

plea in appeal, the Courts below were, in my opinion, right in giving effect to the defendant's deed, and I dismiss this appeal with costs.

MARMOOD, J.—I concur.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

BEJARI DAS (PLAINTIFF) v. KALIAN DAS (DEFENDANT). *

Arbitration—Making award after the time allowed by Court—Civil Procedure Code, s. 521.

Under s. 521 of the Civil Procedure Code, the rule that no award shall be valid unless "made" within the period fixed by the Court, is equivalent to a rule that the award must be "delivered" within that period.

Upon a reference to the arbitration of three persons, the Court ordered that the award made by them should be filed on the 19th September, 1885. The award was not filed on that date, but was signed by two of the arbitrators on that date, and by the third arbitrator on the 20th September, on which day it was filed. It had been agreed that the opinion of the majority should carry the decision.

Held that the award was not "made within the period fixed by the Court" within the meaning of s. 521 of the Civil Procedure Code.

THE facts of this case are stated in the judgment of the Court.

Babu *Ratan Chand*, for the appellant.

Pandit *Nand Lal*, for the respondent.

TYRRELL, J.—This case is one in which a reference to arbitration was made when the suit was in the Court of first instance.

The question at issue was referred to three arbitrators, namely, Nand Kishore, Jit Mal and Beni Ram, and the order of the Court was, that the award made by these arbitrators should be filed, that is to say, made and delivered, on or before the 19th September, 1885.* As a matter of fact the award of the three arbitrators was not filed on that date, but was signed by two of them on that date, and by Beni Ram, the third arbitrator, on the 20th September. Both parties objected to the propriety and correctness of the arbitrators' award, but their objections were overruled, and a decree based on the award was passed.

* First Appeal No. 97 of 1886, from an order of Lala Banwari Lal, Subordinate Judge of Aligarh, dated the 10th May, 1886.

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On appeal by the defendant the lower appellate Court set aside this decree, holding the award to be invalid, and remitted the case to the first Court for trial on its merits. This order of the lower appellate Court is the subject of the present appeal. The learned pleader for the appellant, while admitting that the award was not signed, filed and delivered within the period allowed by the Court, contends notwithstanding that the award was "made" on the 19th September, in the sense of the last paragraph of s. 521, and therefore was valid. He bases his argument mainly on the terms of s. 515 of the Code, which provides that when an award has been made, the parties shall sign it, the argument being that an award, though unsigned, may still, in the sense of that section, be considered to have been "made." He also contends in an oral plea that the award of two out of three arbitrators having been made and signed on the 19th September, the award was a good one, inasmuch as it had been agreed that the opinion of the majority should carry the decision. I would not allow these contentions. Looking to s. 508 of the Code, I find that it is the duty of the Court to fix the time for "delivery" of the award, and under s. 514, if the award cannot be completed within the time so fixed, the Court may enlarge the time for its "delivery." These are the only provisions referring to the period to be fixed by the Court; and as they both contemplate the *delivery* of the award, which necessarily pre-supposes the *making* and signing of such award, it follows that, under s. 521, the rule that no award shall be valid unless "made" *within the period fixed by the Court*, is equivalent to a rule that the award must be "delivered" within that period. In the case before us it is to be noted that the order to file or deliver the award before the 19th September was as precise as it could be. The award, therefore, in the case which was signed by two arbitrators only within the time fixed for its delivery in a completed state, and was not filed till the day after the expiry of the limit fixed by the Court, was not "made" within the period fixed by the Court." As to the oral plea, it is sufficient to say that the Court's order was, that the award of the three arbitrators, and not the award of the majority, should be filed on or before the 19th September; and even the award of the majority was not delivered or filed on that day. I am, therefore,

of opinion that the pleas in appeal are not sound, and that this appeal must be dismissed with costs.

OLDFIELD, J.—I concur.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Turrell.

NAND RAM (PLAINTIFF) v SITA RAM AND ANOTHER (DEFENDANTS).*

Execution of decree—Decree enforcing the right of pre-emption—Non-payment of purchase-money decreed by appellate Court—Restitution of purchase-money paid under lower Court's decree—Civil Procedure Code, s. 533—Application for restitution—Revival of application—Act XV of 1877 (Limitation Act), sch. ii, No 179 (4).

A decree for pre-emption was passed conditionally upon payment by the decree-holder of Rs. 1,139, and in July, 1880, the plaintiff paid this amount into court, and it was drawn out by the defendant in August, 1881. Meanwhile, in July, 1881, the High Court in second appeal raised the amount to be paid by the plaintiff to Rs. 2,400, but the plaintiff allowed the time limited for payment of the excess difference to elapse without paying it and the decree for pre-emption thereupon became dead. In May, 1883, the plaintiff applied in the execution department for the refund of the deposit which had been drawn and retained by the defendant. This application was granted and the defendant ordered to refund, and this order was confirmed on appeal in January, 1885, and by the High Court in second appeal in May, 1885. Meanwhile the first Court had suspended execution of the order pending the result of the appeal, and in December, 1884, removed the application temporarily from the "pending" list. In February, 1885, the plaintiff applied for restitution of the amount deposited, asking for attachment and sale of property belonging to the defendant. This application was dismissed as barred by limitation.

Held that this application was only a revival of the application of May, 1883, which was within time.

Held also that the plaintiff was, in the sense of s. 533 of the Civil Procedure Code, "a party entitled to a benefit by way of restitution under the decree" of the High Court of July, 1881; that it was a necessary incident of that decree that he was entitled to restitution of the sum which he had paid as the sufficient price under the decree of the lower appellate Court; that he was competent under s. 533 to move the local Court to execute the appellate decree in this respect in his favour "according to the rules prescribed for the execution of decrees in suits;" that he did this in May, 1883, by an application made according to law in the proper Court in the sense of art. 179 of the Limitation Act; and that his present application to the same effect being within three years from that application was within time.

* Second Appeal No. 52 of 1886, from an order of M. S. Howell, Esq., District Judge of Aligarh, dated the 12th April, 1886, reversing an order of Babu Abinash Chandar Banarji, Subordinate Judge of Aligarh, dated the 6th February, 1886.

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