

Before Mr. Justice Mitter and Mr. Justice O'Kinsaly.

IN THE MATTER OF THE PETITION OF DUTTO SINGH AND OTHERS.*

DUTTO SINGH AND OTHERS v. DOSAD BAHADUR SINGH

1882
January 17.

Arbitration—Award—Time to file an award—Limitation—Limitation Act (XV of 1877.) Sch. II, Cl. 176—Civil Procedure Code, 1877, ss. 525, 526—Powers of Court—Cause shown against filing award, Validity of—Powers of Arbitrators—Review of Award.

Where an award was made and signed by the arbitrators on the 5th of August 1881, but was not delivered to the parties till the 13th of September following, *semble*, that an application to file the award, made on the 25th of February 1882, under the provisions of s. 525 of the Code of Civil Procedure, was not barred by limitation. It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award under s. 525 of the Code of Civil Procedure, from the time when he is in a position to enforce it.

Under ss. 525 and 526 of the Code of Civil Procedure, the Court has full power to enter into the question of the sufficiency of the cause shown against the filing in Court of an award.

Dandekar v. Dandekars (1) followed; *Ichamoyee Chowdhranes v. Prosunno Nath Chowdhri* (2) dissented from.

After an award has been made and handed to the parties the functions of the arbitrators cease. They have no power afterwards to deal with an application for review of their decision.

IN this case it appeared that Dutto Singh and others (hereafter spoken of as Dutto Singh) agreed to refer to arbitration certain disputes which they had with Dosad Bahadur Singh and others (hereafter spoken of as Dosad Bahadur Singh). The arbitrators made their award on the 5th of August 1881 in favour of Dosad Bahadur Singh, in consequence of which the opposite party applied to the arbitrators for a review of their decision on the 16th of August 1881. Pending the consideration of this application by the arbitrators and on the 28th of November 1881, Dosad Bahadur Singh applied to the Court of the Munsiff of Tajpore in Tirthoot under s. 525 of the Civil Procedure Code to have the award filed in Court. Dutto Singh having been called upon to show cause, objected that the arbitrators had not yet passed any

*Rules Nos. 1033 and 1202 of 1882, against the order of Moulvi Mahomed Noorul Hossain, Munsiff of Tajpore, dated the 30th June 1882.

(1) I. L. R., 6 Bom., 663.

(2) *Ante*, p. 557.

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order on his application for review, and on this ground the application to have the award filed in Court was dismissed on the 9th of January 1882.

On the 17th of January 1882, the arbitrators rejected Dutto Singh's application for review, and on the 25th of February 1882, Dosad Bahadur Singh made another application to have the award filed in Court. Dutto Singh showed cause on the ground, amongst others, that the application for review had been improperly rejected. On the 30th of June 1882, the Munsiff remitted the case to the arbitrators on the ground that the application for review had been improperly rejected.

RULE No. 1033 OF 1882.—On the 22nd of August 1882, Dutto Singh applied to the High Court for a rule calling upon Dosad Bahadur Singh to show cause why the Munsiff's order of the 30th of June should not be set aside on the following grounds: (1), that the application to have the award filed in Court was barred by limitation; (2), that the Munsiff had no jurisdiction to make the order objected to; (3), that the arbitrators having been guilty of misconduct in making the award, and in refusing the application made to them to reconsider it, the Munsiff should have refused to interfere in any way and should have simply refused to file the award; (4), that the award should have been set aside under the provisions of s. 526 of the Civil Procedure Code, or the parties left to a civil suit.

RULE 1202 OF 1882.—After the previous rule had been issued Dosad Bahadur Singh applied to the High Court for a rule calling upon Dutto Singh to show cause why the Munsiff should not be ordered to file the award.

Both rules were heard together.

Mr. *Twisdale* showed cause against Rule No. 1033, and supported Rule 1202.

Mr. *C. Gregory* showed cause against Rule 1202, and supported Rule No. 1033.

The judgment of the Court (MITTER and O'KINEALY, JJ.) was delivered by

MITTER, J.—These two rules arise out of a proceeding held in the Munsiff's Court of Tajpore under the provisions of

ss. 525 and 526 of the Civil Procedure Code. It appears that certain matters in dispute between the parties to these two rules were referred to arbitration without the intervention of a Court of Justice. The arbitrators made their award on the 5th of August 1881; but it was not handed over to the parties till the 13th September following. The petitioners in Rule No. 1033 being dissatisfied with the award, in the meantime filed, on the 16th of August, a petition of review before the arbitrators.

