

*Before Justice Sir Shah Muhammad Sulaiman and Mr.  
Justice Young.*

1930  
November,  
17.

SHANKAR LAL LACHHMI NARAIN (PLAINTIFFS) v.  
JAINY BROTHERS (DEFENDANTS).\*

*Arbitration Act (IX of 1899), section 4(b)—Submission—  
“Written agreement”—Signature not essential—One  
document containing whole terms not essential—Delhi  
Piece-goods Association’s arbitration rules—Appointment  
of umpire.*

In the definition of a submission to arbitration, as given in section 4(b) of the Arbitration Act, 1899, the phrase, “written agreement”, does not mean that each party has necessarily to sign a document containing the terms. The plain acceptance of a document containing all the terms is sufficient. All that is required is that both parties accept a written document as containing the agreed terms; it might be in the form of a signed document by both parties containing all the terms, or a signed document by one party containing the terms and a plain acceptance, either signed or orally accepted, by the other party, or, in the third case, an unsigned document containing the terms of the submission to arbitration agreed to orally by both parties.

Also, the terms of a written agreement may be collected from a series of documents and it is not necessary that all the terms must be contained in the same document.

Upon a consideration of certain clauses and rules, relating to arbitration in disputes arising out of indent contracts, of the Delhi Piece-goods Association it was held that where, after several adjournments, the arbitrator of one party absolutely refused any further adjournment and there was a final rupture with the arbitrator of the other party and the arbitrators separated without nominating an umpire, an umpire could be validly appointed by the Association on the requisition of one party without consulting the other.

Messrs. *P. L. Banerji* and *I. B. Banerji*, for the appellants.

*Dr. K. N. Katju*, and *Mr. M. N. Kaul*, for the respondents.

\* First Appeal No. 41 of 1930, from an order of J. J. W. Allsof, District Judge of Cawnpore, dated the 16th of January, 1930.

SULAIMAN and YOUNG, JJ. :—This is a first appeal from an order of the learned District Judge of Cawnpore, by which he dismissed an application to set aside an arbitration award. The facts are these : Messrs. Jainy Brothers, the defendants respondents, are importers of Manchester piece-goods, carrying on business in Cawnpore. Messrs. Shankar Lal Lachhmi Narain, the plaintiffs appellants, are dealers in such piece-goods. The importers belong to an association called the Delhi Piece-goods Association. That association has drawn up a form of indent contract which dealers must sign before they can deal with the importer-members of the association.

On the 9th of December, 1923, Messrs. Shankar Lal Lachhmi Narain, being desirous of buying certain cotton trouserings from Messrs. Jainy Brothers, signed the indent contract of the association, specifying two cases of cotton trousering at 1s. 10d. That indent contract contains a submission to arbitration in accordance with the Indian Arbitration Act. It also provides in clause 15 that “no claim nor dispute of any sort whatever can be recognized, if not made by us in writing within sixty days from due date of payment”. On the 10th of December, 1923, Messrs. Jainy Brothers wrote a letter referring to the above indent contract and said, “We are glad to inform you that your above indent at the limit of 1s. 10d. per yard has been accepted by us. Copy of your indent is sent herewith as usual.” This letter did not in terms include any of the provisions as set out in the indent contract executed by Messrs. Shankar Lal Lachhmi Narain, except as above quoted. Disputes arose between the parties, and eventually Messrs. Jainy Brothers issued a notice to Messrs. Shankar Lal Lachhmi Narain that the matter should be referred to arbitration in accordance with clause 16 of the indent contract, and they appointed an arbitrator to represent them. Messrs. Shankar Lal Lachhmi Narain also appointed an arbitrator, though under protest. The

