

## APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice,  
and Mr. Justice Tyabji.

BATCHA SAHIB (FIRST DEFENDANT), APPELLANT,

v.

ABDUL GUNNY *alias* ABDUL KARIM SAHIB AND ELEVEN  
OTHERS (PLAINTIFFS, DEFENDANTS NOS. 2 TO 12), RESPONDENTS.\*

1913.  
March 18,  
and  
April 1.

*Award—Judgment and decree in accordance with award—Appeal—Civil Procedure Code (Act V of 1908), sch. II, cl. 15 and 16—Revision, non-maintainability of—Civil Procedure Code, Act V of 1908, sec. 115, no formal petition necessary for revision under.*

No appeal lies from a decree which is in accordance with an award except upon grounds mentioned in clause 16 (2) of the second schedule to the Civil Procedure Code (Act V of 1908). This was also the law under the old Civil Procedure Code (Act XIV of 1882) and it is *a fortiori* under the new Civil Procedure Code according to which an application could be made under clause 15 (c) to set aside an award on the new ground, viz., "the award being otherwise invalid."

*Suryanarayana Rao v. Sarabhaiah* (1911) 21 M.L.J., 263, followed.

*Kanakku Nagalinga Naik v. Nagalinga Naik* (1909) I.L.R., 32 Mad., 510, referred to.

When an application is made to set aside an award but refused and a judgment is pronounced according to the award, the judgment so pronounced is final under clause 16 (2).

A revision petition to set aside an award is more objectionable than an appeal.

*Ghulam Khan v. Muhammad Hassan* (1902) I.L.R., 29 Calc., 167 (P.C.), followed.

*Velu Pillai v. Appasami Pandaram* (1911) 1 M.W.N., 141, distinguished.

*Obiter*: If an application is made to set aside an award but refused, it would be open to the Court to pronounce judgment even though the ten days allowed for such an application had not expired. The words "after the time for making such application had expired," apply only where there has been no application made to set aside the award.

If the application is made after the period of limitation, viz., ten days, the Court can refuse to set aside the award.

A formal application for revision under section 115, Civil Procedure Code, is not necessary.

APPEAL against the decree of H. O. D. HARDING, District Judge of Coimbatore, in Original Suit No. 33 of 1908.

The facts of the case appear from the judgment of WHITE, C.J.

*T. R. Ramachandra Ayyar* and *T. R. Krishnaswami Ayyar* for the appellant.

*C. V. Ananthakrishna Ayyar* for respondents Nos. 1, 4 and 6 to 9.

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WHITE, C.J.—This is an appeal against a decree on a “judgment according to the award” under paragraph 16 of the second schedule to the Code of Civil Procedure. The decree is impeached by the appellant on two grounds: it is said first that there has been no award, secondly, that, on the application to the District Judge to pronounce judgment according to the award, the learned Judge ought to have given an opportunity to one of the arbitrators, who is described by the learned Judge as the “dissenting arbitrator” to give evidence, that he did not give that opportunity and that being so the judgment according to the award is bad.

On behalf of the respondents a preliminary objection was taken that no appeal lies. It seems to me that on the authority of the Full Bench decision which is reported in *Suryanarayana Rao v. Sarabhaiah*(1), the preliminary objection is good and should be upheld. The judgment of the Full Bench was with reference to a case which arose under the Code of 1882. Now the doubts which had arisen under the provisions of the old Code were removed by certain amendments being made in the corresponding provisions of the second schedule to the new Code. Paragraph 15 (which corresponds to section 521 of the old Code) provides that no award should be set aside “except on one of the following grounds.” In paragraph 15 (1) (c) we have a new ground, namely, the award having been made after the expiration of the period allowed by the Court. At the end of the paragraph we have the general words added “or being otherwise invalid.” Those amendments of the law were made for the purpose of removing doubts which had arisen. If on the authority of the Full Bench case, the objection that no appeal lies would have been good under the old Code, *a fortiori* it is a good objection as the law now stands. The time prescribed for an application to set aside an award is ten days from the submission of the award (Limitation Act, 1908, schedule I, article 158) under paragraph 15 of the II schedule to the

(1) (1911) 21 M.L.J., 263.

