(1921) 07 CAL CK 0029

Calcutta High Court

Case No: None

Sewdutrai Narsaria	APPELLANT
Vs	
Tata Sons Ltd.	RESPONDENT

Date of Decision: July 23, 1921

Acts Referred:

- Arbitration Act, 1940 - Section 10

Citation: AIR 1921 Cal 576 : 77 Ind. Cas. 769

Hon'ble Judges: Greaves, J

Bench: Single Bench

Judgement

Greaves, J.
This is an application on behalf of Sewdutrai Narsaria to set aside an award of an umpire, dated the nth June 1921, warding that Messrs. Sewdutrai Narsaria should pay to Messrs. Tata Sons a sum of Rs. 16,320 together with interest at 8 per cent. per annum from the 13th November 1920 until date of payment.

2. Various grounds are set out in the notice of motion but tie following only were urged before me, namely, (1) that the umpire was guilty of misconduct in acting has he did and in refusing to hear evidence and in refusing to state a case for the opinion of the Count, (2) in awarding interest on damages.

3. So far as (1) is concerned, the real question turns on whether the umpire was bound at the request of Sewdutrai Narsaria to state a case for the opinion of the Court on the construction of Clause 3 of the contract between the parties. If he was not so bound then it was open to him to construe the clause for himself and in the view he took of the clause the evidence which the applicants desired to adduce was inadmissible. The submission to arbitration is contained in Clause 17 of the contract and thereby any dispute was to be settled by arbitration as therein mentioned. The power of an umpire under the Indian Arbitration Act to state a special case is contained in Section 10 of the Act, whereby it is provided that an umpire shall,

unless a different intention is expressed, have power to state a special case for the opinion of the Court on any question of law involved. Section 7 of the English Act is practically the same and in Russell en Arbitration and Award, 10th Edition page 175 it is stated that this power is merely permissive and enabling and not compulsory, and reference is made to two cases--Holloway v. Francis (1861) 9 C.B. (N.S.) 559 : 142 E.R. 219 : 127 R.R. 782 and Gibbon v. Parker (1862) 5 L.T. 584 decided u/s 4 of the Common Law Procedure Act, 1854. In Wood v. Holham (1839) 5 M. & W. 674 : 9 L.J. (N.S.) Ex. 3 : 52 R.R. 876 : 151 E.R. 286 it was held that a clause giving an arbitrator liberty, at the request of the parties, to raise any point of law for the opinion of the Court was merely enabling and not compulsory and that it did not involve the obligation to state a case. Miller v. Shuttleworth (1849) 30 L.J.C.P. 343 : 4 L.T. 245 : 9 W.R. 537 is to the same effect as also Baguly v. Markwick (1849) 7 C.B. 105 : 137 E.R. 43. The English Act contains a section (Section 19) which is not in the Indian Act empowering an arbitrator or umpire at any stage of the proceeding to state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference and the section farther provides that he shall do so if directed by the Court. Under this section if the umpire when asked by a party to the'' reference to state a special case, refuses, he is bound at the request of the party, asking for the special case to he stated, to save time to enable the party to apply to the Court and if he refuses to do so, he is guilty of misconduct. J a the absence of such a clause as Clause 19, the party who asks the umpire to state a special case and is refused, should on such refusal apply to the Court forthwith to revoke the submission. If he does not do this, it is, I think, too late to come to the Court when the reference is concluded and an award has been made against him.

4. In the result I think under the circumstances it was in the discretion of the umpire to refuse to state a special case and to decide the point of law himself, and his refusal does not amount to misconduct.

5. So far as the award is concerned; there is, I think, on this point no error of law on the face of the award which would justify the interference of the Court.

6. So far as the second point is concerned, it is stated in Russell ut supra, page 450, that interest may be allowed by arbitrator in cases where the Court would not give it and reference is made to In re Badger (1819) 2 B. & Aid. 691 : 21 R.R. 455 : 166 E.R. 517 but in In re Morpeit (1845) 14 L.J.Q.B. 259 : 2 D. & L. 967 : 10 Jur. 546 : 69 R.R. 888 it was held that an arbitrator cannot award the payment of interest subsequent to the date of the ward unless the submission expressly gave him power to do so. In the present case the arbitrator has awarded Rs. 16,330 as damages together with interest at 8 per cent, from the 13th November 1920, (the data of the breach) until payment. He could of course, have awarded as part of the damages an additional sum representing according: to computation the'' interest from 13th November 1920 to the date of his award, treating this as part of the damages although it is not usual award interest on damages; but this he has not done and in any case I do not

think that he was entitled to a ward interest after the date of his award, so I remit the matter to the arbitrator in order that he may re-consider his award in the light of these remarks.

7. No order as to the costs of the motion.