

interlocutory orders" would be superfluous. In our opinion the only orders excluded are those specifically mentioned in section 94 as injunctions or interlocutory orders, that is to say, orders under clause (c) or clause (e) of section 94. We do not think that the new Code of Civil Procedure has made any change in the former law, and we answer the point referred by saying that a Provincial Small Cause Court has the power to attach moveables before judgment.

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### APPEAL FROM ORIGINAL CIVIL.

*Before Sanderson C. J. and Woodroffe J.*

SOVA CHAND BHUTORIA

*v.*

HURRY BUX DEORA.\*

1918  
 Nov. 26.

*Arbitration—Award, filing of—Time requisite for obtaining copy of a decree—“Submission to the Court” and “Filing in Court”—Exclusion of time between submission and filing—Limitation Act (IX of 1908) Sch. I, Art. 153—Civil Procedure Code (Act V of 1908) Sch. II, s. 10.—Rules and Orders of the High Court, Chapter XXIII, Rule 1.*

The arbitrator in a certain suit made his award on the 23rd August, 1917, and on the 3rd September, 1917, the plaintiff through his attorneys applied for a copy of the award. On the 10th October, 1917, the award was received by the Registrar. Owing to the Long Vacation, the Court was closed on that date and remained so till the 17th November, 1917. On the 22nd November, 1917, the defendants filed the award in Court. In pursuance of the abovementioned application, dated the 3rd September, 1917, a copy of the award was supplied to the plaintiff on the 27th November, 1917. On the 6th December, 1917, the plaintiff applied to the Court for an order to set aside the award and the award was subsequently set aside. On appeal:—

*Held*, that it was not shown that it was the duty of the respondent to file the award and that he could and should have done so between the 17th and 22nd November.

\*Appeal from Original Civil, No. 33 of 1918, in Suit No. 186 of 1916.

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*Held*, also, that Rule 1, Chapter XXIII (of the Rules and Orders of the High Court) did not appear to be in conformity with the provisions of Rules 10, Sch. II of the Code of Civil Procedure.

*Held*, also, that if time commenced to run either on the 10th October, or 22nd November, it did not appear that the application (of the 6th December) was barred.

*Per CURIAM*: It seems that the word "Court" in Article 118 of the Limitation Act means "Court" and not its Registrar and "submission" means "submission to the Court" which again, according to Sch. II. s. 10 of the Civil Procedure Code, is to be done by filing the award in Court.

*Nobin Kally Dabee v. Ambica Churn Banerjee* (1) doubted.

APPEAL by Sova Chand Bhutoria, one of the defendants.

By a mortgage dated the 24th May, 1911, one Hurry Bux Deora mortgaged his property to Jaharmull Bhutoria and others and on the 11th February, 1916, the mortgagor instituted a suit against the mortgagees for redemption of the said mortgage, for possession of the said property and for account of the rents and profits received by the mortgagees. On the 30th June, 1917, it was, *inter alia*, ordered that all matters in dispute should be referred to arbitration. The arbitrator made his award on the 23rd August, 1917. On the 3rd September, 1917, the plaintiff's attorneys applied on behalf of their client for a copy of the award; but they were informed that the award had not been filed and a copy of the same could not in consequence be supplied to them. Subsequently, on the 10th October, 1917, the award was received by the Registrar. During the period between the 10th October, 1917, and the 17th November, 1917, the Court was closed and on the 22nd November, 1917, the defendants filed the same in Court. On the 27th November, 1917, a copy of the award was supplied to the plaintiff's attorneys. On the 6th December, 1917, the plaintiff petitioned the Court for an order to set aside the

