

*Subbaráya*du and *Kaliánardmayyar* for appellant.

Venkatasubba Ráu for respondent.

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

VENKAT-
RÁYUDU
v.
NÁGADU.

JUDGMENT :—The District Judge has dismissed the appeal on the ground that it was presented out of time, and it is urged upon us that he had no power to review his previous *ex parte* order admitting the appeal.

We cannot agree in this contention and we are of opinion that an order made *ex parte* under s. 5 of the Limitation Act may, on proper cause shown, be set aside by the Court which made it—see *Jhotee Sahoo v. Omesh Chunder Sircar*, (1) *Dubey Sahai v. Ganeshi Lal*. (2) We do not see that the Judge exercised his discretion in an unreasonable or improper manner, and must dismiss this second appeal; but, under the circumstances, we will make no order as to costs.

APPELLATE CIVIL.

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

UNNIRAMAN (DEFENDANT No. 1), PETITIONER,

and

CHÁTHAN (PLAINTIFF), RESPONDENT.*

1886.
July 12.

Civil Procedure Code, s. 622—Award—Error of Procedure—Relief refused on equitable grounds.

R.M., party to a suit, having authorised his agent to conduct the suit, the agent consented to the case being referred to arbitration by the court. The arbitration was carried on to the knowledge and with the assent of R.M.

On an application by R.M., under s. 622 of the Code of Civil Procedure, to set aside the award made by the arbitrators on the ground (1) that his pleader had not been authorised in writing, as required by s. 506 of the Code, to apply for arbitration, and (2) that he himself had not consented to the reference:

Held that, under the circumstances, R.M. was not entitled to relief.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order of P. J. Ittiyarah, District Munsif of Angadipú-

(1) I.L.R., 5 Cal., 1.

(2) I.L.R., 1 All., 34.

* Civil Revision Petition 21 of 1886.

Note.—See also I.L.R., 13 Cal., 78.

UNNIRAMAN ram, passed under s. 522 of the Code of Civil Procedure, in suit
 v. 176 of 1881.
 CHÁTHAN.

The plaintiff, Patinjari Kovilagath Vallabhan Cháthan Rájá sued Kondipurambath Unniráman Mutha Panikar, defendant No. 1 and 12 others, his tenants, to recover certain land. The case was referred to arbitration and the award was given in favor of plaintiff.

Defendant No. 1 applied under s. 522 to set aside the award, and his application was rejected.

The facts appear sufficiently for the purpose of this report, from the judgment of the Court (Collins, C.J., and Brandt, J.).

Sankara Menón for petitioner.

Bhášhyam Ayyangár for respondent.

JUDGMENT.—This is an application by the defendant No. 1 in suit 176 of 1881, under s. 622 of the Code of Civil Procedure, to set aside an award, and the grounds relied on by him are that the case was referred to arbitrators without his knowledge and consent, and that his pleader was not specially authorised in writing as required by s. 506 of the Code. It appears that he authorised his anandravan, Krishna Panikar, to conduct the suit in question for him, and there can be no doubt this man assented to the reference. There can also be no doubt but that defendant No. 1 knew that his agent had assented to the reference, that he ratified that assent and was fully aware that the arbitrators were conducting the reference, and it was not until the award was given against him that he asserted that the reference was without his knowledge or consent. A party applying under s. 622 to the High Court for relief must show that he has not contributed by his own conduct to his being placed in the position he finds himself in; and, we think, it would be inequitable, under all the circumstances of this case, to grant the relief sought. Regard is also to be had to the delay on the part of the petitioner. It is not necessary to say, and we expressly refrain from saying, anything as to the validity of the award.

This petition is dismissed with costs.