ORIGINAL CIVIL.

Before McNair J.

UDAYCHAND PANNALAL

v.

BHAGIRATHLAL GHASIPRASAD.*

1935

Jan. 24, 25, 28.

Arbitration—Award against a firm—Execution against a partner—Notice of filing the award—Limitation—Indian Arbitration Act (IX of 1899), s. 15—Code of Civil Procedure (Act V of 1908), O. XXX, r. 3 ; O. XXI, r. 50.

An award against a firm, which has been filed in court, can be executed against a partner in the firm, even though no notice of the arbitration or of the filing of the award has been served on the partner separately.

Manilal Lallubhai v. *Bharat Spinning and Weaving Co., Ltd.* (1) followed.

Udaichand Pannalall v. *Debibux Jewanram* (2) applied.

The proviso to Order XXX, rule 3 of the Code of Civil Procedure does not apply to the service of notice of filing an award.

Order XXI, rule 50 of the Code of Civil Procedure applies to the execution of an award filed in Court.

Manilal Lallubhai v. *Bharat Spinning and Weaving Co., Ltd.* (1) relied upon.

Period of limitation for execution of an award runs from the date the award is filed and not from the date it is made.

APPLICATION under Order XXI, rule 50 of the Code of Civil Procedure for leave to execute an award made under the Indian Arbitration Act, 1899.

The facts of the case and arguments appear sufficiently from the judgment.

S. R. Das for the applicants.

J. N. Mazumdar for the respondent Bhagirathlal.

Cur. adv. vult.

MCNAIR J. This is an application by the firm of Udaychand Pannalal for leave to execute an award in their favour dated the 21st of August, 1930, and filed on the 12th of November, 1934. The award was made against the firm of Bhagirathlal Ghasiprasad, ordering them to pay Rs. 1,326-1-6 in full settlement of the petitioners' claim. The petitioners seek to

*In the Matter of Indian Arbitration Act.

(1) (1933) I. L. R. 58 Bom. 162. (2) (1920) I. L. R. 47 Calc. 951.

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execute it against Bhagirathlal personally, as being a member of the defendant firm.

It is admitted that the firm are in liquidation, but the statement that they were insolvent prior to the making of the award is denied.

The application is opposed on various grounds. It is contended, first, that the award cannot be executed against Bhagirathlal as a partner in the firm, because he did not receive notice of the arbitration or of the filing of the award, and reliance is placed on the decisions in *Vallabhdas Narandas & Co.* v. *Keshavlal Himatlal* (1) and *Louis Dreyfus & Co.* v. *Purusottum Das Narain Das* (2). In the former case the learned Judge was of opinion that the award which was before him was against an individual and not against a firm; he was further of opinion that the firm concerned was a foreign firm which could not be sued or take part in a reference to arbitration in the firm name; so that any decision by him on the question whether an award against a firm can be executed against an individual cannot but be *obiter*. Moreover his views were dissented from in *Manilal Lallubhai* v. *The Bharat Spinning and Weaving Co., Ltd.* (3). In *Louis Dreyfus & Co.* v. *Purusottum Das Narain Das* (2), it was held that the award was not invalid because it was made against a firm, and Fletcher J.'s *dictum* in an earlier case that the "Court "cannot make a decree against a firm when it is "ignorant as to what persons constitute the firm" was expressly dissented from (2), but the award was set aside on the ground that one of the parties thereto had not had proper notice of the arbitration. What happened there was that one of the parties raised an objection to the arbitration, though it did not definitely refuse to arbitrate, and it was held that, in the circumstances, the arbitrators were bound to give notice that they were proceeding with the reference.

The facts here are different. There is no suggestion that the defendant firm, who were parties

(1) (1926) 29 Bom. L. R. 660. (2) (1919) I. L. R. 47 Calc. 29.
(3) (1933) I. L. R. 58 Bom. 162, 172-3.

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to the arbitration, did not receive the requisite notices; all that is suggested is that the present objector did not receive notices. There is nothing in the rules or in the decisions making it incumbent to serve notices on every member of the firm.

