

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.*

SIMSON AND OTHERS (PLAINTIFFS), PETITIONERS,  
and

VENKATAGÓPĀLAM AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

1886.  
April 2, 12.

*Civil Procedure Code, ss. 508, 521, 522, 622—Act VIII of 1859, s. 318—Award made after time allowed by Court, invalid, when the time runs.*

An order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award. No application was made for extension of time. The award having been returned on 8th May, the Court refused to give judgment in accordance with it under s. 522 of the Code of Civil Procedure on the ground that it was not valid.

The plaintiffs now petitioned High Court under s. 622 of the Code of Civil Procedure:

*Held*, that the award was invalid and the Court had not failed to exercise jurisdiction within the meaning of s. 622 of the Code of Civil Procedure.

IN O.S. No. 10 of 1884 on the file of the Subordinate Judge at Cocanada an order of reference to arbitration was made on 21st January 1885 returnable in six weeks. The arbitrators' fees were not paid till 31st March, and they made their award on 8th May. The Subordinate Judge set it aside as invalid and refused to give judgment in accordance with it under s. 522 of the Code of Civil Procedure.

The plaintiffs presented a petition praying the High Court to revise the proceedings of the Subordinate Judge under s. 622 of the Code of Civil Procedure, on the ground that it was open to him to enlarge the time even after the return of the award and that he had declined jurisdiction in refusing to do so.

Mr. *Grant* for petitioners.

Mr. *Norton* for respondents.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT :—The order of reference to arbitration under s. 508 of the Code of Civil Procedure was passed on January 21st, and

\* Civil Revision Petition 344 of 1885.

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the arbitrators were requested to return their awards within six weeks. The full fees were not received till March 31st, and the award was made on May 8th. We must hold that the six weeks began to run from the date of the order, viz., from January 21st.

As the fees were not at once paid, the proper course would have been for the parties to have applied or for the Court, on its own motion, to have enlarged the time allowed for the arbitration. Unfortunately this was not done, and under s. 521 of the Code of Civil Procedure, the award is invalid not having been made within the period allowed by the Court.

It was urged upon us that it was open to the Subordinate Judge to have enlarged the time even after the return of the award and that the Subordinate Judge virtually declined jurisdiction having ignored the prayer to that effect in the plaintiff's petition. It is on this ground that we are asked to exercise our power of revision under s. 622.

In England the power to enlarge after the expiry of the time allowed for an award rests upon an express Statute, and in India the old Code of Civil Procedure (Act VIII of 1859) enacted (section 318) that an award should not be liable to be set aside only by reason of its not having been completed within the time allowed by the Court unless the delay was caused by the misconduct or corruption of the arbitrator or the arbitration had in the meanwhile been superseded by the Court. That section was not, however, re-enacted in the present Code, and we must therefore take it that the Legislature deliberately intended to enact that in all cases no award should be valid unless made within the time allowed by the Court.

The Subordinate Judge therefore did not refuse to exercise a jurisdiction vested in him by law, and we cannot interfere under s. 622 of the Code of Civil Procedure.

We must dismiss this petition, but, under the circumstances, without costs.

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