
Ramtaran Das Vs Adhar Chandra Das and Others

A.F.O.O. (F.M.A.) No. 6 of 1951

Court: Calcutta High Court

Date of Decision: March 11, 1953

Acts Referred:

Arbitration Act, 1940 " Section 14, 14(1), 14(2), 16, 30

Citation: AIR 1953 Cal 646 : (1955) 1 ILR (Cal) 187

Hon'ble Judges: Debabrata Mookerjee, J; Das, J

Bench: Division Bench

Advocate: Syamacharan Mitter, Rishikesh Chatterji, Bibhuti Bhusa Majumdar, for the Appellant; Sarat Chandra Jana and Bhutnath Chatterji, for the Respondent

Final Decision: Dismissed

Judgement

Das J.

1. This is an appeal by Ram Taran Das and is directed against an order of Mr. B.P. Bakshi, learned Subordinate Judge, 1st Court, Hooghly, dated

5-10-1950.

2. The appeal arises out of certain proceedings in arbitration which arose out of a dispute between the descendants of one Ram Jiban Das. The

relationship of the parties is set forth in the following genealogical table.

RAM JIBAN DAS

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Nibaran Chandra Adhar Chandra Banku Bihari Gagan Chandra

| Opposite party | (predeceased)

| No. 7 | = Jogmaya

Gostho | Opposite Party

Opposite Party | No. 5

No. 6 |

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Purna Chandra Ram Tarao Nalini Kanta

= Renu Bala = Binapani

Opposite Party Opposite Party

No. 2 No. 1

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Amar Nath Probhat Kumar

Opposite Party Opposite Party

No. 3 No. 4

3. In consequence of disputes between the descendants of Ran Jiban Das there was an agreement to refer such disputes to the arbitration of five

persons as arbitrators. The agreement is dated 25-7-1945. The arbitrators chosen by the parties were Rama Prosad Choudhury, Rai Saheb

Haradhona Chandra, Khitendra Nath Rai Choudhury, Jitendra Nath Palit and Kanti Charan Pal. The arbitrators met together on several occasions

and ultimately an award was made on 12-10-1948. The award was signed by four out of the five arbitrators; Kanti Charan Pal did not sign the

award. On 18-10-1948, an application was made by Ram Taran Das under the provisions of Section 14, Arbitration Act, 1940, for calling upon

the arbitrators to file the award. In pursuance of a direction by the Court one of the arbitrators Jitendra Nath Palit filed the award on 28-3-1949.

On 7-4-1949, objections to the filing of the award were made by Gostha, opposite party No. 6 and Adhir, opposite party No. 7. Thereafter on

15-4-1950, the Court directed a notice of the filing of the award to be served on opposite parties Nos. 1 to 5. No notice of the filing of the award

was directed to be served on opposite parties Nos. 6 and 7 or on the petitioner Ram Taran Das. After a contested hearing, the learned

Subordinate Judge by his order dated 5-10-1950, rejected the application filed by Ram Taran Das and refused to pass a decree in terms of the

award. Being aggrieved by this order Ram Taran Das has appealed to this Court.

4. Mr. Mitter, learned Advocate appearing in support of the appeal, has pressed several grounds challenging the finding of the learned Subordinate

Judge on the various points referred to in his judgment.

5. Before I deal with these grounds it is necessary to state that the learned Subordinate Judge by his order has dealt with what seemed to him

various defects in the filing of the award and in the proceedings before the arbitrators. The judgment, however, does not deal with the facts bearing

on some of these points. We have, therefore, perused the record with the assistance of the learned Advocates appearing on behalf of the parties.

6. The first ground which was raised by Mr. Mitter relates to the finding of the learned Subordinate Judge that the award was not filed according to

law. The learned Subordinate Judge was of the opinion that the award was filed by a party. This view is entirely erroneous and is opposed to an

entry in the Order Sheet which clearly shows that Jitendra Nath Palit, one of the arbitrators, filed the award.

