in respect of the provisions of the new Act of 1940. I would now like to refer in this connection to the Bench decision of the Madras High Court reported as AIR 1946 Madras 346, and I would specially draw attention to the observation made at page 848 to the following effect:

"The Act of 1940 was intended to consolidate and amend the law of India relating to arbitration matters. The scheme of the Act is to prevent the parties to an arbitration agitating questions relating to the arbitration in any manner other than that provided by the Act. The suit which the appellants filed clearly raised the question with regard to the existence and validity of the award, and

⁷ ILR 31 Pat 856: (AIR .1953 Pat 42)

such a suit is expressly barred by Section 32..... This section (S. 30, Specific Relief Act) obviously cannot override Section 32, Indian Arbitration Act, 1940, which applies "notwithstanding any law for the time,' being in force". The governing section is Section 32, Arbitration Act."

I respectfully agree with the observation above quoted, and that also shows that no suit, other than the proceedings under the Act, is permissible under the law in respect of awards made on reference to arbitration, and I reiterate the view that if that be the purpose of the Act of 1940 that proceedings can be taken only under that Act in respect of awards in regard to their existence, the award by itself has no force in law and no suit outside the limits of this Act can be instituted in respect of such awards. An award to be effective, in other words, affecting property, immovable

or otherwise, below or beyond one hundred rupees in value, must be subjected to the provisions of this Act, and awards, as such, need no registration under the Registration Act.

16. It was argued by Mr. B. C. De, for the appellant, that, though a suit might be held to be barred except in accordance with the provisions of this Act, a defense is not barred, and, therefore, a person can refer to an award by way of defense, but Section 49 of the Registration Act will be a bar to the receiving of such an award in Court. The argument, in effect, was that, if a Court of law has to consider the award, even though it be by way of defense, it cannot be said that an award, without being made a rule of the Court under Section 17 of the Act, cannot be said to be of no effect and value. Section 49 of the Registration Act says that

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

* * *

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered." In my judgment, there is no substance in this contention as well. If the only way to challenge the validity or otherwise of an award is by filing the award in Court under the Act and taking a decision upon it in terms of the award, then the matter cannot be agitated even by way of defense in a proceeding other than a proceeding envisaged by the Act itself. In *Lachhuman Singh v. Makar Singh*⁸, the same view was taken, and it was held

"If the plaintiffs-respondents could not bring a suit to set aside an award, the appellant could not also plead the existence of an award by way of defense in a suit, when he had taken no steps under the Arbitration Act to file the award."

and the Madras decision in *Suryanarayana Reddv v. Venkata Reddi*⁹, to the effect that Section 32 of the Arbitration Act had no application to a defence, was not followed, and that case further observed :

⁸ ILR 32 Pat 604

⁹ ILR 1949 Mad 111

"If the Arbitration Act, 1940, applies, then the appellant will be precluded from putting forward an award which was never filed in Court by way of defence to the suit for partition. Speaking with great respect, I doubt the correctness of the Madras decision which has put a narrower view on Section 32 of the Arbitration Act, 1940."

17. Now, so far as the third question is concerned it should be mentioned that notice of the filing of the award was served on the defendant, who is the appellant before this Court, on 21st June, 1951, and he filed his objections to the award by filing a written statement on 7th September, 1951. The Court below considered the objections even on merits. Now, the question is, whether the objection, on any ground whatsoever, was entertainable by the Court below, in view of the provisions contained in Article 158 of the Limitation Act, which reads as follows :

"Description of application.	Period of Limitation	Time from which period begins to run.
Under the Arbitration Act, 1940 (10 of 1940) to set aside an award or to set an award remitted for reconsideration.	Thirty days	The date of service of the notice of filing of the award."

