PEPSU HIGH COURT

Lal Chand

Vs

Dev Raj

Civil Revn. No. 197 of 2005

(Kartar Singh, J.)

19.02.1949

JUDGMENT

Kartar Singh, J.

1. The facts of this matter briefly are that the petitioner B. Lal Chand and the Respondent B. Dev Raj, two real brothers, sons of L. Daulat Ram Khatri of Patiala on 25-9-2003 referred all their disputes regarding their property to arbitrators by agreement Ex D. W. 1. The agreement which is a short one reads as follows :

> "Hamare chand tanazat ke faislle nahin huay hain. Un failson ke live ham dono Rai Bahadur Seth Multani Mal Sahib aur Ved Jagdiah Chand hardon ko faisla ke liey muqarir karta hain. Jo faisla hardo sahiban denge ham ko manzoor wa qabool hoga. Us se manuharaf nahin hongen. Batarikh 25 Poh, 2003."

The arbitrators actually seized of the reference and called upon the parties to state their disputes which were embodied in two other documents Exs. D. W. 2 and D. W. 3, which are alleged to have been dictated by the petitioner as well as the Respondent respectively and the arbitrators alter hearing both sides within a few hours gave their award which is exhibited on the record as Ex. P. A.

2. The petnr B. Lal Chand filed an appln. under Section 17, Patiala Arbitration Act, wherein he prayed that a decree be passed on the basis of the said award of the arbitrators. Notice of this appln. was given to the deft, who raised various objections in regard to the validity of the award and the following six issues were framed by the trial Court which according to him covered the essential points of controversy between the parties :

> 1. Did the award require compulsory registration and is not, therefore, admissible in

evidence ? O. D.

2. Is not the award admissible in evidence because it is not properly tamped ? O. D.

3. Were the terms of reference vague, the award is not therefore, binding on the defendant ? O. D

4. Have the arbitrators decided also the matters which were not referred to them and what is its effect ? O. D.

5. Have the arbitrators misconducted in giving the award and what is its effect ? O. D.

6. Does the award exceed the powers of the arbitrators? O. D.

3. The first two issues were decided in the first instance and the finding given on these issues has not been disputed. On the remaining four issues, S. Raghbir Singh. Sub-Judge 2nd lass Patiala in a detailed order came to the conclusion that the reference made by the parties to arbitration was vague inasmuch as the disputes were not specified in the original agreement and the subsequent elucidation of the disputes embodied in Exs D. W. 2 and D. W. 3 did not form part of the original agreement having not been signed by the parties and as such the award on the basis of this reference wag not binding on the deft. Some of the property situated at Ludhiana and Chuhar Kalan was not mentioned in Exs. D. W. 2 and D. W. 3 and as such was deemed to have been adjudicated upon without reference; and in this respect also the learned Sub. Judge was of the opinion that the arbitrators bad decided some such matters which were not exactly referred to them and consequently held that the property situated at Ludhiana and village Chuhar Kalan was not the subject-matter of arbitration and the same was expunged from Ex P-A and the award was modified to that extent. In regard to the general objection regarding the misconduct of the arbitrators in not permitting the deft, to adduce evidence as well as in importing their personal knowledge the learned Sub Judge also allowed the objection with the result that the award was set aside on all counts and the appln. of the pltf. B. Lal Chand under Section 17, Patiala Arbitration Act, for enforcing the award was dismissed with costs. On appeal in the Diet Ct. the learned Dist J. also concurred with the findings of the trial Ct. and held that in fact there was no legal agreement and consequently the award was invalid.

4. In this Ct. the resp's. counsel took preliminary objection in regard to the maintainability of he revn. In support of it the contention of the learned counsel mainly was that Arbitration Act of 1940 provides only a restricted right of appeal and as such no right of revn. has been given to any party by express provision of the Act and consequently the decision of the learned Judge was not open to revn. Reliance was placed on *Badruadm Khan v. Bhagloo Koeri*[1], *On the other hand the learned counsel for the petitioner drew my attention to *Mahomad Nazir v. Abdul Rashid*[2], *Rajaram v. Gopi Nath*[3], as well as 7 Patiala 737. In the latest authority of *Tirath Singh v. Isher Singh*[4], relied upon by the resp's. counsel, however, the matter was considered in all its aspects and it was held that in view of Sections 39 and 41 of the Arbitration Act the H. C. possesses power of entertaining petns. for revn. under Section 115, Civil Procedure Code To the same effect dictum was laid down in *Abdul Aziz v. Punjab Govt. Lahora*[5], as well as *Charan Das v. Gursaran Das*[6]. and both these authorities have been relied upon in *Tirath Singh v. Isher Singh*[7],

In view of the ample authority, I have no hesitation in holding that the order of the learned Dist. J. in this case was subject to revn by this Ct. under Section 115, Civil Procedure Code and I see no necessity of discussing other authorities cited at the bar by both sides. It appears that Mr. Daya Sarup only looked at Clause (b) of *Tirath Singh v. Isher Singh*[8] which related to the misconduct of the arbitrators but Clause (a) which relates to the competency of the revn is there and the authority thus goes against him and should not detain me to discuss the other authorities relied upon by the Respondent This disposes of the preliminary objection which is accordingly repelled.