7. The next ground on which the learned Subordinate Judge found against the petitioner was that notice of the filing of the award was neither issued

nor served on the petitioner and opposite parties Nos. 6 and 7.

8. u/s 14(2), Arbitration Act, a duty is cast on the Court to give notice of the filing of the award once the award is filed in Court. In the present

case, the facts which I have recited above show that such a notice was issued only on opposite parties Nos. 1 to 5 presumably because the

petitioner Ram Taran Das had himself filed a petition in Court for a direction on the arbitrators to file their award, and opposite parties Nos. 6 and

7 had already appeared in Court and filed their objections. There is, therefore, no substance in the ground made by the learned Subordinate Judge

that the award was not filed according to law because the notice of the filing of the award was not directed to be served on the petitioner and

opposite parties Nos. 6 and 7.

9. The learned Subordinate Judge was also of the opinion that the award was not filed according to law because certain account books were not

filed in Court along with the award. The relevant provision is Section 14(2), Arbitration Act, 1940. The section requires that the arbitrators shall

cause to be filed the award or a signed copy of it together with "any depositions and documents which may have been taken and proved before

them." This section corresponds to para 10 of Schedule II, Civil P. C., 1908. In order to dispose of this ground it is necessary to state certain

facts. It appears from the Order Sheet that on 1-9-1949, a petition was filed by opposite parties Nos. 6 and 7 for a direction on the petitioner to

produce certain khatas (account books) alleged to be in the letter's possession. This petition was disposed of by the Court by Order No. 58

dated 3-9-1949. The learned Subordinate Judge rejected the application on the ground that he saw no reason why the account books should be

produced by the petitioner.

The evidence bearing on this point may now be summarised. One of the arbitrators Rama Prosad Choudhury was examined. In his deposition the

witness stated that no account books were filed before the arbitrators. Further examined, the witness added that the account books were shown to

the arbitrators taut were left with the parties. The witness further stated that no statement of accounts was prepared. Nalini Kanta Das, witness

No. 1 for the opposite parties, stated that khatas for ten years were shown to the arbitrators. They were not signed by the arbitrators but remained

with the opposite parties. It appears from the above facts that these account books were not marked as exhibits in the case and were not received

in evidence by the arbitrators. They were merely looked into by the arbitrators for certain purposes. No objection on the above ground was taken

in the petition of objections filed by the opposite parties Nos. 6 and 7.

The question is whether the non-filing of the khatas (account books) along with the award was a defect which rendered its filing as not being in

accordance with law. Section 14(2) requires the arbitrators to file documents which have been proved before them. " These accounts were never

marked as exhibits or received in evidence. In the case of --"Maharaja Sir Joy Mungal Singh v. Mohan Ram Marwaree" 12 W.R. 397 Norman J.

observed that all books and exhibits together with the proceedings which have been removed from the "nathi" (records) should have been returned

to the Court. That case turned on the corresponding provision of Section 320, Civil P. C., 1859. The facts of that case are entirely dissimilar. In

that case the reference was made through the intervention of the Court. Certain papers and documents had been made over to the arbitrators along

with the Reference made to them. These papers were a part of the proceedings and in spite of the objections filed by a party to the reference, they

were returned to one of the parties to the reference. In those circumstances, the Court was of the opinion that this was an illegality vitiating the

proceedings. In the present case, for reasons I have already given, the mere non-filing of these khatas which were not received into evidence is not

sufficient to vitiate the proceedings and render the filing of the award otherwise than in accordance with law. There is, therefore, no force in the

ground made by the learned Subordinate Judge against the petitioner. The learned Subordinate Judge was, therefore, not right in his view that the

award was not filed in accordance with law.

