

## ORIGINAL CIVIL.

*Before Mr. Justice Chari.*

KHATIZA BEE BEE.

v.

I. E. ABOWATH AND SEVEN OTHERS.\*

1927

Jan. 27.

*Arbitration Act (IX of 1899), section 11—Rules and orders of the High Court, Chapter XXXV, Rules 1 and 9—Non-compliance with provisions of Act and requirements of rules for filing award, effect of—Appearance of party on illegal notice whether cures irregularities—Court's inherent power for directing proper procedure—Limitation.*

*Held*, that where an award is forwarded to the Court for filing without compliance with the provisions of the the Indian Arbitration Act and the requirements of the rules of the Court as to issue of notices to parties by the arbitrators and as to the filing of copies of such notices and of the proceedings of the arbitrators, the Registrar acts without jurisdiction in filing such an award and in issuing notice to parties. The appearance of a party in answer to such notice cannot be held to legalise it, and the question whether his objections to the award should be disallowed as being time-barred cannot be gone into. The Court in the exercise of its inherent jurisdiction is bound to take steps to rectify matters and to direct the return of the award to be filed according to the proper procedure. The pendency of the infructuous proceedings will save limitation.

*Kalyanwala*—for the Arbitrators.

*Keith*—for the Petitioner.

*S. N. Sen*—for the 2nd Respondent.

*Doctor*—for the 1st and 3rd Respondents.

CHARI, J.—In this case an award was delivered by certain arbitrators. On the 31st of May 1926 the award was sent by Mr. Patker on the instructions of one Voraji to the Court, with a note to the effect that the award be filed in Court. It was not accompanied by a translation of the award, but it was accompanied by Rs. 100 the translation fees. That letter was received in Court on the 1st of June 1926. After a great deal of delay due to want of translation and the raising of a question whether it is necessary to have a stamped application for the purpose of filing the

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award, the Deputy Registrar on the 8th of May 1926 made a note that the award was not accompanied by copies of the notices issued by the arbitrators to the parties in compliance with the requirements of section 11 of the Indian Arbitration Act as required by Rule 1. After making a note to that effect the Registrar passed the following order:—

“Issue notice under Rule 9 to the parties for 26th July 1926 by which date applications to remit or set aside the award must be presented.” The letter forwarding the award was not only not accompanied by copies of notices but was also unaccompanied by the proceedings before the arbitrators as required by Rule 1 of the rules framed under section 20 of the Arbitration Act. On the 14th of July 1926 notices were issued from the Court and were served on the parties either on the 20th or on the 22nd of that month. These notices were not in conformity with the order of the Registrar, as it notified to the parties that the 26th of July was fixed for hearing objections and also contained intimation that applications if any to remit or set aside the award should be presented within ten days after the service of the notice. This is also contrary to Rule 9 which makes it obligatory on the Court to fix the tenth day from the date of the filing the award as the day on or before which objections have to be filed. On the 17th of July the proceedings before the arbitrators were filed Court but copies of notices were not filed. I am informed, and it is not denied, that as a matter of fact the arbitrators had not served any notice on the parties as required by section 11, clause (2) of the Indian Arbitration Act. On the 26th of July 1926 Cowasjee, Sen and Banerji for the 2nd Respondent appeared in Court and at the request of Mr. Surridge on their behalf the matter was allowed

to stand over for a fortnight. On the 2nd of August 1926, Mr. Banerji filed his objections on behalf of the 2nd Respondent. It is contended before me that the objections are time-barred. It was filed on the 2nd of August 1926 and whether the ten days be calculated from the 20th or the 22nd July or from the 8th of July it is equally beyond time. Mr. Sen who appeared for the 2nd Respondent does not dispute this but he challenges the whole proceeding and draws my attention to certain irregularities and illegalities. His first objection is that Rule 1 contemplates that all the arbitrators should join in forwarding the award to the Court whereas the award in this case was forwarded by Mr. Patker on behalf of a single arbitrator. This in my opinion is not a sound objection and any one arbitrator can on behalf of himself and the others send the award to the Court. Such a procedure is a sufficient compliance with the provisions of the Act. His next objection is that no notice was served by the arbitrators as required by section 11, clause 2. This in my opinion is a fatal objection. The object of that provision is to give timely notice to the parties of the filing of the award. Rule 1 of the rules of the High Court enables the Registrar to file the award only when the award is accompanied by copies of the notices. It is argued by Mr. Keith that the conduct of the 2nd Respondent in subsequently appearing in Court is a waiver of the notice. It is true that in response to the notice issued by the Court he appeared, but this cannot be deemed to be a waiver of antecedent irregularities. It is only when all the provisions of the Act and the Rules are complied with that the Registrar is enabled to file that award and issue notices. When they have not been complied with he can neither file the award nor issue

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any notice. The issue of the notice is beyond his jurisdiction and the appearance of the party in answer to such notice cannot be held to legalise it.

The position is therefore this. The objections filed are undoubtedly time-barred but there has not been a proper filing of the award. The provisions of the Act and the requirements of the rules must be complied with before the Registrar can file the award. It is only when the award is legally and properly filed that it will be executable as a decree. Even if, at this stage, I disallow the 2nd Respondent's objections on the ground that they are time-barred, all these irregularities will have to be enquired into, when the award is sought to be executed as a decree. In my opinion these are valid and insuperable objections. When the attention of the Court is drawn to these irregularities, the effect of which is to make the filing of the award improper and illegal, the Court in the exercise of its inherent jurisdiction, is bound to take steps to rectify matters and the proper procedure is to begin from the beginning again. I therefore direct that the award be returned to Mr. Patker, the advocate for Voraji, to enable the arbitrators to issue the necessary notices before filing the award with the proceedings and copies of such notices. As soon as the award is filed and all the provisions of the Act and the rules have been complied with the Registrar will make an order to the effect that the award be filed and thereupon he will issue notice under Rule 9 directing the parties to file applications if any for remitting or setting aside the award within ten days from the date of the filing of the award. No question of limitation can arise as Article 178 of the Limitation Act is inapplicable and, even if it did, the pendency of the infructuous proceedings will save limitation.