

## **PUNJAB AND HARYANA HIGH COURT**

Firm Gulab Rai Girdhari Lal

Vs

Firm Bansi Lal Hansraj

(A.N. Bhandari, C.J. S Dulat, J.)

29.09.1958

### **JUDGMENT**

#### **A.N. Bhandari, C.J.**

1. This appeal raises the question whether an order by which a Court sets aside an award under the provisions of Arbitration Act, 1940, must be deemed to be an order superseding the arbitration.

2. The parties to this litigation are the firm Bansi Lal-Hans Raj petitioner and the firm Gulab Rai Girdhari Lal respondent.

3. According to the terms of an arbitration agreement all matters in controversy between the parties were to be referred to the arbitration of two arbitrators, one for the petitioners and the other for the respondents. The petitioners, however, appointed only one arbitrator, namely Pt. Karam Chand who was to act on their behalf as well as on behalf of the respondents. On 3-10-1950 this arbitrator filed an award in the Court of the Senior Sub-Judge at Jullundur and requested the Court to make the award the rule of the Court. Shri Gulal Chand Jain, Senior Sub-Judge, declined to accede to this request as he was of the opinion that the appointment of Pt. Karam Chand as the sole arbitrator was contrary to the provisions of the agreement of reference and consequently that the award made by him was not binding upon the parties. This was on 6-8-1951.

4. Two days later that is on 8-8-1951 the petitioner presented an application under Section 20 of the Arbitration Act 1940, in which he prayed for the issue of a notice to the respondents to show cause why the matters in controversy between the parties should not be referred to arbitration in accordance with the provisions of Clause 7 of the arbitration agreement This application came up for consideration before Shri Sham Lal, Senior Sub-Judge. The latter held that his predecessor had merely set aside the award and has not superseded the reference and consequently that it was within the power of the parties to present a second application under Section 20 of the Arbitration

Act. He accordingly made an order calling upon the parties to submit the names of the persons whom they wanted to appoint as arbitrators. The respondents are dissatisfied with this order and have come to this Court in appeal.

5. Section 19 of the Arbitration Act is in the following terms, "19. Where an award has become void under Sub-section (3) of Section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred." This section provides that when an award has become void or has been set aside the Court may supersede the reference. The expression "may" is usually only permissive or discretionary and not mandatory or prohibitory. It is a word of permission rather than of command and it seems to me that it has been used in that sense in Section 19. To construe it in any other manner would in my opinion defeat the very object of the Legislature which doubtless was to confer full discretion on the Court to say in each particular case whether the reference should or should not be superseded. I am thus inclined to concur in the view taken in *Abdul Hakim Khan v. Chairman Lahore Improvement Trust*, AIR 1950 Lah 32, that when a Court making an order under Section 19 does not expressly supersede the reference and direct that the arbitration agreement shall cease to have effect, it must be deemed to have declined to exercise the power. A contrary view has been taken in certain other cases, but it must be remembered that those cases relate to the interpretation of paragraph 15(2) of the Second Schedule to the Code of Civil Procedure which declared that where an award becomes void or is set aside, the Court shall make an order superseding the arbitration.

6. When the Senior Sub-Judge declared on 6-8-1951 that the appointment of Karam Chand as sole arbitrator was against the provisions of the agreement of reference and that the award made by him was not binding on the parties, he merely set side the award and did not supersede the reference. In the absence of a specific order superseding the reference, it seems to me that it was within the competence of his successor to direct that the matters in controversy between the parties should be referred to arbitration in accordance with this terms of the agreement.

7. For these reasons I would uphold the order of the learned Senior Sub-Judge dated 27-2-1953 and dismiss the appeal. The parties will be left to bear their own costs.

**S.S. Dulat, J.**

8. I agree.