*The reference seems to be wrong-Ed.

5. The next question for consideration is as to whether the objection raised by the deft, resp are such which seriously damage the award and amount to misconduct of the arbitrators. Now it is difficult to give any exact definition of what, amounts to misconduct on the part of arbitrators The expression appears to be of wide import because if on the one hand it does not necessarily bring or include misconduct of a fraudulent or improper character, it does include action on the part of arbitrator which is on the face opposed to rational and reasonable principles that should govern the procedure. Similarly although it does not necessarily imply corruption or moral terpitude on the part of any arbitrator yet a mishandling of arbitration as is likely to amount to some substantial displacement of the ordinary rules of justice does amount to misconduct, Misconduct would, there fore, be a question of fact in each case and has to be ascertained from the facts of the entire proceedings which unhappily in this case are very short and hence present some difficulty. In view of this definition these objections be considered at seriatim according to the issues framed in the case.

6. The first and the foremost objection is to the vagueness of the agreement and both the Cts. below found that the wording of the reference was rob only ambiguous but indefinite and no property having been mentioned therein it was not a valid reference for the purpose of arbitration. The learned Judges however, did not attach any importance to Exs D. W. 2 and D. W. 3 as to whether they constituted the counter part of reference, Ex. D. W. 1. In this respect the main argument which prevailed with the lower Cts. was that Exs D. W. 2 and D. W. 3 were not signed by the parties and it was only in the course of arbitration proceedings that the same were prepared by the arbitrators themselves, The question arises as to whether the agreement should consist of one document only or more than one. In *Shankar Lal v. Jainey Bros*[9]*.,* it was held that the terms of the agreement may be narrated from a series of documents and this view was also shared in *Kotumal Pakardas v. Adam Haji Pir Mahomed*[10]*,* wherein it was held that it was not necessary to constitute an arbitration agreement that its terms should be contained in one document. Such an agreement may be found in correspondence of a number of letters Mr. Hari Kishan the learned counsel for the petitioner also relied upon *Rami Naidu v. Seetham Naidu*[11]*,* wherein the question was considered under Section 29, Contract Act, and it was held that where partes to a suit agreed to refer the matter and certain disputes to arbitrators and the disputes

though not specifically mentioned in the agreement were capable of being made certain having regard to the conduct of the parties, it was held that the agreement was enforceable and Section 93 Evidence Act, was no bar to produce extrinsic evidence to show what those disputes were. Now the position in this case admittedly is that the disputes were referred to arbitration by Ex. D. W. 1 wherein it was only stated that there were certain disputes between the parties and all were referred to the arbitrators and that their award would be acceptable to them but when the parties appeared before the arbitrators they were called upon to state their case and their disputes and they disclosed the same which were embodied in Exs. D. W. 2 and D. W. 3. This clearly indicates that Exs. D. W. 2 and D. W. 3 were prepared in continuation of the original reference and the same constituted a counter-part of the original reference and the parties could not back out of them. To my mind a written contract does not mean a contract staged at the outset but one in which the terms are also expressed in writing in the act of making it. This aspect of the question was considered at length in *Shankar Lal v. Jainey Bros*[12]*.,* wherein the meaning of the written agreement was explained in the following manner:

> "The terms of a written agreement may be collected from a series of documents and a written agreement does not mean that each party has to sign a document containing the terms. The plain acceptance of a document containing all the terms is sufficient. All that is required by Section 4 (b) is that both parties accept a written document as containing the agreed terms; it might be in the form of a signed document by one party containing the terms and a plain acceptance either signed or orally accepted by the other party, or, in the third case, an unsigned document containing the terms of the submission to arbitration agreed to orally by both the parties."