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award and to direct the hearing of the suit be proceeded with. Mr. Justice Greaves directed the plaintiff to serve notice of motion on the defendants for the purpose of setting aside the award, making the notice of motion returnable on the 14th December, 1917. On that date his Lordship made an order setting aside the award. On the 18th February, 1918, Mr. Justice Greaves granted a Rule at the instance of Sova Chand Bhutoria calling on the plaintiff to show cause why the order made in this suit and dated the 14th December, 1917, should not be reviewed and set aside on the ground, *inter alia*, that it was apparent on the face of the record that the plaintiff's application to set aside the award was barred by limitation. On the 5th April, 1918, both parties agreeing, Mr. Justice Greaves directed that the order of the 14th December, 1917, be amended by substituting the words "upon hearing Mr. B. L. Mitter advocate for the said defendant Sova Chand Bhutoria" for the words "and Mr. B. L. Mitter advocate for the said defendant Sova Chand Bhutoria consenting". On the 12th April, 1918, the above-mentioned Rule was discharged with costs. Sova Chand Bhutoria, one of the defendants, thereupon, appealed against the order of Mr. Justice Greaves, dated the 14th December, 1917, setting aside the award as amended by the order of the 5th April, 1918.

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*Mr. N. Sircar* (with him *Mr. S. C. Bose*), for the appellant. Under Art. 158 Sch. I of the Limitation Act, 1908, the time from which the period of limitation began to run was the date on which the award was received by the Registrar. The award was submitted on the 10th October, 1917, and notice was given to the parties on the same date by the Registrar. The respondent might get the benefit of the period during which the Court was closed, *viz.*, from the 10th

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October, 1917, to the 17th November, 1917, and be allowed to deduct that period in reckoning limitation. Once the Courts reopened, limitation would begin to run from the date of reopening and not from the 22nd November, 1917, the date on which the award was actually filed in Court: *Nobin Kally Dabee v. Ambica Churn Banerjee* (1). See also Rules and Orders of the Calcutta High Court, Chapter XXIII, Rule 1. After the 17th November, 1917, the respondent could only claim deduction of the time actually required for getting copy of the award. In the present case it took 5 days to get a copy. Allowing for these 5 days, the application made on the 6th December, 1917, for an order to set aside the award was not made within 10 days and was, therefore, barred by limitation.

*Mr. S. R. Das* (with him *Mr. H. D. Bose*), for the respondents. Art. 158 of the Limitation Act must be read with s. 10 of Sch. II of the Civil Procedure Code, 1908. The fact that the award was sent to the Court on the 10th October, 1917, did not amount to filing within the meaning of s. 10 of Sch. II of the Code. "Submitted to the Court" did not mean mere receipt by the Registrar. Under Art. 158 that expression meant that the award had to be filed in Court. When the award was filed in Court, it was only then that the award was before the Court. As to whether "Registrar" meant Court, it ~~has been held~~ that the Registrar could not give leave under the Charter, because he has not a Court. Under Art. 155 of the Limitation Act, 1871, the words were "notice of submission" and s. 320 of the Civil Procedure Code, 1859, used the word "submitted" only. Art. 158 of the Limitation Act, 1877, was exactly the same as Art. 156 of the Limitation Act, 1908, and the provision about notice, etc, in the prior Act of 1871 was deleted.

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But s. 518 of the Civil Procedure Code, 1882, provided that notice was to be given and thereby restored the law on this point to what it was under the limitation Act of 1871. The plaintiff respondent having applied to set aside the award, it was not his duty to file the award. Under s. 10 of Sch. II of the Code of 1908, it was the arbitrator who had to "cause it to be filed", and that section existed in the Code of 1882. In *Nobin Kally Dabee v. Ambica Churn Banerjee* (1), Harington J. was in error. Chapter XXIII r. 1 of the Rules and Orders of the Calcutta High Court, which were passed after 1908, by providing that notice be given by the Registrar calling upon the parties to file the award went beyond, or added to the provision of s. 109 Sch. II of the Code and was, therefore, *ultra vires*.

