

APPEAL FROM ORIGINAL CIVIL.

Before Jenkins C. J., Woodroffe and Mookerjee JJ.

CHAITRAM RAMBILAS

1915

April 28.

v.

BRIDHICHAND KESRICHAND.*

Arbitration—Bengal Chamber of Commerce, arbitration by—Arbitration Act (IX of 1899) s. 14—Arbitration clause in a contract—Reference to an Association—Rules of an Association for the conduct of arbitration proceedings referred to it, whether imported into the contract and binding on the parties thereto.

Where a contract contains an arbitration clause by which it is agreed that any dispute arising out of the contract shall be referred to the arbitration of the Bengal Chamber of Commerce, the rules of the Association are imported into the contract and are binding on the parties.

Per JENKINS C.J. The decision in *Ganges Manufacturing Company, Ltd. v. Indra Chand* (1) was binding on the learned Judge (of the Court of first instance) and should have been followed by him.

APPEAL by Chaitram Rambilas from the judgment of Imam J.

This appeal arose out of an application by the respondents, Bridhichand Kesrichand, for a Rule calling upon the appellants Chaitram Rambilas to show cause why an award of the Bengal Chamber of Commerce, dated the 29th August 1914, and filed in the High Court on the 20th November 1914, should not be set aside on the ground of misconduct and to stay certain proceedings in the Presidency Small Cause Court.

*Appeal from Original Civil, No. 16 of 1915.

The facts, which are taken from the judgment of Imam, J., were as follows :—

By a contract, dated the 2nd October 1913, Bridhichand Kesrichand agreed to sell and Chaitram Rambilas agreed to purchase 500 bales of jute of a certain mark and quality, shipment within one month from date at Rs. 12 a maund to be delivered at the ghat of the buyers' mills. The contract contained an arbitration clause, which ran as follows : " Any dispute arising out of this contract shall be referred to the arbitration of the Bengal Chamber of Commerce, whose decision shall be accepted as final and binding on both parties to this contract."

In fulfilment of the contract the respondents, on the 11th and 13th October 1913, delivered to the appellants 1,200 half bales of jute in two lots of 551 and 649, respectively at the Central Jute Mills and the respondents received 90 p. c. of the price in cash. Thereafter a dispute arose between the parties as to the quality of the jute supplied. In April 1914, the appellants under the arbitration clause contained in the contract referred the dispute to the arbitration of the Bengal Chamber of Commerce. The Registrar of the Bengal Chamber of Commerce Tribunal of Arbitration thereupon called upon the respondents to submit a statement of their case. Some correspondence then passed between the respondents' attorneys and the Registrar, in the course of which the respondents stated that in their opinion the case was rather for a Court of law than for arbitration by the Chamber's Tribunal of Arbitration. Eventually, on the 14th May 1914, the respondents submitted to the Registrar a statement of their case, and at the same time they mentioned that they had no objection to put forward their claim before the Tribunal so long as evidence was taken, which was, according to their contention, most necessary.

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The arbitrators appointed by the Chamber of Commerce thereafter proceeded to adjudicate upon the case and gave an award in favour of the appellants.

The respondents asked that this award should be set aside on the grounds that the arbitrators had refused to allow them to adduce evidence to establish their case, and that they had not agreed to accept the rules of the Tribunal of Arbitration of the Chamber of Commerce as binding on them.

After setting out the facts as stated above, Imam J. set aside the award observing as follows:—

“On behalf of the respondents the authority of Mr. Justice Harington’s decision in the *Ganges Manufacturing Company v. Indra Chand* (1) is cited. In that case the contract provided a similar arbitration clause and that learned Judge in dealing with it stated ‘they chose to propose that their disputes should be disposed of by the Bengal Chamber of Commerce. They chose this Association. It is one of the duties of this Association to dispose of such disputes by arbitration according to its rules.’ Having offered to be bound by the decision of this Association, they cannot now be heard to say that they are not bound by the rules of the Tribunal of their choice.’ While accordng all due weight and respect to that decision, I am not prepared to agree with it on this point. In the arbitration clause no mention of the rules has been made, and no assent to be governed by any procedure that the Chamber might choose to adopt has been signified. The rules of the Chamber empower the Tribunal to deal with a case unfettered as they think best; and no obligation has been cast upon them to examine witnesses, even if the parties wish it, or to conform to the ordinary methods of arbitration. Under the agreement the parties chose to have the Chamber to arbitrate upon any disputes between them, but they nowhere said that they consented to the exercise by the Chamber of those wide powers that the rules confer. In the absence of such a provision in the agreement, the Chamber cannot be credited with any higher powers than any other arbitrator. The decision of Mr. Justice Harington was cited before Mr. Justice Chaudhuri in *Nalin Chandra Saha v. Sinclair Murray & Co.*² in support of a contention similar to the one pressed by the present respondents, and that learned Judge expressed his disagreement with the proposition. The refusal of the Tribunal to allow the petitioners to adduce evidence vitiates the award, and I accordingly set it aside. The respondents will pay the costs of this application.”

(1) (1906) L. L. R. 33 Cal. 1169.

² Unreported, ...

From this judgment Chaitram Rambilas appealed.

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Mr. N. N. Sircar and *Mr. H. C. Mazumdar*, for the appellants, contended that there had been no refusal on the part of the arbitrators to take evidence, and that the respondents had not made the case in their petition, that they were ignorant of the rules of the Bengal Chamber of Commerce or that they were not bound by those rules. They referred to the case of the *Ganges Manufacturing Company, Ltd., v. Indra Chand* (1) in support of their contention that the rules of the Chamber of Commerce were imported into the contract, and they also referred to *Benjamin v. Barnett* (2).