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Code of Civil Procedure, as amended; the Court might have set aside the award in the present case on the ground that it was otherwise invalid, if the application had been made in time. In the present case, the award would seem to have been submitted on the 29th of June. The application to set it aside was made on July 18th, 1910. This would seem to have been overlooked. The order refusing to set aside the award appears to have been made at the same time (September 2, 1910) as the judgment according to the award under paragraph 16 of the II schedule to the Code of Civil Procedure (which corresponds to section 522 of the old Code) was given. In the present case the judgment according to the award was pronounced after the time for making the application to set aside the award had expired. But even if this had not been so, as it seems to me, inasmuch as an application to set aside the award had been made and refused it would have been open to the Court pronounce judgment even though the ten days had not expired. The words "after the time for making such application had expired" would seem to apply only where there has been no application made to set aside the award. The law is thus stated by Mr. Banerji in his book on the Law of Arbitration in India, and I think correctly, on page 293—"In order to secure finality to the judgment and decree the necessary conditions are that there has been no order remitting the award, and that no application has been made to set aside the award within the ten days, or if an application has been made it has been refused after judicial determination by the Court."

In the present case the Court refused to set aside the award. The judgment pronounced under paragraph 16 (1) is therefore final under paragraph 16(2).

Then we are asked to deal with the matter by way of revision. There is no formal application before us to revise but, as has been pointed out, under section 115 of the Code, a formal application is not necessary. In *Ghulam Khan v. Muhammad Hassan* (1) the Privy Council observed: "Their Lordships are inclined to agree with the view of CLARK, J., in (2) that in the case of an award revision would be more objectionable than an appeal." We are asked to interfere on the ground

(1) (1902) I.L.R., 29 Calo., 167 at p. 185.

(2) ( ) 84 P.R., 1901.

that the learned Judge ought to have given one of the arbitrators an opportunity to give evidence on the hearing of the application to set aside the award. Speaking of this arbitrator, the Judge said, "he was here on the 11th August. Now he has been summoned, but cannot be found. Petitioner's case turns on that man, yet petitioner took no steps to secure his presence on the last occasion." Then he says "I see no reason to adjourn this matter further; panchayatdars have given an award, but all that has really happened is that the third, the absent man, does not agree with them in some points and so did not sign the award." If it were quite clear that the learned Judge has exercised discretion wrongly in this case, we might be prepared to take the strong step of interfering on revision but the general policy of the legislature is clear that in these matters the judgment in accordance with an award should be final. Mr. Ramachandra Aiyar has been unable to call our attention to any case in which this Court has interfered by way of revision where a decree has been passed in accordance with an award given by arbitrators, excepting a case decided by WALLIS, J., *Velu Pillai v. Appasami Pandaram*(1). In that case it does not appear that there was any application to set aside the award and judgment was pronounced two days after the award was submitted. It was not a case of impeaching an award but a case where the express provisions of paragraph 16 of schedule II of the Code of Civil Procedure had been contravened. I may refer to a decision of MUNRO and ABDUR RAHIM, JJ., in *Kanakku Nagalinga Naik v. Nagalinga Naik*(2). There it was held under the old section that no appeal lay against a decree passed in accordance with an award excepting on the grounds stated in the section and that no appeal will lie on the ground that an award is void *ab initio*. I refer to this case for the purpose of pointing out that it was never suggested there that the Court should or could interfere in the exercise of its power of revision. I think we should uphold the preliminary objection and dismiss the appeal with costs and I think we should decline to interfere by way of revision.

TYABJI, J.—I agree.

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TYABJI, J.

(1) (1911) 1 M.W.N., 141.

(2) (1909) I.L.R., 32 Mad., 510.