

APPELLATE CIVIL.

Before Edgley J.

LAKSHMI NARAYAN KOLEY

v.

LALIT MOHAN BHATTACHARJYA.*

1940
May 30.

Co-operative Societies—*Execution of award—Limitation, when begins to run—Co-operative Societies Act (II of 1912)—Indian Limitation Act (IX of 1908), Sch. I, Art. 182(1).*

Limitation for execution of an award made under r. 22 of the Co-operative Societies Rules runs from the date on which such decision is communicated to the party affected thereby, and not from the date of the order, and the former date must be deemed to be the date of the decision of the arbitrator.

The application for execution in such cases is governed by Art. 182 (1) of the Limitation Act.

Sreenath Chatterjee v. Kylash Chunder Chatterjee (1) and *Dutto Singh v. Dosad Bahadur Singh* (2) applied.

APPEAL FROM APPELLATE ORDER preferred by the judgment-debtor.

The facts of the case are sufficiently stated in the judgment.

Gopendra Nath Das and *Lala Hemanta Kumar* for the appellant. The time limit for putting the awards into execution is three years from the date of each award in question. The execution petitions are barred under Art. 182(1) of the Limitation Act.

Bimala Charan Deb and *Sailendra Nath Mitter* (Jr.) for the respondent. The limitation is three years, but the starting point of limitation should not be the date of the award, but the date of delivery of the award with all necessary papers by the Assistant Registrar to the society concerned, as required by

*Appeal from Appellate Order, No. 213 of 1939, against the order of Surendra Nath Palit, First Subordinate Judge of Hooghly, dated June 3, 1939, reversing the order of Rabindra Kumar Basu, Second Munsif of Serampore, Mar. 17, 1939.

(1) (1874) 21 W. R. (C. R.) 248.

(2) (1883) I. L. R. 9 Cal. 575.

rule 8. The society is not in a position to take action upon the award till it is delivered to the society under rule 8. The starting point of three years' limitation for the execution of the award is the date on which it is so communicated, instead of the date on which the award is actually made. The principles laid down in *Sreenath Chatterjee v. Kylash Chunder Chatterjee* (1); *Dutto Singh v. Dosad Bahadur Singh* (2) and *Kunj Lall v. Banwari Lall* (3) are applicable to this case.

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Das, in reply. The society being a party had knowledge of the award and could have taken action on it earlier. The cases cited have no application and are distinguishable.

EDGLEY J. The judgment-debtor is the appellant in this case and the decree-holder is the Chatra Serampore Co-operative Credit Society, Limited. It appears that in 1932 a dispute arose between the judgment-debtor and the Co-operative Credit Society, which was referred to the Registrar under the provisions of r. 22 of the Statutory Rules framed under s. 43 of the Co-operative Societies Act (II of 1912). The Registrar referred the matter to the Assistant Registrar, who, on May 31, 1932, recorded an order in favour of the Society, which entitled the latter to realise the sum of Rs. 114-12 from the judgment-debtor together with interest at the rate of $9\frac{3}{4}$ per cent. per annum. No steps appear to have been taken to communicate this award officially to any of the persons affected thereby, until October 10, 1935, when it was forwarded to the Society with the Assistant Registrar's letter No. 13449B of that date.

Admittedly, awards under r. 22 of the Co-operative Societies Rules are executable as decrees and this being the case, the provisions of Art. 182(1) of the Indian Limitation Act will apply. It, therefore, follows that the Society should have applied for

(1) (1874) 21 W. R. (C. R.) 248.

(2) (1883) I. L. R. 9 Cal. 575.

(3) (1918) 4 Pat. L. J. 394.

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execution within three years of the date of the award. Actually they instituted execution proceedings on October 26, 1938, which was the re-opening date after the civil Court vacation of 1938. In these circumstances, the execution proceedings taken by the Society are within time, if limitation runs from the date of the Assistant Registrar's letter, by which the award was communicated to the Society, but will be out of time if limitation is held to run from the date of the order which was made on May 31, 1932.

The question, therefore, which requires consideration is whether the date of the award should be deemed to be the date of the decision of the arbitrator or the date on which such decision is communicated to the party concerned.

Rule 22 of the Rules under the Co-operative Societies Act, which prescribes the procedure to be followed in connection with matters of this sort, does not provide that the decision of the Registrar or the award of an arbitrator appointed under the rule, should be communicated to any of the parties directly interested in that decision or award. But, obviously, it must be taken to have been the intention of the framers of the rules that a decision of this nature should be communicated to the parties affected thereby. In this connection, it may be noted that there is also no provision in the rules contained in Sch. II to the Code of Civil Procedure, that, in connection with an arbitration without the intervention of the Court, an award should actually be communicated to the parties concerned. In such matters, limitation as regards the filing of the award runs from the date of the award (under Art. 178 of the Indian Limitation Act) and it has been held by this Court in the cases of *Sreenath Chatterjee v. Kylash Chunder Chatterjee* (1) and *Dutto Singh v. Dosad Bahadur Singh* (2) that in such a case the date of the award does not mean the date written therein, but the time when it is

(1) (1874) 21 W. R. (C. R.) 248.

(2) (1883) I. L. R. 9 Cal. 575.

handed over to the parties, so that they may be able to give effect to it. Similarly, in connection with the matter with which we are now dealing, it is clear that the party, in whose favour an award has been made, cannot give effect to it until it has been communicated to him; and, in my view, the principles laid down in the abovementioned cases should be applied in calculating the period of limitation for executing as a decree an award made under r. 22 of the Rules framed under a Co-operative Societies Act. In this view of the case, the date of the award should be regarded as the date on which such award is officially communicated to the person or persons affected thereby. That date in the present case was October 10, 1935. As the last date for taking execution proceedings under Art. 182(1) of the Indian Limitation Act fell within the civil Court vacation of 1938, the requisite application for execution was made on the re-opening date, viz., on October 26, so it must be regarded as within the time.

The decision of the lower appellate Court is, therefore, correct and it will be affirmed. This appeal is, consequently, dismissed. I make no order with regard to costs.

Leave to appeal under s. 15 of the Letters Patent is refused.

Appeal dismissed.

A. A.

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