*Mr. S. C. Bose*, in reply. Under s. 10 of Sch. II of the Code "filing" meant only "submitting" and an award was filed when it was handed over to the proper officer. If it were contended that in filing an award it would be necessary to submit it to the Court after being duly stamped, then the period of limitation would under the same article be reckoned from different dates on the Original Side of this Court and in the mofussil, that is to say, in the High Court limitation would run from the date after the award ~~was duly~~ stamped and filed in Court and in the mofussil Courts from the date it was handed over to a proper officer of the Court. Filing on the Original Side had a technical meaning and there was no such procedure in the mofussil regarding filing as there was on the Original Side. Limitation, therefore, must run from the date the award was received by the Registrar.

*Mr. S. R. Das*, to a question by the Court, submitted that if it were held that limitation ran from

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the 17th November, 1917, and not from the 22nd November, 1917, the period from the 10th October, 1917, to the 27th November, 1917, was requisite for obtaining a copy of the award. The plaintiff respondent had applied for a copy on the 3rd September, 1917; therefore, on the 10th October his application for a copy was subsisting. He could not, however, get a copy until the award was filed. It was not his duty to file the award. The award was subsequently filed on the 22nd November, 1917, and the respondent in pursuance of his application obtained a copy on the 27th November, 1917: see *Bani Madhub Mitter v. Matungini Dassi* (1) and *Bechi v. Ahsanullah Khan* (2) in support of the proposition that the period between the 10th October and the 27th November abovementioned was the time requisite for obtaining a copy.

*Mr. S. C. Bose* (with leave of Court) submitted that inasmuch as limitation was running in the appellant's favour, it was not the appellant's duty to file the award. Under the Indian Arbitration Act it was the duty of the arbitrator to file awards [*Baijnath v. Ahmed Musavi Sabji* (3)]; but in the present case it was the duty of the respondent to have filed the award, if he wanted to save limitation and he could not now take advantage of his own laches.

*Cur. adv. vult.*

WOODROFFE, J. The facts are fully set forth in the judgment of Greaves J., which I need not repeat. It is sufficient to say that there was an award in an arbitration made in a suit and that this award was set aside by the Court. When it was set aside counsel for the party (now appellant) stated at the Bar that

(1) (1885) I. L. R. 13 Calc. 104. (2) (1890) I. L. R. 12 All. 461

(3) (1912) I. L. R. 40 Calc. 219.

having considered the materials before him he could not resist the order which the plaintiff sought, and which was in fact made. A review of this order was then asked for by the appellant on the ground that the application to set aside the award was barred by limitation under Article 158 of the Indian Limitation Act (1908), more than 10 days having elapsed since the date when the award was submitted to the Court. This involves a consideration of the question of the meaning of the words "Submission" and "Court".

In the appeal it is contended on the authority of the decision of Harington, J., in *Nobin Kally Dabee v. Ambica Churn Banerjee* (1) that the time from which limitation runs is the date on which the award is received by the Registrar (in this case the 10th October, 1917) and not the date on which the award is filed (in this case the 22nd November). Assuming that this decision is correct, it is not established that the application to set aside the award was barred, for the respondent is entitled to exclude the time requisite for obtaining a copy of the award. An application for copy was made on 3rd September. This application was premature in that no award had then been received. When, however, it was received on the 10th of October the application still subsisting took effect and in fact it is found that it was on the strength of this application that a copy was subsequently given. The question then is what was the time "requisite". From the 10th October to the 17th November the Court was closed and on the 22nd November the award was filed.

A copy could not under the rules be given of the award until it was filed and from 22nd to 27th November was taken up in supplying a copy of the award previously filed. There is no difficulty here unless

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it is shown that it was the duty of the respondent to file the award and that he could, and should, have done so between the 17th and 22nd November. But the duty of the respondent in this respect is not, I think, made out. No provision to that effect has been shown us and on the contrary rule 10 Schedule II of the Civil Procedure Code provides that the arbitrator should cause the award to be filed and notice of the filing shall be given to the parties. It cannot be said, therefore, that there was any laches, and the time during the period 10th October and 27th November must, therefore, be excluded. It is not, as the learned Judge holds, that time commenced to run from the 27th November, but it commenced to run (on this hypothesis) from the 10th October, but the time requisite for obtaining a copy must be excluded.

