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in a proper proceeding and somebody else institutes a suit, after being defeated in his claim case, that the property is his and not that of the judgment-debtor and then asks for a temporary injunction on the ground that his property is being wrongfully sold in execution of a decree; it is difficult to see how the property is at the moment of his application to the Court in danger of being *wrongfully* sold in execution of the decree. It may be that the Court will invoke its inherent powers to stay the execution of the decree if the circumstances are so coercive that the balance of convenience is in favour of the appellant or that a stay is necessary to prevent an abuse of the process of the Court. Upon the facts which have been found in this case, as pointed out by my learned brother in his judgment just delivered, I do not see that the balance of convenience is at all in favour of the respondents. I therefore agree that the appeal should be allowed with costs.

Appeal allowed.

S. A. K.

REVISIONAL CIVIL.

Before Wort and Manohar Lal, JJ.

SATISH CHANDRA CHAKROVARTY

v.

P. N. DAS & CO.*

Code of Civil Procedure, 1908 (Act V of 1908), Schedule II, paragraphs 14, 20 and 21—arbitration out of court—award in favour of unregistered company—objection to enforceability of award under section 69(1) of the Partnership Act, 1932 (Act IX of 1932),—illegality, whether apparent on the face of the award.

* Civil Revision no. 314 of 1937, from an order of Babu K. K. Banerji, Additional Subordinate Judge of Darbhanga, dated the 30th of April, 1937, confirming an order of Maulavi Kabiruddin Ahmad, 2nd Munsif of Darbhanga, dated the 25th of May, 1936.

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A certain dispute arising out of a contract was referred to arbitration out of court and an award having been made in favour of *D. & Co.*, an unregistered company, they made an application under paragraph 20 of the second schedule to the Code of Civil Procedure, 1908, to file the award. The defendant objected to the award being filed on the ground that the unregistered company could not enforce their right under the award by reason of the bar imposed by section 69(1) of the Partnership Act, 1932;

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Held, that there was no illegality apparent on the face of the award within clause (c) of paragraph 14 of the second Schedule.

Champsey Bhara & Co., v. Jivraj Balloo Spinning and Weaving Co., Ltd.(1), followed.

British Westinghouse Electric and Manufacturing Company, Limited, v. Under-ground Electric Railways Company of London, Limited(2) and *Landauer v. Asser*(3), referred to.

Application in revision by the defendant.

The facts of the case material to this report are set out in the judgment of Wort, J.

Sir Manmatho Nath Mukherjee (with him *Hareshwar Prasad Sinha* and *Ratikant Chaudhury*, for the petitioner.

Dr. Dwarka Nath Mitter (with him *B. N. Mitter* and *K. N. Moitra*), for the opposite party.

WORT, J.—This rule is directed against the order of the Additional Subordinate Judge confirming an order of the Munsif in an application under paragraphs 20 and 21 of the second schedule of the Code of Civil Procedure, in other words, an application to file an award.

The circumstances are as follows. In 1934 Satish Chandra Chakrovarty and P. N. Das & Co., submitted a dispute arising out of certain contracts

(1) (1923) I. L. R. 47 Bom. 578, P. C.

(2) (1912) A. C. 673.

(3) (1905) 2 K. B. 184.

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between them to the arbitration of certain persons. In due course an award was made, and it is with regard to this award that the application, to which I have referred, was made to the Munsif. Both the trial court and the lower appellate court have gone into the question whether section 69 of the Partnership Act applies to this case. Section 69(1) provides that

"No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm."

The Courts below considered the question whether Das & Co., who are the respondents to this rule and who are represented by Dr. Mitter, were a joint family carrying on a joint family business or whether the members of that firm formed a partnership under the Partnership Act. This question was decided in favour of the petitioner. Then the question arose whether they were registered which clearly they were not. The third question that arose was whether this was a suit or proceeding within the meaning of subsection (3) to section 69 which I have just read. On this last question the Judge found in favour of Das & Co., and therefore the award has been filed.

The first point argued before us on behalf of the petitioner is whether the High Court has jurisdiction under section 115 of the Code of Civil Procedure to revise or otherwise interfere with the order of the Additional Subordinate Judge. A large number of authorities have been quoted and I must confess that it is somewhat difficult to draw a distinct line between them, the real question in all the cases being—what is the meaning of the word 'jurisdiction'? I propose to say nothing more about the matter for fear of adding confusion to it rather than clarifying it, because in my opinion this case can be decided on an entirely different ground.

When one or two facts is stated, it will be seen how the matter stands. The Munsif had presented to him an award, and it is quite clear that according to the provisions of paragraph 20 of the second schedule of the Code of Civil Procedure a matter had been referred to arbitration, an award had been made thereon and the Munsif was dealing with an application to file that award and as a condition precedent he had jurisdiction of the subject-matter of the award. I pause here to deal with an argument advanced by Mr. Sinha who replied to the argument of Dr. Mitter, that the Munsif had no jurisdiction over the subject-matter of the award. Mr. Sinha is confusing the provisions relating to the prohibition as regards a suit or other proceeding under section 69 with the subject-matter of the award under paragraph 20. The subject-matter of the award was the contract for timber, and, always provided that the amount claimed by one party or the other was not beyond the pecuniary jurisdiction of the Munsif, there could be no doubt that the Munsif had jurisdiction over the subject-matter of the award.