It was urged further that notice of filing the award must be served on the parties to the reference and on every member of a firm whom it is sought to make liable. This argument was raised and negatived by a Division Bench of this Court in *Udaichand Panna Lall* v. *Debibux Jewanram* (1) where Mookerjee J. deals with the matter at length, and his conclusion is that the alleged omission to give notice of the filing of the award does not destroy the operative character of the filed award. The learned Judge points out that the provisions of the Indian Arbitration Act differ substantially from the provisions of the English Arbitration Act, 1889, and he holds that the plain language of section 15 of the Indian Arbitration Act, that the moment an award is filed in Court it becomes enforceable as if it were a decree of the Court, should be given effect to. In support of his contention that to make an individual partner liable he must be served with notice, Mr. Mazumdar relied on Order XXX, rule 3 of the Code of Civil Procedure, 1908.

In his affidavit in opposition, Bhagirathlal states that the defendant firm was "closed on or about the "12th day of March, 1930, and immediately thereafter "dissolved. The said Udaychand Pannalal was at "all material times aware of this fact." It will be remembered that the award was made in August, 1930. He, therefore, relies on the proviso to Order XXX, rule 3, which lays down that where a partnership has been dissolved to the knowledge of the plaintiff before the institution of the suit the summons shall be served upon every person in British India whom it is sought to make liable. The statements in the affidavit are extremely vague, and they are denied in the affidavit in reply.

(1) (1920) I. L. R. 47 Calc. 951, 957-8.

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There is nothing in the affidavits to show when the reference to arbitration was made, and it is clear that the proviso to Order XXX refers to a time anterior to the decree and cannot be applicable to an award which has been filed and which has therefore become enforceable as a decree.

It is to be noted also that there is no suggestion at any time that the service on the firm was faulty, nor does the opposite party even suggest that he was not a member of the firm. His defence is founded on the fact that he was a partner.

Mr. Mazumdar further contends that the provisions of Order XXI, rule 50, of the Code of Civil Procedure, under which this application is made do not apply to an award against a firm. This argument was put forward and rejected by the Bombay High Court in *Manilal Lallubhai* v. *Bharat Spinning and Weaving Co., Ltd.* (1). Kania J. points out that "the underlying fallacy" of this argument "is to assume that the Civil Procedure "Code *in terms* provides for enforcement of all "proceedings under other Acts of the legislature", and later on he says (1) :—

> The fact that the provisions of rule 50 have been deliberately included in Order XXI in the Code instead of allowing them to remain in Order XXX as was done in the English law shows a distinct departure on the part of the Indian legislature by putting in one chapter all the modes of execution.

The decision of Kania J. on this question was upheld on appeal by the High Court at Bombay (2). Both the learned Judges in the appellate court holding that section 15 of the Indian Arbitration Act would be, for all practical purposes, a dead letter, and the very object for which the law of arbitration was enacted would be frustrated, unless the relevant provisions of Order XXI were read as covering an award, by treating "decree" as including an award which has become enforceable as a decree, and by treating "the Court which passed the decree" as referring to the Court whose decree the award is to be treated as being for the purpose of execution.

(1) (1933) I. L. R. 58 Bom. 162, 168. (2) (1933) I. L. R. 58 Bom. 162, 175.

With this reasoning I respectfully agree and, in my opinion, Mr. Mazumdar's contention must fail.

Mr. Mazumdar finally contended that this application was not an application for execution, but an application for *leave* to execute the award and that it was governed not by Article 183, but by Article 181 of the Limitation Act. Time runs, he contends, from the date of the award, that is, the 23rd of August, 1930 and the bar of limitation operates after three years from that date. In support of his argument he relies on the case of *Bhagvan Manaji Marwadi* v. *Hiraji Premaji Marwadi* (1), where it was held that an application for leave to execute a decree against partners who were not impleaded and were not served in the suit was merely an ancillary application to the application for execution. In my opinion, this contention cannot prevail.

The award, it is true, was made in 1930, but the award only becomes enforceable as a decree when it has been filed and it is only then that the question of execution can arise.

The award was filed in November, 1934, and whichever Article of the Limitation Act may be applicable, the present application is in time.

The petitioners have, it is true, waited more than three years before filing their award, but there is no provision of law, of which I am aware, to prevent them from adopting this course, nor am I aware of anything to prevent the unsuccessful party to an award from applying to have the award filed should he consider it against his interests to allow his opponent to postpone the period of execution.

Application allowed.

Attorneys for applicant: *Messrs. C. C. Bosu.*

Attorney for respondent: *Rajkumar Bose.*

P. K. D.

(1) (1932) 34 Bom. L. R. 1112.