I am not, however, at present satisfied that the decision of Harington J. is correct.

Having regard to the foregoing facts, it is not necessary finally to decide the matter but it seems to me that the word "Court" in Article 158 of the Limitation Act means "Court" and not its Registrar and "submission" means submission to the Court, which again according to Schedule II, section 10 of the Civil Procedure Code is to be done by filing the award in Court. I feel a difficulty in holding with Harington J., in *Nobin Kally Dabee v. Ambica Churn Banerjee* (1), that time runs not from the time the award is filed in Court but from the time it arrives at the Registrar's office. If time ran from the 22nd November, five days must be excluded for the obtaining of a copy. Copy was not obtainable on the application of the 3rd September till the 27th November, so that these five days must be excluded and therefore

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the application of the 6th December was in time. Though the result at which I have arrived is the same, I do not agree with the opinion expressed in the judgment under appeal that time commenced to run from the 27th November when a copy of the award was first obtainable. Time on this hypothesis commenced to run on the 22nd November when the award was filed, but under section 12 of the Limitation Act in computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Rule 1 Chapter XXIII appears to have been passed after Harington J.'s judgment and from its wording seems to have been based on that decision. Rule 10 of Schedule II of the Code was section 516 of the earlier Code in force prior to the judgment of Harington J. This rule 1 does not appear to be in conformity with the provisions of rule 10, Schedule II of the Code which provides for the arbitrator causing the award to be filed and for notice being given to the parties. It does not say anything about submission to the Registrar for the purpose of being filed, notice by the Registrar and so forth. If then time commenced to run either on the 10th October or 22nd November it does not appear that the application was barred. As regards the contention that if the argument as to limitation fails the Court should have allowed the evidence of the arbitrator to be given when the application to set aside the award was made, counsel for the defendant said that having considered the materials before him he could not resist the order which the plaintiff sought. This case, therefore, is not one upon which the appellant should be allowed at this stage further enquiry on the facts as to the merits of the case. The allegations as to the alleged misconduct on the part of the arbitrator are

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not satisfactorily answered in the affidavits filed on behalf of the appellant and, in my opinion, the appeal fails and should be dismissed with costs.

SANDERSON C. J. I agree

O. M.

*Appeal dismissed.*

Attorneys for the appellants: *O. C. Ganguly & Co.*

Attorneys for the respondents: *Dutt & Sen.*

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### APPELLATE CIVIL.

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*Before Chatterjea and Newbould JJ.*

1918  
 Dec. 11.

JOGENDRA NARAIN ROY CHOWDHURY

v.

KIRAN CHANDRA ROY.\*

*Revenue Sale—Revenue Sale Law (Act XI of 1859) s. 37 and 4th "exception to s. 37—Scope of s. 37—Benefit of the 4th" exception to s. 37, which can be claimed.*

Section 37 of Act XI of 1859 applies to sale of an entire estate for recovery of arrears due on account of an entire estate, as well as to a sale for recovery of arrears due on account of a share only, provided the entire estate is sold under the provisions of section 14 of the Act, and that so long as it is the entire estate which is sold and the arrears are due on account of the estate itself and not on account of estates other than that which is sold, section 37 applies.

The benefit of the 4th exception to s. 37 is limited only to such portions of land as are covered by buildings, tanks, etc., and cannot be extended to cover those lands included in the lease on which no permanent works have been constructed.

\* Appeal from Appellate Decree, No. 3330 of 1914, against the decree of H. A. Street, District Judge of Khulna, dated Aug. 18, 1914, affirming the decree of Jogendra Nath Basu, Subordinate Judge of Khulna, dated Feb. 25, 1913.