10. The learned Subordinate Judge was also of the view that as notice of the signing of the award was given by some of the arbitrators the

proceedings were defective. Section 14(1) requires that the arbitrators shall make and sign the award and give notice of the making of the award

to the parties to the reference. Our attention was drawn to a decision of this Court in the case of -- 43 CWN 924 . That case turned on a

construction of para 10, Schedule II Civil P. C., 1908, which was in terms similar to Section 14. In that case, however, no notice whatsoever was

given of the signing of the award. It was held by a Bench of this Court that this rendered the proceedings invalid for the reason that unless notice is

given to the parties of the filing of the award, the parties would have no opportunity of filing objections, within the time prescribed by Act. Our

attention was also drawn to the case of -- Bai Laxmibai Vs. Shridhar Manik Patel, (C). That case, however, was one where the notice of the

award was given by an Attorney acting on behalf of all the parties. The present case is not covered by the two decisions referred to above.

The question, therefore, is whether the fact that notice of the making and the signing of the award was given by some of the arbitrators rendered

the proceedings invalid. The object of such a notice, in my opinion, is to apprise the parties to the arbitration agreement, if the fact of the making of

the award so as to enable them to prefer objections before the Court in proper time. A mere omission on the part of some of the arbitrators to sign

the notice required by the section is a mere irregularity and does not, in my opinion, vitiate the proceedings. There is, therefore, no substance in the

ground that the proceedings should be regarded as invalid merely because the notice of the making of the award and the signing thereof was given

by some of the arbitrators and not by all of them.

11. The next ground which was made by the learned Subordinate Judge related to the valuation of the properties in dispute and of the making of

the allotments by the arbitrators.

12. This question has to be answered under two heads : first, as regards the homestead properties and as regards the agricultural lands. I shall first

take up the homestead properties. In dealing with this matter, I shall consider first the valuation of these properties and secondly the allotment

thereof. The proceedings before the arbitrator were marked as Ex. 7. The record of the arbitrators of 13-5-1946, shows that there was a

discussion as to value of each one of the houses which were the subject-matter of arbitration. The meeting was adjourned to 21-5-1946, on which

date, as the Order Sheet of the Arbitration Case shows, arguments were heard and discussions made by the parties in the presence of the

arbitrators. Rama Prosad Choudhury, one of the arbitrators, who was examined in the case, deposed to say that in view of the experience of Rai

Saheb Haradhone Chunder the question of valuing the properties was left to him, He also said that the arbitrators made enquiries from the parties

and added that the parties did not want to adduce evidence. The proceedings before the arbitrators on 21-5-1946, and 29-5-1946, show that the

suggestions of the parties as regards the allotment of the houses were considered and reasons are given as to why the different houses were being

allotted to the different co-sharers.

13. The above review of the proceedings and of the evidence shows that no evidence was taken by the arbitrators as regards the actual value of

the different items of properties. A mere discussion between the arbitrators and the parties cannot be regarded as a substitute for arriving at a

proper valuation of the premises. The suit was one for partition and a fair partition obviously implied a fair estimate of the different items of

properties and a fair allotment implied that each one of the co-sharers got an allotment proportionate to his share. It is true that the arbitrators can

come to a rough and ready conclusion and that they are not required to proceed formally as in a Court of Law. At the same time, a decision on the

question of valuation of the premises has to be reached by all the arbitrators acting jointly and they could not delegate this duty to one of them,

even if the latter has special knowledge about valuation. The proceedings do not indicate that Rai Saheb Haradhane Chunder who was, on Rama

Prosad's evidence, entrusted with the duty of valuing the homestead properties, stated to the other arbitrators or discussed with them the question

of valuation. Mr. Jana appearing on behalf of the respondents referred us to a decision in the case of -- Daulatsing Bapusing Raul Vs. Ratna

Anandsing, (D). That case lays down that there is no objection to parties having the assistance of an arbitrator who has special knowledge of a

particular fact but even so the parties should be given the opportunity of considering the estimate made by such an arbitrator and of giving evidence

in rebuttal of such an estimate if they are so advised. I shall refer to this matter again after I have referred to the evidence as regards valuation of the

agricultural lands.

