

Before Mr. Justice Burkitt.

SITA RAM (DEFENDANT) v. BHAWANI DIN RAM (PLAINTIFF).*

Civil Procedure Code, sections 508, 514 and 521 - Arbitration - Award -

Delivery of award within the time fixed by the Court.

The time fixed by the Court for the delivery of an award in a case pending before it was the 16th of April 1900. The award was actually completed and signed and made over to a peon of the Court on the 16th of April; but, as it was received by the peon after Court hours, it did not in fact reach the hands of the Court until the next day, the 17th of April. Held that the award was within time. *Behari Das v. Kalian Das* (1), *Chuha Mal v. Hari Ram* (2), *Raja Har Narain Singh v. Chaudhrai Bhagwant Kaur* (3), *Umersey Premji v. Shamaji Kanji* (4), and *Arunagam Chetti v. Arunachalam Chetti* (5) referred to.

THE parties to the suit out of which this appeal arose entered into an agreement to refer the matters in dispute between them to arbitration. These matters were accordingly referred by the court to two arbitrators and an umpire, and the 30th of March 1900 was fixed as the date by which the award was to be filed. The time was afterwards extended to the 16th of April 1900. On the last mentioned day the arbitrators drew up their award, executed it and signed it, and handed it over to the court peon who was in attendance on them by order of the court. It is said to have been about 8 o'clock in the evening when the peon received the paper, and consequently it was not filed in court until the next day. The court (Munsif of Sayidpur) held that the award was bad, it having been submitted to the court by the arbitrators one day after the time given to them by the court. It thereupon refused to act on the award and proceeded to try the case on the merits, ultimately decreeing most of the plaintiff's claim. The defendant appealed, and the lower appellate Court (Subordinate Judge of Ghazipur) agreed with the finding of the Court of first instance that the award was filed after time, and, on the merits, dismissed the appeal. The defendant thereupon appealed to the High Court.

* Second Appeal No. 1110 of 1901, from a decree of Rai Anant Ram, Subordinate Judge of Ghazipur, dated the 12th of June 1901, confirming a decree of Maulvi Muhammad Abdur Bahim, Munsif of Sayidpur, dated the 23rd of June 1900.

(1) (1886) I. L. R., 8 All., 543.

(3) (1891) I. L. R., 13 All., 300.

(2) (1886) I. L. R., 8 All., 548.

(4) (1883) I. L. R., 13 Bom., 119.

(5) (1898) I. L. R., 22 Mad., 22.

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Munshi *Haribans Sahai*, for the appellant.

Mr. *S. S. Singh* and Munshi *Gobind Prasad* (for whom
Pāndit *Baldeo Ram Dave*), for the respondent.

BURKITT, J.—This is in some ways a peculiar case. At an early stage of the proceedings the parties to the suit came to an agreement to refer their differences to arbitration. In pursuance of this agreement the matters in dispute were referred by the Court to two arbitrators and an umpire, who were required to submit their award by the 30th of March, 1900. The time was afterwards extended to the 16th of April, 1900. On the last mentioned day the arbitrators drew up their award, executed it and signed it, and handed it over to the Court peon who was in attendance on them by order of the Court. It is said to have been about 8 o'clock at night when the peon received the paper, and naturally it was not filed in Court till the next day. The Court of first instance held that the award was bad, it having been submitted to the Court by the arbitrators one day after the time given to them by the Court. The Court thereupon refused to act upon the award, and proceeded to try the case on the merits. On appeal the lower appellate Court, adopting the conclusions of the first Court, held that "in reality the award was filed on the 17th of April, beyond time, and under such circumstances the said award is void and not fit to be accepted." The Court then proceeded to hear the appeal on the merits and finally dismissed the appeal with costs. In this appeal the only point which was raised before me is that the Courts below were wrong in refusing to act upon the award. It is contended that the award was made within time within the meaning of sections 508, 514 and 521 of the Code of Civil Procedure. Several cases were cited at the hearing, and amongst others the case of *Behari Das v. Kalian Das* (1), the case of *Chuha Mal v. Hari Ram* (2) and the case of *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar* (3), in which their Lordships of the Privy Council, at page 304 of the Report, entirely approved of the judgment of Mr. Justice Oldfield in the case of *Chuha Mal v. Hari Ram* mentioned

(1) (1889) I. L. R., 8 All., 543.