The question was also cons dared in *Kotumal Pakardas v. Adam Haji Pir Mohd*[13]*.,* and the words of the definition of 'submission' which is equivalent to agreement were explained and it was held that it is not necessary to constitute a submission that the terms of the agreement should all be contained in one document. Such an agreement may be found in correspondence consisting of a number of letters and the requirements of Section 4, Arbitration Act, can be satisfied when certain written undertaking was given at the outset for the purpose of arbitration. This explains the whole position beyond any manner of doubt and needs no elaboration. I am further of the opinion that this view is based on legal common sense and no restriction has been placed by the legislature on the manner and the number of documents which should constitute the original agreement. The only other thing to be considered is as to whether the parties gave out the details of the dispute or they were gathered by the arbitrators themselves from some extraneous source. This is not denied by both the parties who came into the witness box that it were they who gave the details of the disputes embodied in Exs. D. W. 2 and D. W. 3. Both the arbitrators who were examined as witnesses also unequivocally stated that these documents were prepared at the instance of B. Lal Chand and Mr Dev Raj. For all these reasons, it seems clear to me that the reference was a complete one in consideration of Ex. D. W. 1 read with D. W. 2 and D. W. 3 and could not be dubbed as vague one as not to form the basis of the arbitration by the parties.

7. With regard to the second objection that the arbitrators imported personal knowledge and moreover did not allow sufficient time to the deft, to adduce evidence for which he had made an oral request, it has been strenuously contended that the arbitrators gave their award in all haste and did not give the parties even a breaching time to adduce their evidence and that this amounted to a judicial misconduct. Reference was made to the statement of Mr. Dev Raj wherein he has stated that the arbitrators did not give him any opportunity all hough he made a request for the inspection of the Tawela and furthermore that he wanted to produce evidence to the effect that he had only realised Rs. 1500 from Tungal Ram and not Rs. 3000 as alleged by the other side. The witness has furthermore stated that he wanted to get the original registered deed in the custody of one Jodh Singh produced before the arbitrators in order to show that the debt due to him from Gajja Mal was his personal property and it was not to be shared with the Respondent but he was not afforded any opportunity and consequently he failed to produce the evidence which was necessary for coming to a right conclusion. It was urged that the failure on the part of the arbitrators not to allow any time to L. Dev Baj amounted to judicial misconduct and the award was rightly set aside on the score of this objection. The other objection regarding the use of personal knowledge is connected with this objection and can conveniently be considered at the same time. In this respect the main contention of the Respondent was that the arbitrators did not record any evidence and based their award sheer on their personal knowledge which was against the common procedure under the Evidence Act. In support of this contention the learned counsel for the Respondent relied upon *Lachhmi Narain v. Sheo Nath*[14], and *Palavesam Chettiar v. Narayana Aiyar*[15], In the first case *Lachhmi v. Sheo Nath*[16] it was held that in the absence of any agreement that an arbitrator should decide a dispute upon one's own knowledge of the facts and without taking any evidence if an arbitrator does so decide a dispute, his act is fatal to the award on the ground of misconduct. Similarly in the other authority *Palavesam Chettiar v. Narayana Aiyar*[17], the question arose whether an arbitrator could import his personal knowledge into the consideration of a case before him and it was held that it would depend upon the terms of the submission to arbitration. If the submission simply asks him to decide a case, that would not give him a right to import his own personal knowledge into the consideration of the case; but where the submission gives him an option either to take evidence or to decide the case upon his own personal knowledge, he is entitled to import into the consideration of the case his own personal knowledge. The ratio decidendi of these two authorities obviously is that the arbitration can import their personal knowledge into consideration of the case provided the terms of the agreement to arbitration permit.

8. On the other hand, the learned counsel for the applt. while controverting this argument referred to *Ramamija Chanar v. V. S. Thathachariar*[18], In this Madras case their Lordships observed that it cannot be said that as a matter of law an award can be invalid merely because the arbitrator is personally acquainted with some of the facts upon which a decision is required. When an arbitrator is apparently chosen for his personal knowledge of the question in issue it would be ridiculous to hold that the mere fact of his possessing such personal knowledge and examining the evidence in the light of that personal knowledge would amount to misconduct. The

observation continued to say that; when the arbitrator is chosen from the family circle he must necessarily make the enquiry in the light of his personal knowledge of the family and so long as he bases his enquiry on the material placed before him read in the light of his knowledge of the family he cannot be held guilty of misconduct. *Chiiambaram Chettiar v. Ayyappa Chettiar*[19], was also relied upon in this respect. Authorities on this question are not wanting one way or the other but the principle enunciated to my mind, is that when an arbitrator in arriving at the decision was influenced by secret enquiry of the case made by him after recording the evidence and by the opinion of third persons about the merits of the case, his conduct would amount to judicial mis conduct vide *Ramahandar v. Hansram*[20], But this principle of law would not include the case where an arbitrator is selected because of his personal knowledge or where the parties who are sui juris agree to a reference that the arbitrator shall decide the dispute on his own knowledge or without evidence it does not amount to misconduct. The line between the two is no doubt very slender but the question can also be considered in the light of the evidence brought on this record. Both the arbitrators Bai Bahadur Seth Multani Mal and Dr. Jagdish Chander were examined and both of them have stated that they were being posted into the dispute of the parties long before the reference and in fact they were well aware of their dispute and it was on the score of their personal knowledge that they were approached by the parties to arbitrate over their dispute. The actual words used by both the witnesses read as follows: One of the arbitrators Rai Bahadur Seth Multani Mal stated:

