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The point which has been raised before me by the applicant is that the application was made under section 3 at the time of passing the decree and not under section 5 after the passing of the decree. This is borne out by the record. Now the Act does not provide any appeal from a refusal to grant instalments under section 3. The Act presumes that in an ordinary case an appeal will lie against the decree itself and that that matter may then be raised in the appellate court. In the particular case before me the decree was a decree of a small cause court and therefore no appeal lay. This chapter II only has provision for appeals from an order refusing to pass fixed instalments in a decree which was previously passed, that provision being in section 5(2). The appeal provision in section 23 is only for chapter III and not for chapter II. The court below therefore had no jurisdiction to pass the order in question and this order must be set aside. I therefore allow this civil revision of the plaintiff and set aside the order of the lower appellate court.

APPELLATE CIVIL

Before Mr. Justice Rachhpal Singh and Mr. Justice Bajpai

GANGA DHAR (DEFENDANT) *v.* INDAR SINGH (PLAINTIFF)*

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November, 29

Arbitration—Award—Must be complete and final—Several piecemeal awards invalid—Civil Procedure Code, schedule II, paragraph 20—Arbitration without the intervention of a court.

Certain disputes between the parties were referred by them, without the intervention of a court, to arbitration, and the arbitrator gave first one award dealing with some of the disputed matters and later on a second award dealing with the rest of the matters in dispute. An application was made

*First Appeal No. 7 of 1935, from an order of Pran Nath Aga, Civil Judge of Bulandshahr, dated the 26th of November, 1934.

under paragraph 20 of the second schedule of the Civil Procedure Code to make the "award" a rule of the court:

Held that the two awards made by the arbitrator were invalid. Unless there is an agreement between the parties which authorises the arbitrator to make several awards it is the duty of the arbitrator to give one complete award deciding all the matters in dispute which have been referred by the parties. If, without special power, the arbitrator makes two awards, each deciding part of the matters referred, both such piecemeal awards should be set aside as being invalid, for there is no one complete and final award on all the matters referred.

Sir *Tej Bahadur Sapru* and Mr. *C. B. Agarwala*, for the appellant.

Mr. *Ram Nama Prasad*, for the respondent.

RACHHPAL SINGH and BAJPAI, JJ.:—This is a first appeal from order against the decision of the learned Judge of the court below dismissing the objections raised by the defendant to the validity of an award made by an arbitrator.

The facts which have given rise to the dispute between the parties, briefly put, are these. Indar Singh and Ganga Dhar are two brothers. Indar Singh made an application for partition of mahal Naubat Singh in the revenue court. The revenue court proceeded with that application and eventually lots were prepared and drawn. It appears that Ganga Dhar, defendant, drew a lot containing properties which were considered to be better than the properties which went into the other lot. Thereupon Indar Singh applicant prayed the Collector that he may be permitted to withdraw his application. The Collector granted that application in spite of the objections raised by the opposite party. Ganga Dhar preferred an appeal to the Commissioner and was successful in getting an order under which the decision of the Collector was set aside. There was a further appeal by Indar Singh to the Board of Revenue which was, however, unsuccessful.

On the 10th of March, 1934, Ganga Dhar and Indar Singh entered into an agreement by which they referred

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the matters in dispute between them to one Karan Singh, who is the husband of their sister. In this reference they stated at one place: 'Whereas there is a dispute between us about the partition of properties, movable and immovable, and about the accounts of profits of the property and cash, etc., on account of which there is a danger of litigation in future and which will entail loss and ruin of the parties." At another place it is stated, "and we agree that whatever the arbitrator decides about the assets (*tarka*) of Naubat Singh, father of the parties, movable and immovable properties and profits of the properties and cash, etc., from his sense of justice, the same will be acceptable to us like a decision of the court and no party shall have any objection at any case and at any time." The arbitrator gave two awards in the case. The first award was made by him on the 18th of April, 1934. The arbitrator decided the dispute between the parties in respect of mahal Naubat Singh and also about profits of the same mahal. A short time after the arbitrator made a second award under which the other points in dispute between the parties were decided by him. It may be pointed out here that before the second award had been given by the arbitrator, the defendant appellant had sent him a written notice asking him not to take further proceedings in respect of the properties about which no award had been made by him.