The arbitration agreement, Ex. 1, provides for the appointment of an Amin for the purpose of survey (vide para Gha). The proceedings before the

arbitrators show that on 29-4-1946, the arbitrators decided that a list of the lands, classification thereof, would be made by an Amin with the

assistance of Jitendra Nath Palit, one of the arbitrators. The proceedings also show that the Amin and Jitendra were entrusted with the task of

appraising the income of the lands. Rama Prosad Choudhury in his evidence stated that the Amin gave a list. He further deposed that it was the

Amin who prepared the "tokens" of the landed properties. This clearly indicates that the work of valuing the agricultural lands and making allotments

was done by the Surveyor and not by the arbitrators. The evidence, referred to above, shows on the contrary that the "tokens" of the allotments

were made by the Surveyor, and that the allotment of the lands was made by toss. The question, therefore is whether the proceedings for valuing

the disputed premises and allotting the same were such as rendered the award invalid.

In the case of -- AIR 1925 227 (Oudh) (2) (E), Pullan A.J.C. was of the opinion that the allotment by lottery was not invalid in the case of

arbitration proceedings. The facts of that case were that there was a difference of opinion between the arbitrators and the matter was referred to

an Umpire. The Umpire finding it difficult to come to a decision had a toss up and in accordance with the result of the toss, made the allotments. It

is not necessary for me to test the correctness or otherwise of the decision. I may, however, refer to the following observations of Norman J. in

the case of -- 12 WR 397 (A) 400 the learned Judge observed that "the making of an award is a judicial act that must be done by the arbitrators in

the presence of one another and at the same time"". If the making of an award is a judicial act the arbitrators must exercise their judgment in valuing

the properties in dispute and in making proper allotments. The arbitrators cannot delegate their right to one of them or to strangers unless the

parties to the reference consent thereto. When people go to arbitration, they bind themselves to abide by a decision of the arbitrators of their own

choice. They do not bargain for a decision of their disputes by a stranger in whom] they may have no confidence. In the case of --"Punjab

Province v. Dr. Lakhmi Dass" AIR 1944 Lah 149 it was pointed out that the "principle that no person should be bound by a proceeding had in his

absence and to his prejudice, applies to arbitration proceedings. It does not appear from the Order Sheet of the arbitrators that the parties were

present at any time when the Amin made the valuation or when the allotments were made & cast up. It is also well settled that a delegation by the

arbitrators to a stranger is entirely invalid (see the case of --AIR 1944 Lah 149 . On this ground I am of opinion that the arbitrators" proceedings

were not properly conducted and the award made by the arbitrators cannot be sustained.

14. The learned Subordinate Judge was further of the opinion that the award was ineffective as it was not signed by all the arbitrators. Section 14

no doubt requires that the arbitrators after they have made the award shall sign the same. In the present case, the arbitration agreement provided

for a decision of the disputes by a majority of them. The proceedings show that a draft award was made and this draft award was signed by all of

them. Mr. Jana contended that there is nothing to show that this draft award was signed by all the arbitrators. This, however, is not correct. Rama

Prosad Choudhury, one of the arbitrators, deposed that all the arbitrators signed the draft award and he proved the draft award in Court. There is

no rebutting evidence to show that Kanti Charan Pal did not sign the draft award. It has not been disputed that the final award follows the draft

award. The facts, therefore, indicate that the final award embodies a decision by the arbitrators as a whole. The question, therefore, is whether the

mere fact that one of the arbitrators Kanti Charan Pal did not sign the final award rendered the award invalid. The question has been considered in

a number of cases and has been answered in the negative. In the case of --" Abinash Chandra v. Parasuram, 44 CWN 866 which was a case

under para 10 of Schedule II Civil P. C., 1908, Henderson J. was of the opinion that once the making of the award is discussed by all the

arbitrators acting together and the majority comes to a certain conclusion and an award is drawn up, the mere fact that the dissenting minority does

not sign the award does not render the award invalid. The learned Judge pointed out that this rule is based on common-sense. I respectfully agree

with the above view. If a contrary view is taken, the minority would be able to frustrate a decision reached by the majority of the arbitrators which,

according to the arbitration agreement, was binding on all of them. The same view was taken in the cases of -- Raghbir Pandey and Another Vs.