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Mr. L. P. E. Pugh and *Mr. C. C. Ghose*, for the respondents. We rely upon two points (*a*) misconduct, and (*b*) our ignorance of the rules of the Chamber of Commerce, which are therefore not binding upon us. As to the first point, a refusal to hear evidence is misconduct, see *Russell on Arbitration and Award*, 9th Ed., pp. 148, 149. They also referred to *Harvey v. Shelton* (3). With regard to our second point, we cannot be bound by rules of which we are ignorant: *Perry v. Barnett* (4).

JENKINS C.J. This is an appeal from an order of Mr. Justice Inám made apparently under section 14 of the Indian Arbitration Act. There was an arbitration followed by an award. But it is alleged that there was misconduct on the part of the arbitrators; and it is on the ground of this misconduct that the application was made to the Court and succeeded before the learned Judge. The misconduct suggested was the failure to hear evidence. Whether there was that failure or not is a matter in dispute.

(1) (1906) I. L. R. 33 Calc. 1169. (3) (1844) 7 Beav. 455, 462.

(2) (1903) 8 Com. Cas. 244, 247. (4) (1885) 15 Q. B. D. 388.

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But the way in which the case was presented to the learned Judge and in which he understood it appears from this passage in the judgment: "The petitioners' complaint is that the arbitrators refused to allow them to adduce evidence to establish their contentions and proceeded with the arbitration according to the Rules of the Tribunal of Arbitration established by the Bengal Chamber of Commerce and not according to the law under the Indian Arbitration Act. The petitioners' contention is that the arbitration clause in the contract is merely an agreement to abide by the decision of the Chamber without accepting to be governed by the wide powers of that body as expressed in their rules." It is apparent therefore from this that it was admitted that the misconduct depended upon the alleged non-applicability of the rules governing an arbitration by the Bengal Chamber of Commerce. I cannot attribute any other meaning to the words of the judgment which I have just quoted.

The first question, therefore, which we have to consider is whether these rules were imported into the contract. Even without the assistance of any authority it appears to me that these rules were imported into the contract and that without such importation the contract would be insensible so far as it related to arbitration. For, it would involve the ridiculous position that every member of the Chamber of Commerce would have to sit on the arbitration. So that on the contract itself I should have felt no doubt. But apart from that there is a very careful judgment of Mr. Justice Harington in *Ganges Manufacturing Co., Ltd., v. Indra Chand* (1), delivered as far back as the 5th June 1906, where the contract was in the same terms as that with which we are now concerned.

(1) (1906) I. L. R. 33 Cal. 1169.

The learned Judge came to the conclusion which I have indicated as a correct view of the contract. That decision was certainly binding on the learned Judge and, according to my opinion, should have been followed by him. It may not be binding on us in the strict sense. But I think it is entitled to every respect and it agrees with the view I entertain on the subject.

Therefore it appears to me that on the basis on which this case was argued and conducted before Mr. Justice Imam there was no misconduct, because the rules of the Chamber of Commerce were applicable.

It appears to us unnecessary to consider other matters. But I cannot refrain from pointing to the fact that the application, verified and supported in the way it is, forms a most unsatisfactory basis on which to claim relief under section 14 of the Indian Arbitration Act. It is so unsatisfactory that I do not think that there should be a remand. In my opinion the appeal should be allowed and the application dismissed. The respondent should pay the costs of the hearing before Mr. Justice Imam and before this Court.

WOODROFFE J. I agree that the appeal should be allowed. The fact that the Chamber of Commerce has framed rules for its arbitration is, I should have thought, well known to every trader in Calcutta, particularly to those accepting contracts stipulating for arbitration by the Chamber of Commerce. However this may be, I entirely agree with the judgment of Mr. Justice Harington in the case referred to by the Chief Justice that if a party to a contract has agreed to submit to an arbitration of the Bengal Chamber of

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Commerce he must be held to be bound by the rules of that Chamber.

MOOKERJEE J. I agree with the Chief Justice.

Appeal allowed.

Attorneys for the appellant: *Manuel & Agarwallah.*

Attorneys for the respondents: *Pugh & Co.*

W. M. C.

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

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Aug. 4.

PROKASH CHANDRA GHOSE

v.

HASAN BANU BIBI.*

Mortgage—Interest—Loss of part of security by acquisition of mortgaged land—Mortgagee applying to Land-Acquisition Judge for return of mortgage money (out of the compensation money) within term, whether entitled to interest for the whole term—Land Acquisition Act (I of 1894) ss. 18, 30.

If the mortgagee makes a demand for payment within the term, and the mortgagor complies, the mortgagee cannot insist upon payment of interest for the whole of the term.

Letts v. Hutchins (1), *In re Moss* (2), *Smith v. Smith* (3) referred to.

Where the mortgagee has given notice requiring payment within the term, he cannot withdraw it without the consent of the mortgagor.

Santley v. Wilde (4) followed.

* Appeal from Original Decree, No. 210 of 1913, against the decree of H. P. Duval, District Judge of 24-Parganas, dated April 26, 1913.

(1) (1871) L. R. 13 Eq. 176.

(3) [1891] 3 Ch. 550.

(2) (1885) 31 Ch. D. 90.

(4) [1899] 1 Ch. 747; 2 Ch. 474.