Indar Singh, plaintiff, made an application in the court of the learned Civil Judge praying that the award made by the arbitrator be made a rule of the court. To this application several objections were taken by Ganga Dhar, defendant. In the view which we take of the case it is not at all necessary to refer to all of them. One of them was that no valid award had been made by the arbitrator. It was pleaded that it was not competent to the arbitrator to give his decision about the points in dispute piecemeal as had been done in this case. The contention, therefore, was that both the

awards given by the arbitrator were not valid and therefore the application of the plaintiff should be rejected.

The learned Judge of the court below came to the conclusion that the two awards which were given by the arbitrator were quite good and that it was open to the arbitrator to give his decision piecemeal, and as under the two awards all the points on which parties were at variance had been decided the awards were good. It is against that decision that the present appeal has been preferred by the defendant.

We have heard learned counsel on both sides and after consideration of the question have come to the conclusion that the appeal must succeed. Sir *Tej* who appeared on behalf of the appellant has contended before us that the awards given by the arbitrator in the present case were no awards. He further contended that it was the duty of the arbitrator to give one complete award, and as he failed to do so, the two awards which he gave piecemeal were not good and therefore could not be enforced. We think that the contention is well founded and is amply supported by the authorities which have been cited before us by him. The first authority to which reference might be made is Comyn's Digest, volume I, page 666. It is laid down there as follows: "So an award ought to be entire; and therefore, if it be made, part at one day and part at another, though all be made before the time limited for it, it shall be void." In Russell's Law of Arbitration, 13th edition, page 202, the law on the point is stated to be as follows: "It is implied in all cases, unless something to the contrary is expressed, or may be inferred from the submission, that the arbitrator can make but one award: *Gould* v. *Staffordshire Potteries Waterworks Co.* (1), *per* PARKE, B. This must be one entire and complete instrument in itself; therefore, if it is made part at one day and part at another, though each and every part is made within the time

(1) (1850) 5 Ex. 214 (223); 155 E.R. 92(96).

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limited for the award, it will be void. (Com. Dig. Arb. E 16). If, without special power, the arbitrator makes two awards, each deciding part of the matters referred, and not one entire award on all together, both may be set aside, for there is no one final award on all the subjects: *Winter* v. *Munton* (1)."

Sir *Tej* in his arguments addressed to us has also cited the view expressed in a book recently published on the law of arbitration in England and that is the Law of Arbitration by Quintin Mcgarel Hogg. At page 137 the learned author states that "The principle from Bacon's Abridgement set out at the beginning of this chapter requires an award to be final as well as complete. It is not enough that the arbitrator should determine the issues referred to him and all of them; he must further determine them finally, so that in relation to them no further controversy can arise." The view enunciated in the above mentioned book is amply supported by authority. In this connection we need only refer to the case of *Gould* v. *Staffordshire Potteries Waterworks Co.* (2), where PARKE, B., made observations which clearly support the contention raised before us by learned counsel for the appellant. PARKE, B., observed as follows: ". . . and this was contended for by analogy to the ordinary practice on submissions to arbitration, where everything to be inquired into must be included in the award. But the ground for that rule is to be found in the agreement of the parties to the submission, in which it is usually one of the terms that the arbitrator is to make but one award. That condition is implied in all cases, unless something to the contrary is either expressed in or may be inferred from the submission." This view has been taken in several English cases and it is clear that there should be one and complete award which should determine the dispute between the parties finally. The law in India is the

(1) (1818) 2 Moore. 723.

(2) (1850) 5 Ex. 214 (223); 155 E.R. 92(96).

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same. We may also refer in connection with this matter to the case of *Ganes Narayan Singh* v. *Malida Koer* (1). MOOKERJEE, J., at page 403 observed: "It is well settled that an arbitrator must be careful to see that his award is a final decision on all matters requiring his determination. The obligation so to decide depends upon the question whether the submission requires that all or only some of the matters in dispute are to be determined by him. . . The same rule has been adopted in the American Courts in a series of decisions. . . . The position, of course, is different where the arbitrator is empowered to make one or more awards at his discretion, as in *Dowse* v. *Coxe* (2), *Wrightson* v. *Bywater* (3); and the decision of this Court in the case of *Shoshemukhi Dabia* v. *Nobin Chunder* (4) must be taken to fall within this class of cases. In the case before us, however, it was clearly the duty of the arbitrator to give a complete adjudication of the matters in controversy." The case of *Shoshemukhi Dabia* v. *Nobin Chunder* (4) is also in favour of the appellant It was laid down in that case that where an arbitration bond provides that the matters in dispute referred to the arbitrator may be taken up and dealt with seriatim and the award delivered bit by bit, it is not necessary under section 327 of Act VIII of 1859 that all the matters referred should have been decided before the first portion of the award dealing with some only of the subjects in dispute can be filed. At page 94 we find the following observations: "Thirdly, the objection is again raised that the arbitrators did not decide all the points in dispute. The parties, it seems to me, were at liberty, if they chose, to allow the arbitrators to take up seriatim the matters in dispute, and, so to say, to deliver a series of awards." A perusal of this case shows that unless there is an agreement between the parties which authorises the arbitrator to make several awards,