Kaulesar Pandey and Others, (H) and -- Johara Bibi and Others Vs. Mohammad Sadak Thambi Marakayar and Others, (I). The view taken by

the learned Subordinate Judge on this point cannot be sustained.

15. It was also held by the learned Subordinate Judge that the award was ineffective as it did not divide the moveables and left some of the

Immovable properties joint. As regards the last matter, this was done with the consent of the parties. As regards the partition of the moveables, the

position is this: The arbitrators agreed that the moveables would be divided by Kanti Charan Pal. The latter, however, refused to act. The

moveables were accordingly left joint. A division of the moveables is not inextricably bound with the division of the immovables. If there was any

objection on this score, that could have been cured by a remission of the matter to the arbitrators u/s 16, Arbitration Act. This view is supported

by the decision in the case of -- Ram Bahadur Jha Vs. Sree Kant Jha and Others, (J).

16. The award directed Binapani, wife of Nalini Kanta, to execute a conveyance. The learned Subordinate Judge was of the opinion that as

Binapani was not a party, this part of the award was ineffective. It appears, however, that on the finding of the arbitrators this property was held by

Binapani benami for the joint family. The decision of the arbitrators required Binapani to make a conveyance in favour of all the parties to the

reference. The mere fact that Binapani is not a party to the reference does not vitiate the award. The decision on this point benefited all the parties.

What other steps may have to be taken to get a conveyance is a matter with which we are not concerned.

17. The learned Subordinate Judge was also of the opinion that Jogmaya was given an allotment although she had no share, her husband having

predeceased his father. There is no substance in this finding. The arbitration agreement expressly provided that Jogmaya would be given a share

and this agreement has been given effect to by the arbitrators in their award.

18. The learned Subordinate Judge was also of the opinion that the allotment was unfair because an item of property popularly called ""Goalbari

was allotted to Adhar, opposite party No. 7. We have been referred to the evidence bearing on this point. It appears from the deposition of

Gostho, opposite party No. 6, that Gostho's father used to live in this ""bari"" and on his death Adhar was in occupation. It was a tin-roofed

structure and the arbitrators have given cogent reasons why this property was allotted to Adhar. After all, this is a matter entirely in the discretion

of the arbitrators. It is not the function of the Court to disturb the finding of the arbitrators if it has been reached bona fide. There is no substance in

this ground also.

19. In the result, the decision of the learned Subordinate Judge is sustained on the ground that the award is defective in the matter of valuation of

the disputed premises and in the matter of allotment of the same.

20. The next question is as to the form of the order which has to be made. The learned Subordinate Judge was of the opinion that the arbitration

proceedings were not maintainable and that the award was not valid and legal, and as such no decree can be passed on such an award. I may refer

to the material provisions of the Arbitration Act on this point.

After an award has been filed and objections raised by a party to the reference, the Court has to decide these objections. u/s 15, Arbitration Act,

the Court may correct or modify the award. u/s 16 it may remit the award to the arbitrators for their consideration on grounds mentioned therein.

u/s 30 the Court can set aside the award on grounds stated therein. Section 17 provides that if the Court sees no reason to modify, remit or set

aside the award, it shall pass a judgment in terms of the award. The ambit of the powers of the Court is, therefore, either to modify, remit or set

aside the award. No other duty is cast on the Court. In this case, for reasons which are given by the learned Subordinate Judge and affirmed by us

the award has to be set aside. As the award has to be set aside, no decree can follow on the basis of the award. The application filed by Ram

Taran Das must, therefore, be dismissed.

21. The question whether the arbitration agreement is subsisting or not is not a matter which arises in these proceedings. We are, therefore, not

called upon to pronounce upon this question.

22. In the result, this appeal fails and is dismissed with costs, hearing fee five gold mohurs.

Debabrata Mookerjee J.

23. I agree.