
(1870) 07 CAL CK 0009

Calcutta High Court

Case No: None

S.M. Jagatsunderi Dasi

APPELLANT

Vs

Sonatan Bysak

RESPONDENT

Date of Decision: July 6, 1870

Judgement

Norman, J.

By an order of this Court dated the 17th of January 1867, this case was referred in accordance with the provisions of section 312, Act VIII of 1859, to Baboo Grish Chandra Banerjee and Baboo Romanath Law, as arbitrators, who were "to make their award in writing and submit the same to this Court within three months from that date." No order for enlarging the time for making the award appears to have been made. The proceedings submitted to this Court with the award show that the first meeting of the arbitrators took place on the 22nd May 1867. Subsequent meetings were held on the 12th June, the 22nd June, the 6th July, and the 27th July, which were attended by all the parties, and at which evidence was taken. On the 27th July, Baboo Dinanath Bose for Sonatan Bysak, objected that the time limited by the order of reference for making the award had expired, but his objection was overruled by the arbitrators. The award was made on the 12th August 1867, but the fees not being paid, the award remained with Baboo Grish Chandra Banerjee till his death in August 1868. In May 1870, the parties applied to Baboo Romanath Law for the award. Baboo Romanath Law found it in Baboo Grish Chandra Banerjee's desk, and delivered it to the successful party, by whom it was brought into Court. Baboo Romanath Law says, "I did not personally submit it to the Court. I did so through the successful party." Mr. Branson now moves for judgment in accordance with the award; several objections have been taken by the Advocate General for Sonatan Bysak,--first that the objection having been taken before them, the arbitrators ought not to have proceeded to make their award after the expiration of three months from the date of the order of reference. This objection was fully and properly answered by the arbitrators. It is enough for me to say that the first meeting did not take place till after the time limited in the order for making the award had expired; that Sonatan Bysak subsequently attended, took part in the proceedings, and made no objection till the last

meeting, when he found that the decision was likely to go against him. The arbitrators show there were good reasons why the award should not have been completed within the time limited. Now it has been held, in numerous English cases, that if, after the time for making an award has expired, the parties attend further meetings before the arbitrators, with full knowledge of the circumstances, and without making any objection, they are precluded from saying that the authority of the arbitrator is at an end,--see the cases collected in Russell on Awards, page 144. In the present case, section 318 of Act VIII of 1859 cures any objection on the ground that the award was not made within the time limited by the order of this Court.

2. The next objection is that the award was not submitted to the Court until after the death of Baboo Grish Chandra Banerjee, though the order of reference provides that the arbitrators are to submit their award to the Court within three months. I was at first disposed to think that the objection was fatal. No doubt, as a general rule, the award must follow the terms of the order of reference, and, accordingly, where the order provided that the award should be made and published to both parties by a certain day, and the arbitrators made and published it to the plaintiff and one of the defendants on that day, it was held that the award could not be enforced, because it was not published to both the defendants on that day.--Hungate's case 5 Rep., 103. So where an order of reference, instead of providing that the award be ready to be delivered, direct that it be delivered to the parties by a certain day, the award will not be enforceable unless it is actually delivered by that day,--see Russell on Awards, page 245. If the matter stood on the order of reference alone, I think it would be clear that the award could not be enforced. But as the award is one made under the provisions of Act VIII of 1859, in order to see how the award is to be submitted to the Court, we must look to section 320 of that Act. That section does not say by whom the award is to be submitted. It is to be submitted "under the signature of the person or persons by whom it is made." There is nothing in the language of the enactment which makes it necessary that the arbitrators should personally submit the award to the Court. Section 315 directs that the Court shall fix a time for the delivery of the award, Section 318 provides that "when the arbitrators have not been able to complete the award within the period specified in the order, the Court may enlarge the time for the delivery of the award. These two sections show that the Act contemplated the award as completed before it is actually submitted to the Court."

3. No doubt, when there are several arbitrators, the judicial act of making an award must be the act of all the arbitrators, They must all be present together, and concur in that which is to stand as their joint judgment. But when the award is completed, and the functions of the arbitrators as judges are at an end, it matters little through what channel the award is transmitted, or, in other words, by whom it is submitted to the Court. I think, therefore, that the reason of the thing, as well as the change in the language, shows that the completion and delivery of the award mentioned in sections 315 and 318 is something different from the submission of the award to the Court u/s 320. The award having been completed in the life-time of Baboo Grish Chandra Banerjee, I think that either Baboo

Romanath Law, the surviving arbitrator, or the plaintiff, who obtained the award from him, was competent to submit the award to the Court, notwithstanding the previous death of Baboo Grish Chandra Banerjee. There will, therefore, be a decree in pursuance of the award. I desire to observe that although an arbitrator may deliver the award to one of the parties to the suit, he ought not to hand over with it the proceedings, depositions, and exhibits in the suit. These it would be his plain duty to transmit to the Court; were it otherwise, one party might get possession of valuable documents entrusted by the Court to the arbitrator or belonging to the opposite party, merely because he chose to pay the arbitrator's fees.