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arbitration then proceeded. On no less than thirteen occasions the proceedings had to be adjourned on account of the absence of Messrs. Shankar Lal Lachhmi Narain and their arbitrator. The arbitration proceedings started on the 20th of December, 1924, and the last meeting of the arbitrators took place on the 2nd of January, 1927. On the 2nd of January, 1927, Shankar Lal Lachhmi Narain wanted a further adjournment, but Mr. Gur Prasad, the arbitrator for Messrs. Jainy Brothers, being of opinion that Messrs. Shankar Lal Lachhmi Narain were endeavouring unduly to delay the arbitration, refused to adjourn and Mr. Janki Nath, the purchasers' arbitrator, then left. There and then Mr. Gur Prasad proceeded to an award, and on the same day under clause 16 of the contract he applied to the Delhi Piece-goods Association to appoint an umpire. The Delhi Piece-goods Association appointed an umpire who eventually sat, and as neither Mr. Janki Nath nor Messrs. Shankar Lal Lachhmi Narain appeared before him, he proceeded to draw up his award *ex parte*. This award supported the award of Mr. Gur Prasad in favour of Messrs. Jainy Brothers.

Of the grounds of objection set out in the memorandum of appeal the appellants, Messrs. Shankar Lal Lachhmi Narain, have argued four only. They submit : (1) That the letter of the 10th of December, 1923, from Messrs. Jainy Brothers did not amount in law to an acceptance in writing of the submission to arbitration set out in the indent contract. They say that there was, therefore, no submission in writing within the meaning of section 4 (b) of the Indian Arbitration Act of 1899. (2) That there was no claim or dispute made by Messrs. Jainy Brothers within sixty days from the due date of payment in accordance with clause 15 of the contract. (3) That the appointment of the umpire was not valid, inasmuch as Messrs. Jainy Brothers' arbitrator did not give the arbitrator of Messrs. Shankar

Lal Lachhmi Narain an opportunity to agree as to the nomination of an umpire, and that therefore there had been no "disagreement as to the umpire" in accordance with clause 16 of the contract and rule 5 of the survey and arbitration rules of the Delhi Piece-goods Association, which were endorsed on the back of the contract. (4) That Shankar Lal who signed the indent contract was not authorized by Messrs. Shankar Lal Lachhmi Narain, a partnership, to sign the arbitration clause.

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As regards the first point, we are clearly of opinion that the objection is misconceived. Section 4 (b) of the Arbitration Act enacts that a "submission" means a written agreement to submit present or future differences to arbitration. There must, therefore, be an agreement in writing between the parties. It was urged by the appellants that a "written agreement" means that each party must sign the document which contains the submission to arbitration, and that as the letter of the 10th of December, 1923, did not refer in specific terms to the clause relating to arbitration, in law this could not amount to an agreement in writing. It is clear on the authorities both in England and in India that the terms of a written agreement may be collected from a series of documents, and a "written agreement" does not mean that each party has to sign a document containing the terms. The plain acceptance of a document containing all the terms is sufficient. We are satisfied that the letter of the 10th of December, 1923, alludes to the indent contract and accepts it in its entirety. Further, we are of opinion that a written agreement does not in the Indian Arbitration Act mean that the signatures of the parties are a necessary ingredient. We are aware of the case of *Sukhamal Bansidhar v. Babu Lal Kedia & Co.* (1), which decided that section 4(b) required a submission signed by both parties or their agents; but we think that, in so far as that case

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decided that signatures were necessary, we doubt if it was correctly decided. The Act merely specifies a written agreement, and we see no reason to read into the plain words of the Act that the execution of a submission to arbitration is necessary. All that is required is that both parties accept a written document as containing the agreed terms : it might be in the form of a signed document by both parties containing all the terms, or a signed document by one party containing the terms and a plain acceptance either signed or orally accepted by the other party, or, in the third case, an unsigned document containing the terms of the submission to arbitration, agreed to orally by both parties. A written contract does not mean a contract which is proved by documentary evidence, but one in which the terms are expressed in writing in the act of making it. The obvious example of a perfectly valid written contract unsigned by either party is a steamship or railway company's ticket containing the printed terms and conditions of the contract. This ticket is not merely evidence of the contract, but is an operative contractual instrument and subject to rules of law which govern written as opposed to oral contracts. We think some confusion has been imported into the Indian decisions on this point through the analogy of English law in cases where submissions to arbitration may in certain instances be contained in contracts which are subject to the operation of section 4 of the Statute of Frauds or section 4 of the Sale of Goods Act, both of which statutes enact that in order to make the contracts enforceable they must be signed by the party to be charged or their duly authorized agent. Neither of these statutes apply to India, and we see no reason to read into section 4 (b) of the Indian Arbitration Act anything more than is there expressed. Even in England the doctrine that the signatures of the parties or their agents were necessary to a submission to arbitration has been doubted : See *Hickman v. Kent or Romney*