> "Friqain ne zahir kiya tbba ke salsan tamam friqain ke tanazat ghar ke bat ka zati ilam hai. Is liey unka faisla salsan munasib honga. Dononne eh bhi zahir kiya thha ke salsan ka faisla dono koo qabool was manzoor hoga. Choounkeh mene charon bhaion ka jhagra chukaya thba."

The other arbitrator Dr. Jaglish Chander also stated in the same strain and the relevant portion may be quoted as under:

> "Hamna, upne zati malutnat ka faida utttakar faisla ke bana rakhi tbhi. Ghunkeh bam unke tanazat ke achchi tareh jande san. Do teen sal hamko Jhagra sunate rehte thhe. Eh khangi muamlat ka tasfia chhahte thhe."

Now whatever the legal aspect of the question may be, it shall have to be considered in the light of these statements as to whether the reference was made to the arbitrators on account of the fact that they were in possession of the family affairs of both sides and could be the best Judges on account of their personal knowledge or that they made any secret enquiries from third party imported that knowledge into their decision. What appears to a prudent man on consideration of all the facia and circumstances is that the main reason, as stated by Dr. Jagdish Chander one of the arbitrators, was that the parties were approaching them since long and wanted to avail the benefit of their personal knowledge with regard to their personal disputes and there is nothing on the record to show that the arbitrators in any way made any secret

enquiry from third persona which might have influenced them. It was rather their first hand knowledge based on acquaintance of the family affairs of the disputants before them and the shirt reference that whatever they do would be acceptable to them, that brought about the award. For all these reasons I am of the opinion that the objection regarding the use of personal knowledge was not a sound one in the particular facts of this case.

9. The other objection, however, stands on quite a different footing. This is with regard to the second part of the objection namely that the Respondent was not given sufficient opportunity to adduce evidence for which he made an oral request. In this respect the statement of B. Dev Raj is very much explicit which has been quoted above, and in contradiction to that, reference can only be made to the statement of one of the arbitrators Dr. Jagdish Chander who stated that the parties did not adduce any evidence regarding their disputes nor did the arbitrators inspect any document in possession of the parties. Whatever statement they made originally were considered and the award was given in consideration of those statements as well as heir personal knowledge. It would be better to give the actual words of the statement in order to appreciate the discussion and this reads as follows:

> "Friqain na upne tanazit ke mutaliq koe saboot nahin diva. Hame friqain ke uzrat parh kar faisla kar diva. Ham ne koe dastawez dhiran ke nahin dekhi. Te dhiran ke bianat parhe jo ke tehrir to zabani san Ham ne koe saboot ka Mouqa nahin dia thha. Itna keh dia the ke Lala Dev Raj ko jo kuchh lakhwana hai is waqat lakhwa do. Jab dono ne bianat lakhwai salsan ne koe zaroorat Is bat ki nahin samjhee keh unko saboot ke mohlat deni chahiay. Nahin una ne saboot pesh karne ya dastawaz pesh karne ke liya kaha."

This part of the statement is quite clear and needs no comment. Mr. Hari Kishan, however laid emphasis on the last line and argued that in point of fact no one after the statements were made asked for any opportunity to adduce evidence The last line apparently is qualified by the preceding line namely that the arbitrator did not think it necessary to give any opportunity for the proof. It appears in between the lines that the arbitrators wanted to dispose of the matter soon after and consequently proceedings were closed. Mr Dev Raj in his statement, which is quoted above, has specifically referred to certain matters which he wanted to bring into the notice of the arbitrators by producing the actual document of the basis of which some money was realized by him from Tangul Ram and with regard to the debt outstanding against Gajja Mal Accordingly I am satisfied that the Respondent wanted to adduce more evidence beyond the oral statement made by them but the proceedings were dosed within a short period by the arbitrators themselves