While this petition of review was pending, the petitioners in Rule No. 1202 under s. 525 of the Civil Procedure Code, applied to the Munsiff of Tajpore, who had jurisdiction over the matter, to have the award filed in Court. On notice being given to the petitioners in Rule No. 1033, who were the parties to the arbitration other than the applicants under s. 525, they raised various objections, some of which undoubtedly come within the provisions of ss. 520 and 521 of the Civil Procedure Code; but the Court without determining any of them refused the application on the 9th January 1882 solely on the ground that an application for review was then pending before the arbitrators.

On the 7th January 1882, the application for review was rejected. The petitioners in Rule No. 1202 again applied to the Court on the 25th February 1882 to have the award filed in Court under s. 525. Again the parties other than the applicants, on notice being given, urged various objections, which were disposed of by the Court on the 30th June 1882.

One of the objections urged against the award being filed in Court was that the application dated the 25th February 1882 was out of time, under Art. 176 of the Limitation Act, which lays down that an application under s. 525 of the Civil Procedure Code should be made within six months from the date of the award. The Court overruled this objection on the ground that the six months should be counted from the date when the award became final, and that the award did not become final till the application for review was disposed of.

Another objection against the award was that the arbitrators were guilty of corruption. The Court overruled it, finding that this charge was not established.

But the Court, being of opinion that the application for

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review had not been duly considered by all the arbitrators, remitted the award to them to deal with the application for review according to certain directions contained in the judgment. The petitioners in Rule No. 1202 contend that the order remitting the award is erroneous; that the Court, having regard to its finding upon the other objections, should have ordered the award to be filed in Court. The petitioners in the other rule contend that the decision of the lower Court on the question of limitation is erroneous; and that it having come to the conclusion that the proceedings of the arbitrators were not regular should have rejected the application at once.

The first question that we have to decide is, whether the application of the 25th February 1882 was barred under the provisions of Art. 176 of the Limitation Act. The order of the lower Court in this case is not appealable, and the rules were obtained under the provisions of s. 622 of the Civil Procedure Code. Supposing that the decision of the lower Court on the question of limitation is erroneous in law, it might be doubtful whether it would bring the case within the purview of s. 622 of the Civil Procedure Code. However, if it were necessary for us to decide this question, we would follow the opinion expressed by Couch, C.J., in *Sreenath Chatterjee v. Koylash Chunder Chatterjee* (1) "that the word 'date' does not mean the day written in the award, as when it was made, but the time when it is given to the parties, when it becomes an award and is handed over to them, so that they may be able to give effect to it." An award may be made and dated the day it is written and signed by the arbitrators. It may then remain in the hands of the arbitrators for more than six months. In a case like this it would be unreasonable to hold that the six months should count from the "date" written in the award.

It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award under s. 525 of the Civil Procedure Code from the time when he is in a position to enforce it.

It has been next urged in support of Rule No. 1033 that when objections were taken to the filing of the award in Court,

(1) 21 W. R., 248.

and when some of these objections came within ss. 520 and 521 of the Civil Procedure Code, the lower Court should have dismissed the application under s. 526. It has been contended before us that a Court under ss. 525 and 526 cannot enter into the question of the validity of the cause shown against the filing in Court of an award; that whenever any of the grounds mentioned or referred to in s. 520 or s. 521 are alleged, the Court must refuse the application holding that sufficient cause has been shown why the award should not be filed within the meaning of ss. 525 and 526. In support of this contention the case of *Ichamoyee Chowdhranee v. Prosunno Nath Chowdhri* (1) has been relied upon. The learned Judges who decided that case gave different reasons for their decision. No doubt the judgment of Wilson, J., fully supports this contention; but with great deference to his opinion we are unable to agree in that view. In *Dandekar v. Dandekars* (2) a contrary view of the ss. 525 and 526 has been taken. We do not think it necessary to go into the reasons of our decision upon this point, as we do not find that we can add anything to those given in the Bombay decision cited above. This objection must also therefore fail.

In Rule No 1202 it has been urged that the lower Court is in error in remitting the award to the arbitrators to reconsider the application for review against it. We are of opinion that this contention is valid. After the award was made and handed over to the parties, the functions of the arbitrators ceased. They had no power afterwards to deal with any application for review.

Therefore, the ground upon which the first application was disposed of by the lower Court was erroneous. We, therefore, set aside both the orders of the 9th January and 30th June 1882, and send back the record to the lower Court to deal with the objections taken to the filing of the award according to law. We allow no costs in either of the Rules.

Orders set aside.

(1) *Ante* p. 557.

(2). I. L. R., 6 Bom., 663.

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