

a fresh starting point for computing the period of limitation, payment of interest or part payment of principal by a receiver or guardian may stand on a different footing than an acknowledgment of liability made by him.

RUSSELL, J.—I concur.

PERIASAMI
MUDALIAR
v.
SEETHARAMA
CHETTIAR.

APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and
Mr. Justice Russell.*

PONNUSAMI MUDALI (DEFENDANT), APPELLANT,

v.

MANDI SUNDARA MUDALI (PLAINIFF), RESPONDENT.*

1903.
August 4.
October 15.

Civil Procedure Code—Act XIV of 1882, ss. 525, 540, 620—Application to file an award—Registration as a suit—Award set aside—Application for revision—Maintainability—Right of appeal from order setting aside award.

An application was made to file an award in a District Munsif's Court and was registered as a suit. The defendant appeared, and the District Munsif took evidence, whereupon, he refused to file the award and set it aside, being of opinion that the arbitrators had been guilty of misconduct in making the award. The applicant filed a civil revision petition in the High Court :

Held, (1) that the order refusing to file the award and setting it aside was a decree, and (2) that an appeal lay against that decree.

APPLICATION to file an award. Plaintiff had applied to the District Munsif of Vellore, under section 525 of the Code of Civil Procedure, to file an award made by two arbitrators, to whom plaintiff and defendant had referred certain differences. The application was registered as a suit, whereupon defendant appeared, upon notice, and opposed the filing of the award. The District Munsif took evidence and, being of opinion that the arbitrators had been guilty of misconduct in making the award, refused to file it and set it aside. The plaintiff then applied to the High Court for revision of the District Munsif's order.

* Appeal No. 20 of 1903 under section 15 of the Letters Patent against the judgment of Sir Arnold White, Chief Justice, dated 2nd February 1903, in Civil Revision Petition No. 267 of 1902, presented under section 622 of the Code of Civil Procedure to revise the decree of S. Raghunathaiya, District Munsif of Vellore, in Original Suit No. 359 of 1900, dated 31st March 1902.

PONNUSAMI
MUDALI
v.
MANDI
SUNDARA
MUDALI.

The case first came before the Chief Justice, who held that the circumstances referred to by the District Munsif as involving misconduct were mere informalities in the procedure of the arbitrators, that no misconduct on their part had been made out, and that, under section 526 of the Code of Civil Procedure, the District Munsif had no power to set aside the award. He reversed the order and directed the award to be filed.

Against that order, appellant filed this appeal, under article 15 of the Letters Patent.

Hon. Mr. C. Sankaran Nayar and R. Sivarama Ayyar for appellant.

V. Krishnaswami Ayyar for respondent.

The case came on for hearing before Subrahmania Ayyar and Boddam, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.—The respondent in this appeal applied to the District Munsif of Vellore, under section 525 of the Code of Civil Procedure, to file an award made by two arbitrators to whose decision the respondent and the appellant had submitted certain differences in connection with a partnership trade they had been carrying on.

The application having been registered as a suit, the appellant appeared upon notice and opposed the filing of the award. The District Munsif having taken evidence, and being of opinion that the arbitrators had been guilty of misconduct in making the award refused to file it and "set it aside."

The respondent then applied to this Court under section 622 of the Civil Procedure Code to have the order revised, and the learned Chief Justice came to the conclusion that the circumstances referred to by the District Munsif as involving misconduct were mere informalities in the procedure of the arbitrators, that no misconduct on their part was made out and that under section 526, Civil Procedure Code, the District Munsif had no power to set aside the award, and consequently reversed the order of the Munsif and directed the award to be filed.

In this appeal one point which arises for determination has reference to the nature and effect of the order of the District Munsif. "If the said order was a decree within the meaning of the expression as used in the Civil Procedure Code and one appealable under the provisions thereof this Court would have no jurisdiction to interfere in revision.

In *Mana Vikrama v. Kristnan Nambudri*(1) it was, no doubt, held that a decision whereby a Court refuses to file an award under section 526 is not a decree, but only an order against which the Code allows no appeal. The learned Judges based this view solely on the ground that the proceeding under section 525 is not in fact a suit—a ground, which, with all deference to the learned Judges, is obviously untenable, inasmuch as the section itself speaks of the proceeding, once the application is registered, as a suit and it is now established beyond controversy that such a proceeding is a suit though it be one commenced by an application and not by a plaint in the usual form. Our attention was also called to the following observation in *Gowdu Magata v. Gowdu Bhagavan*(2) tending to the same view:—“In the former case (*i.e.*, where the Court refuses to file the award) no right is conclusively negatived, for the award can be enforced by an ordinary suit” (see at page 300). But the suggestion thus made is in effect in conflict with the observations of the Judicial Committee in *Muhammad Nawaz Khan v. Alam Khan*(3) which clearly imply that any matter which is directly and substantially in issue and is determined in a proceeding under section 525 would be *res judicata* in any subsequent litigation between the same parties involving the same points.