(1) (1911) 13 C.L.J. 399.
(2) (1825) 3 Bing. 20; 28 R.R. 565.
(3) (1838) 3 M. and W. 199; 150 E.R. 1114.
(4) (1879) 4 C.L.R. 92.

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it is not competent to him to do so and that the whole award should be like a judgment complete, giving the decision of the arbitrator on all the points involved in the case.

Learned counsel for the appellant conceded before us that if the parties agreed between themselves that the arbitrator would have the power to give decisions in more than one award and then if the arbitrator gave awards seriatim there would be nothing objectionable in that and the awards would be good. The question, therefore, for consideration is whether in the present case the agreement under which Karan Singh was appointed an arbitrator gave him power to make several awards. We have perused the terms of the reference and we do not think that it gives any power to the arbitrator to make more than one award. All that the agreement of reference says is that Karan Singh is appointed arbitrator and he is empowered to decide matters in dispute in any manner and the matter is left to his sense of justice. The parties agreed to accept his decision, but there are no words from which it can be gathered that the arbitrator was given a power by the parties to make more than one award. It is therefore clear to us that it was the duty of the arbitrator to decide all the points in difference between the parties and then to make his award. In the present case the arbitrator stated that he had forgotten to give his decision on some of the points and therefore it became necessary for him, after his having given one award, to give another. We do not think that this statement of the arbitrator can be accepted. Under the agreement of reference he was given powers to decide all the points in difference between the parties. He is a close relation of both the parties to the suit and his statement that he by mistake omitted to give an award in respect of the properties other than mahal Naubat Singh is clearly not correct. We accept the contention of learned counsel for the appellant that after the arbitrator had

given his first award he became *functus officio* and it was no longer open to him to make a second award. The result is that both the awards made by the arbitrator are in fact no awards and cannot stand. We must, therefore, hold that the decision of the learned Civil Judge on this point is not correct.

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The result is that this appeal is allowed, the order passed by the court below directing that a decree be passed in terms of the awards is set aside and the suit of the plaintiff is dismissed with costs in both the courts.

Before Mr. Justice Bennet and Mr. Justice Ismail

RADHA KISHEN (DEFENDANT) *v.* MAHARAJA OF BENARES (PLAINTIFF)*

1937 *December*, 1

*Interest—Legal or equitable ground for awarding interest—*Haq-i-chaharum*—No demand for interest before suit—Interest Act (XXXII of* 1839*)—Delay in filing suit.*

Where the plaintiff, who was entitled to get his *haq-i-chaharum* upon the sale of a house in Benares, made no demand for interest in the notice which was served on the defendant $3\frac{1}{2}$ years after the sale, and made an inordinate delay of $5\frac{1}{2}$ years in filing the suit, it was *held* that neither in law nor in equity was the plaintiff entitled to any interest on the amount up to the date of suit; no right to interest arose out of contract or under the Interest Act, and this was not a case for the exercise of equitable jurisdiction to award interest. *Pendente lite* and future interest was, however, allowable.

Mr. *Govind Das,* for the appellant.

Mr. *B. Malik,* for the respondent.

BENNET and ISMAIL, JJ.:—This is a first appeal by a defendant, purchaser of a house in Benares, against the part of a decree awarding the plaintiff, H. H. Maharaja of Benares, interest on *zar-i-chaharum* of Rs.3,287-8 at 6 per cent. per annum from the date of sale on the 18th January, 1928. The appeal is taken only on the ground that the court below should not have allowed interest. Now the facts are that this

*First Appeal No. 219 of 1934, from a decree of Bindbasni Prasad, Additional Civil Judge of Benares, dated the 30th of April, 1934.