(2) (1886) I. L. R., 8 All., 548.

(3) (1891) I. L. R., 13 All., 300.

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above. I was also referred to the case of *Umersey Premji v. Shumji Kanji* (1), in which Mr. Justice Jardine dissented from the opinion laid down in *Behari Das v. Kalian Das* (2) referred to above. This judgment, however, was pronounced in 1888 some three years before the decision of their Lordships of the Privy Council in the case above mentioned of *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar*. I was referred lastly to the case of *Arumugam Chetti v. Arunachalam Chetti* (3), in which the learned Judges expressed their approval of the decision of Mr. Justice Jardine mentioned above, and held that the decision of the Privy Council in the case of *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar* was not inconsistent with the view they took. The gist of most of these cases seems to me to be that the date to be looked at in a matter like the present is the date at which the arbitrators made the award, and not the date on which the award may have reached the Court. How far the Madras and Bombay decisions which I have just referred to are consistent with the decision of their Lordships of the Privy Council, it is not necessary for me to discuss.

It seems to me that this case turns on a very short point. The award was made and signed by the arbitrators within the time fixed, that is to say it was made on the 16th of April, and it was on that day handed over to the officer of the Court who was in attendance on the arbitrators for that purpose. This I consider, if there were any doubt on the matter, to be a sufficient compliance with the order of the Court that the award should be submitted by the 16th of April, 1900, "*ta tarikh mulayyanah bhej den.*" In my opinion the award is a good and valid award, and was not invalidated by the fact that it did not actually reach the hands of the Court till the 17th April. I must therefore allow this appeal, set aside the decrees of the two lower Courts, and direct that the record be now sent through the lower appellate Court to Court of first instance, in order that that Court may, as directed by the Code of Civil Procedure, pass a decree in accordance with the award, unless there should be

(1) (1888) I. L. R., 13 Bom., 119. (2) (1886) I. L. R., 8 All., 543.
 (3) (1898) I. L. R., 22 Mad., 22.

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some other valid objection raised to such decree being passed. The respondent must pay the appellant's costs in all three Courts.

Appeal decreed.

PRIVY COUNCIL.

MAQBULIAN (DEFENDANT) v. AHMAD HUSAIN AND OTHERS

(PLAINTIFFS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Evidence—Proof of divorce and subsequent marriage—Deposition in former criminal case—Act No. I of 1872 (Indian Evidence Act), sections 19 and 80—Heading of deposition.

In a suit in which the appellant's success depended on her establishing her mother's divorce from a former husband (Eda) and subsequent marriage to another man (Ghulam Ali) in whose service she had been for some years, and to whose property the appellant claimed to succeed as his daughter and heir, the respondents produced a deposition made after the birth of the appellant by her mother in a criminal case. The heading of the document was "Ghafooran, wife of Eda, caste Shaikh, aged 40 years, from Dewa, on solemn affirmation," and in it the witness stated "I have lived with Ghulam Ali these 12 or 14 years. I lived with him before his wife died, two years before that event." *Held* (reversing the decision of the Judicial Commissioner's Court) that the heading was only descriptive of the witness, and formed no part of the evidence given by her on solemn affirmation; it might well be, and probably was, a wrong description of her: and her statement in the deposition was not necessarily or even probably an admission of immorality. Even if admissible, therefore, the deposition was not entitled to any weight.

On the rest of the evidence it was held that the second marriage of the appellant's mother was a valid one and that the appellant was legitimate and entitled to the property she claimed.

APPEAL from a decree (31st May 1899) of the Court of the Judicial Commissioner of Oudh by which a decree (16th December 1896) of the Subordinate Judge of Bara Banki was set aside and the respondents' suit decreed.

The suit was one concerning property which constituted the estate of one Ghulam Ali *alias* Ghasitey, a resident of the village of Dewa in the district of Bara Banki, who died intestate on the 14th of November 1892, the plaintiffs and the defendant both claiming to succeed to the property as his next heirs. The

Present :—Lord MACNAGHTEN, Lord DAVEY, Lord ROBERTSON, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.