There does not appear to be any doubt that the objection to the award filed by the defendant on 7th September, 1951 was an objection to set aside the award, which was in favor of the plaintiff, and, if it was an objection to set aside the award, it cannot but be governed by Article 158 of the Limitation Act. In the present case, there is no dispute that notice of the filing of the award was served upon the defendant on 21st June, 1951, and, therefore, the defendant had thirty days from 21st June, 1951, within which he could file his objection. He did not do so, and, therefore, the objection was barred by time, and could not have been entertained by the Court below. Section 17, of the Act should now be read; it reads thus :

"Where the Court 'sees no cause' to remit the award or any of the matters referred to arbitration for reconsideration or 'to set aside the award', the Court shall, 'after the time for making an application to set aside the award 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 and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."

The important words in the section have been underlined (here in ' ') by me, and, in my opinion, it admits of no doubt that, if the application to set aside the award has not been filed within the time allowed by law, the Court shall proceed to pronounce judgment according to the award. I am for the time being omitting the other matters requiring the attention of the Court at the time when it is acting under Section 17. Now Article 158 of the Limitation Act has prescribed the time as thirty days from the date of the service of notice of filing of the award. If the application for setting aside the award is not made within that time, the Court, if there be no other ground available under Section 17 for not pronouncing the judgment according to the award, shall pronounce judgment according to the award. The language of the section, in my opinion, seems to be very clear and unambiguous. Some of the cases which have taken that view are *Surya Narain Jha v. Banwari Jha*¹⁰, *Devi Ditta v. Babu Ram*¹¹, *Y. L. Paul v. G. C. Joseph*¹², *Johuri Mull Jugal Kishore v. Kasi Prosad Jhajarhia*¹³,. and *Raghunath Rai Dilsuk Rai v. Bridhi Chan Sri Lal*¹⁴, But the case of *Deo Narain Singh v. Siabar Singh*¹⁵, by a learned Single Judge of this Court, has been relied upon to show that, even though no objection has been filed, the Court suo motu can set aside the award, if it finds that the award was not a valid award on the very face of it. That case has not in terms found that an objection made beyond the time fixed by Article 158 of the Limitation Act could be entertained. In the present case, we are only concerned with the question as to whether an objection filed more than thirty days after the service of the notice of

the filing of the award could be entertained by the Court or not. In my opinion, Section 1.7 of the Act is a complete answer to this question, and the answer must be in the negative. Such an objection cannot be entertained. If no objection for setting aside the award is made within the time prescribed by Article 158 of the Limitation Act, the Court is to pronounce judgment in accordance with the award, provided the award passes the test laid down under Section 16. It is interesting to note that Section 17 speaks of remitting of the award and of setting it aside. So far as remitting of the award is concerned, provision is made in Section 16 of the Act, and the grounds for remitting the award are mentioned therein. So far as setting aside of the award is concerned, the grounds for setting the award aside are given in Section 80. The award cannot be set aside except upon an application made to set it aside, and the application to set it aside can be made within thirty days from the date of the service of the notice of the filing of the award under Article 158 of the Limitation Act. The grounds given in Section 30 for setting aside the award are grounds which involve consideration of facts, and the Court cannot possibly go into those matters, except upon an application of the party aggrieved by the award, and, therefore, it is necessary that an application for setting aside the award must be made, and, if it has got to be made, it must be made within the time prescribed by law. It appears the attention of the learned Judge in the case in AIR 1952 Patna 461, was not drawn to the provisions of Section 16, relating to remitting of award, and to Section 30, for setting aside the award. In the one case, when the award is filed, the Court can suo motu, on the grounds mentioned in Section 16, remit the award; in the other, the award cannot be set aside unless the grounds mentioned in Section 30 are made out, and they can be made out only when the person interested in setting aside the award has made an application.

18. In the result, I would answer the first question in the negative, the second question in the affirmative, the first part of the third question also in the negative, and the second part of the third question in the affirmative. The case shall now go back to the Division Bench for disposal in the light of the answers given above to the questions raised.

¹⁰18 Cal WN 626

¹² AIR 1948 Mad 512

¹⁴ ILR 3 Pat 839.

¹¹ ILR 8 Lah 274

¹³ ILR (1942) 2 Cal 160

¹⁵ AIR 1952 Pat 461

Choudhary J.

19. I agree.

Dayal J.

20. I agree.

Reference answered accordingly.