Moreover, according to the *ratio decidendi* of the decision of the majority in the Full Bench case of *Mahomed Wahiduddin v. Hakimani*(4), an order such as that in question here is a decree; and the recent case of *Ghulam Jilani v. Muhammed Hassan*(5) relied on by the appellant shows that the Judicial Committee apparently take the same view. At page 58 of the report, their Lordships, dealing with the case of applications to file awards made out of Court, observe:—“Proceedings described as a suit and registered as such should be taken in order to bring the matter . . . under the cognizance of the Court. That is or may be a litigious proceeding—cause may be shown against the application—and it would seem that the order made thereon is a decree within the meaning of that expression as defined in the Civil Procedure Code.” And as at page 56 they say “the decisions of the Indian Courts on those provisions (*viz.*, those of the Civil Procedure Code relating to arbitrations) are so conflicting that it may be useful to state the

PONNUSAMI
MUDALI
v.
MANDI
SUNDARA
MUDALI.

(1) I.L.R., 3 Mad., 68.

(3) L.R., 18 I.A., 73.

(5) L.R., 29 I.A., 51.

(2) I.L.R., 22 Mad., 299.

(4) I.L.R., 25 Cal., 757.

PONNUSAMI
MUDALI
v.
MANDI
SUNDARA
MUDALI.

conclusions at which their Lordships have arrived on some of the disputed points brought to their attention in the course of the argument" the view stated in the passage quoted above has to be accepted as an actual decision by the Committee on the point dealt with. It, therefore, seems to us that the ruling in *Mana Vikrama v. Kristnan Nambudri*(1) on the point under consideration is erroneous.

Next, taking the Munsif's order in question to be a decree it seems to us to be clear that an appeal lay against it, for the prohibition against an appeal contained in the concluding part of section 522 has reference only to a decree passed on an award accepted as valid and cannot apply to an order amounting to a decree which neither rests on nor is made in accordance with an award but proceeds on the footing that there is no valid award. The cases of *Kombi Achen v. Pangi Achen*(2) and *Krishnan Chetti v. Muthu Palandi Vacha Makali Tevar*(3) are decisions relating to decrees passed in accordance with awards.

We, therefore, refer for the decision of the Full Bench the questions—

(1) Whether the order of the District Munsif, dated the 31st March 1902, refusing to file the award and setting it aside is a decree? and

(2) Whether an appeal lay against it?

The case came on for hearing before the Full Bench constituted as above.

Hon. Mr. C. Sankaran Nayar and R. Sivarama Ayyar for appellant.

V. Krishnaswami Ayyar for respondent.

The Court delivered the following

OPINION.—We think that the matter is practically concluded by the *dictum* of the Privy Council in the recent case of *Ghulam Jilani v. Muhammed Hassan*(4) that an order made on an application to file an award under section 525 of the Civil Procedure Code "would seem to be a decree within the meaning of that expression as defined in the Civil Procedure Code." This is a considered *dictum*, and is, we think, fully in accordance with the scheme and policy of the Code.

(1) I.L.R., 3 Mad., 68.

(2) I.L.R., 21 Mad., 405.

(3) I.L.R., 22 Mad., 172.

(4) L.R., 29 I.A., 51.

The decision of the Privy Council in *Muhammad Nawaz Khan v. Alam Khan*(1) is not at variance with the above view. We think that the contrary view taken in *Mana Vikrama v. Kristnan Nambudri*(2) is erroneous.

PONNUSAMI
MUDALI
v.
MANDI
SUNDARA
MUDALI.

Our answer to the reference made to us is (1) that the order of the District Munsif refusing to file the award and setting it aside is a decree, and (2) that an appeal lay against that decree.

The appeal came on for final hearing in due course before Sir Subrahmania Ayyar, Offg. C.J., and Boddam, J., when the Court delivered the following

JUDGMENT.—Following the ruling of the Full Bench, we reverse the order of the learned Chief Justice on the ground that an appeal lay and no revision petition could be heard.

Each party will bear his own costs in the revision petition as well as in this appeal.

APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar
and Mr. Justice Russell.*

SIVAGAMI ACHI (DEFENDANT No. 7—SEVENTH COUNTER-
PETITIONER), APPELLANT,

v.

SUBRAHMANIA AYYAR (PLAINTIFF), PETITIONER,
RESPONDENT.*

1903,
October 30.
November
16.

Civil Procedure Code—Act XIV of 1882, s. 287—Proceedings relating to proclamation of sale—"Order"—Appeal.

None of the proceedings of a Court under section 287 of the Code of Civil Procedure and the rules framed thereunder in relation to the proclamation of sale is an "order" within section 244 and as such appealable as a "decree."

Sivasami Naicker v. Ratnasami Naicker, (I.L.R., 23 Mad., 568), and *Ganga Prosad v. Raj Coomar Singh*, (I.L.R., 30 Calc., 617), dissented from.

(1) I.L.R., 18 Calc., 414.

(2) I.L.R., 3 Mad., 68.

* Civil Miscellaneous Appeal No. 117 of 1903, presented against the order of P. J. Itfeyerah, Subordinate Judge of Kumbakonam, in Execution Petition Register No. 215 of 1902 (Original Suit No. 40 of 1900).