*Marsh Sheep Breeders' Association* (1). There is certainly a conflict of authority as to whether signatures are necessary in cases which do not fall within statutes which expressly require such signatures.

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With regard to the second objection that no claim was made by Messrs. Jainy Brothers within sixty days, we are satisfied that in fact a claim was made or a dispute arose between the parties within sixty days from the due date of payment. Messrs. Jainy Brothers' letter of the 19th of September, 1924, to Messrs. Shankar Lal Lachhmi Narain, in our view, establishes this. In any event, the word "us" in clause 15 of the contract refers clearly only to Messrs. Shankar Lal Lachhmi Narain and not to Messrs. Jainy Brothers. Nowhere else in the contract can it be said that "us" refers to both the parties. When Messrs. Jainy Brothers are indicated, the proper word "you" is used.

As regards the third objection, the wording of clause 16 is as follows: "When the arbitrators or the surveyors disagree and do not appoint an umpire the Delhi Piece-goods Association, if applied to by either party to the dispute, shall appoint an umpire." It is clear in this case that the arbitrators had disagreed and had not appointed an umpire. If the matter rested there, there would be no difficulty in repelling the objection of the appellants; but the contract undoubtedly includes the survey and arbitration rules of the Delhi Piece-goods Association, endorsed upon the back of the contract and referred to in clause 16. The fifth rule is as follows: "Should the two surveyors chosen by buyers and sellers be unable to agree as to the nomination of an umpire, the buyers or sellers may apply to the committee of the association within fifteen days from the final date of survey to nominate an umpire". It is contended that the sellers were in this case never given an opportunity to agree to the nomination of an umpire and, therefore,

(1) [1915] 1 Ch., 881.

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it could not be said that the arbitrators were unable to agree, and that therefore the appointment of the umpire was invalid and the award, therefore, bad. It is to be noted that these rules nowhere mention arbitrators. They refer solely to surveyors, whose duties are different from those of arbitrators. But the rules are headed "Survey and Arbitration Rules of the Delhi Piece-goods Association," and we are inclined to think, therefore, that although the rules are loosely worded, they are meant to apply to arbitration proceedings. A similar point was taken in the case of *Sushil Chandra Das and Company v. Sukhamal Bansidhar* (1). The facts in that case are identical with the facts of the one under consideration. The High Court in that case came to the conclusion that "The arbitrators had differed in such conclusive fashion as to put it beyond doubt that they were not going to deliver a joint award. The refusal of Mr. Roberts to adjourn the arbitration proceedings was equivalent, under the circumstances, to a refusal to meet Mr. Khosla again; and the arbitrators had separated without nominating an umpire". We see no reason to disagree with the decision in that case. There was a final rupture between the arbitrators on the 2nd of January, 1927, and we hold that Messrs. Jainy Brothers were then and there entitled to apply to the Delhi Piece-goods Association to appoint an umpire, and that this objection to his award is not sound.

With regard to the objection that Shankar Lal was not authorized to sign the arbitration clause, the learned District Judge in his judgment sets out convincing evidence that Shankar Lal must have been authorized to enter into a submission of arbitration on behalf of his firm, and we see no reason to differ from his finding that he was so authorized and that it was the usual practice of the appellant firm to enter into similar agreements containing such a submission. The appeal is dismissed with costs.

(1) (1922) I.L.R., 44 All., 472 (473).