10. Similarly on the last objection regarding the excels made in the award with regard to the certain property which was not mentioned in Exs, D. W. 2 and D. w 3 I do not feel satisfied that this property which was not mentioned in the reference could be expunged and the award could be easily modified as has been done by the trial Ct. and was subsequently endorsed by the learned Dist. J. also, Mr. Hari Kishan in this respect contended that the property which did not

form the subject of reference has already been expunged by the trial Ct. and the same does not affect the award and consequently this objection is set at rest between the parties. On the other hand Mr. Daya Sarup argued that although the decision on this issue was not taken exception to because the award was set aside and it was not necessary for Dev Raj to come in this Ct. on any one finding when the ultimate result was given in his favour; yet the award was invalid in toto on account of the decision regarding certain property which did not form the subject-matter of the agreement. In consideration of all the circumstances I am of the opinion that the objection regarding the refusal of the arbitrators to give any opportunity for further evidence affected the legality of the award and furthermore the matter not referred to arbitration cannot easily be separated without effecting the determination of the matters referred to, as contemplated by Section 16, Arbitration Act. All disputes pending between the parties were referred to as per Ex. D. w. 1 and they were specified by virtue of Exs. D. W. 2 and D. W. 3 and if certain matters have been adjudicated upon which were not mentioned in Exs. D. w. 2 and D. w. 3, it would be rather sitting on judgment on matters not referred to. It is, therefore, in the fitness of things and not only desirable but necessary that the award should be remitted to the arbitrators on these two objections namely the one relating to the property not referred to arbitration and secondly with regard to the objection to the legality of the award or the score of allowing no opportunity to the deft, for adducing more evidence. This would enable both sides to get their disputes resolved before the arbitrators who are chosen by themselves after a good deal of effort on their part. The result is that in the peculiar circumstances of this case the appln. for enforcing the award can neither wholly succeed nor the objection in their entirety prevail and in the light of the observations given above the award must go back for further consideration and fresh decision. The revn. petn. is accordingly accepted to this extent that the award is remitted to the arbitrators under Section 16, Arbitration Act, for submitting a fresh award in continuation of the previous one after giving opportunity to the parties for producing their evidence in the light of the observations made above. The arbitrators are directed to submit the fresh award in the Ct. of Sub-Judge 2nd Class. Patiala within one month from today which period can be enlarged by the Sub-Judge, if so desired by the arbitrators. The record will be sent to the rial Ct for necessary action according to law. No order as to costs. Parties are directed to appear before the arbitrators on 18-1-2005.

11. In view of the intricate question of law I would also certify the case to be a fit one to be taken up to the Judicial Committee if any one of the parties feels aggrieved with the decision on the question of remitting the award to the arbitrators and desires to move the Judicial Committee, in the light of sub-clause (a) of Section 39, Arbitration Act, whereby a special right to appeal to P. C. is granted to the parties in cases of arbitration.

Order accordingly.

Cases Referred.

[1] A.I.R. (21) 1934 Pat. 555 : (153 I. C. 759), A. I. R. (19) 1932 Bom. 233, A.I.R. (23) 1936 Lah. 588, as well as on A.I.R. (25) 1938 Lah. 50
[2] A.I.R. (18) 1931 Lah. 318: (133 I. C. 879)
[3] A. I. R. (18) 1931 ALL. 721 : (133 I. C. 416)
[4] A. I. R. (35) 1948 Lah. 50 (49 P. L. R. 129)
[5] A. I. R. (29) 1942 Lah 186 : (I.L.R. (1943) Lah. 677)
[6] a.I.R. (32) 1945 ALL. 146: (I.L.R. 1945 aLL 162)
[7] A.I.R. (35) 1948 Lah. 50 : (49 P. L. R. 129)
[8] A.I.B (35) 1948 Lah 60; (49 P. L. R. 129)
[9] A.I.R (18) 1931 ALL. 136 (2); (53 ALL. 384)
[10] AIR (26) 1939 Sind 357 : (I.L.R. (1939) Kar 769)
[11] A.I.R. (22) 1935 Mad. 276: (154 I. C 821)
[12] A.I.R. (18) 1931 ALL. 136 (2) : (53 ALL. 384)
[13] A.I.R. (26) 1939 Sind 357 : (I.L.R. (1939) Kar 769)
[14]54 I. C. 443 : (a. I. r. (6) 1919 all 98)
[15]88 I. C. 660 : (a. I. r. (12) 1926 Mad. 1086)
[16](64 I. C. 443 : a. I. r. (6) 1919 all. 98)
[17]88 I. C. 660 : (a. I. r. (12) 1925 Mad. 1086)
[18] a. I. r. (30) 1943 Mad. 172 : (I. l. R. (1943) Mad. 443)
[19] A. I. R. (22) 1935 Mad. 152 : (155 I. C. 1059)
[20] A. I. R. (18) 1931 Lah. 111 : (131 I. C. 220)