We now come to paragraph 21 of the second schedule which makes provision with regard to matters which the Judge had to consider, apart from those dealt with under paragraph 20, in determining the question whether the award should be filed or not. This paragraph provides—

“Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.”

Now, the only duty of the Munsif and the only duty therefore of the Additional Subordinate Judge in appeal was to consider those matters referred to in paragraph 21 and to see whether there were any grounds to refer to paragraphs 14 and 15. The second schedule of the Code of Civil Procedure is an exhaustive Code in this matter. As has been

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pointed out by their Lordships of the Judicial Committee of the Privy Council on more than one occasion, no Court has jurisdiction to go beyond the provisions of this schedule. The provisions of paragraphs 14 and 15 are clear. They refer to the remission of an award. Paragraphs 20 and 21 refer to an award outside Court, if I may use the expression, in contradistinction to an award made in pursuance of a submission in a suit. But the matters referred to in paragraphs 14 and 15 are common to both cases. Looking at paragraphs 14 and 15 it will be seen that if any of those facts or circumstances are present, then the Court before whom an application to file an award comes may reject the application. I might say for the purpose of saving time that the only argument addressed to us with regard to this matter is founded on clause (c) of paragraph 14 which says—

“Where an objection to the legality of the award is apparent upon the face of it.”

It is not suggested that there is any other matter which can give jurisdiction to the Courts below to reject the application for filing an award. We are not left without authority with regard to this matter. I refer to the case of *Champsey Bhara and Co. v. Jivraj Balloo Spinning and Weaving Co., Ltd.*(1). The subject-matter of that appeal was an arbitration award relating to certain cotton contracts and one of the matters argued before their Lordships and before the Judges of the Bombay High Court was that the award given in that matter was bad in law on the face of it within the meaning of the clause to which I have just made reference. Lord Dunedin in delivering the opinion of their Lordships of the Judicial Committee referred to the well-known case of *Hodgkinson v. Fernie*(2) and quotes this passage from the judgment of Williams, J.: “The law has for many years been settled, and remains so at this

(1) (1928) I. L. R. 47 Bom. 578, P. C.

(2) (1857) 3 C. B. (N. S.) 189.

day, that, where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final Judge of all questions both of law and of fact..... The only exceptions to that rule, are, cases where the award is the result of corruption or fraud.....” or “where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award”. The law there laid down is in conformity with the paragraphs of the second schedule of the Code to which I have made reference. The question which their Lordships addressed themselves was—“Does the error in law appear on the face of the award?” Reference was also made to the case of *British Vestinghouse Electric and Manufacturing Company, Limited, v. Underground Electric Railways Company of London, Limited*⁽¹⁾ where the arbitrator had stated a special case and got an opinion of the Divisional Court. In making his award he stated that opinion and founded his award upon it. The opinion was held to be erroneous and so there was an error in law on the face of the award. Their Lordships referred to the case of *Landauer v. Asser*⁽²⁾ (the authority of which had been doubted as being wrongly decided) but stated that in their Lordships’ opinion it was not necessary to consider that point for the present case differed from *Landauer v. Asser*⁽²⁾ in essential particulars. In that case the legal proposition was stated in terms and on which the award proceeded whereas in the case before them no legal proposition is stated as a ground of the award. I might add that by the arguments in the case there was an attempt to incorporate the letters in the award but it was held that even had the letters been looked at they only contained the view of one party. The argument there endeavoured to incorporate both the letters and certain rules of the Cotton Association of Bombay but that argument was

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rejected as their Lordships of the Judicial Committee decided that no such argument could be supported from the wording of the award. Therefore there was no error in law on the face of the award. When that question is put to us in this case it seems to be capable only of one answer—'there is nothing on the face of the award which is illegal, and it is only by reference to section 69 and by reference to the facts of the case that we could possibly hold that the applicants Das & Company in this case were not entitled to enforce the award which they had obtained'. There are no grounds upon which the Court below could reject the application of the plaintiffs, and therefore, although my reason in this matter is different, the decision at which the learned Judges in the Courts below have arrived is correct. On those grounds, and not on the grounds of jurisdiction of this Court under section 115 of the Code of Civil Procedure, I would dismiss this application and discharge the rule with costs: Hearing fee five gold mohars. The injunction stands discharged.

Let the record be sent down.

MANOHAR LAL, J.—I agree.

Rule discharged.

S. A. K.

APPELLATE CIVIL.

Before Wort and Manohar Lal, JJ.

ABDUL HAMID KHAN

v.

DHANI DUSADH.*

Res Judicata—pre-decree agreement—decree-holder realizing decretal amount contrary to the agreement—suit by judgment-debtor for recovery of alleged over-payment, whether maintainable.

*Appeal from Appellate Decree no. 515 of 1934, from a decision of V. K. R. Menon, Esq., I.C.S., Deputy Commissioner of Palamau, dated the 3rd of May 1934, modifying a decision of Babu Gobind Saran, Munsif of Palamau, dated the 27th of July, 1933.

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