

REVISIONAL CIVIL.*Before Mr. Justice Addison.*

DEVI DITTA (PLAINTIFF) Petitioner

versus

BABU RAM (DEFENDANT) Respondent.

Civil Revision No. 686 of 1926.

Indian Limitation Act, IX of 1908, section 5 and article 158—Objections to award presented out of time but within the time fixed by the Court—whether Court can extend the time.

The parties referred the subject matter of the suit to the arbitration of one N. C. ; the latter filed his award in Court on the 12th of April 1926 in presence of the parties, and the Court fixed the 26th of April as the date up to which parties could present objections to the award.

Held, that the Court was right in holding that the objections put in by the plaintiff on the 26th of April were time-barred under article 158 of the Indian Limitation Act, not having been preferred within 10 days after the plaintiff had notice that the award had been filed in Court.

Held also, that the provisions of section 5 of the Indian Limitation Act, not being applicable to such applications, it was not competent to the Court to extend the time prescribed by article 158.

And, the law being quite clear, it was immaterial that the petitioner was deceived by the order of the Court.

Surya Narain Jha v. Banwari Jha (1), followed.

Application for revision from the decree of Maulvi Muhammad Ibrahim, Additional Subordinate Judge, 4th Class, Una, District Hoshiarpur, dated the 12th May 1926, holding that the objections preferred by the plaintiff were time-barred and granting a decree in terms of the award.

DUNI CHAND, for Petitioner.

I. C. CHOPRA, for Respondent.

JUDGMENT.

ADDISON J.—During the pendency of a suit the parties referred the subject-matter of the suit to the arbitration of *Pandit* Narain Chand who, on the 12th of April 1926, in the presence of the parties, filed his award in Court. The Court fixed the 26th of April 1926, as the date up to which parties could present objections to the award. The plaintiff put in objections to the award on the 26th of April 1926, but the Court has held that these objections are time-barred under article 158 of the First Schedule to the Indian Limitation Act as they were not presented within ten days after the award was filed in Court by the arbitrator in the presence of the plaintiff. As the Court held that the objections were barred it proceeded to pass a decree in accordance with the award. Against the order of the Court refusing to entertain the objections the plaintiff has moved this Court on the revision side.

Article 158 of the First Schedule of the Indian Limitation Act is quite clear. Ten days is the time within which the plaintiff should have presented his objections to the award after it was filed in Court in his presence. The objections should, therefore, have been presented by the 23rd of April and not on the 26th of April. The words of section 5 of the Indian Limitation Act show that this section does not apply to such applications. There is a direct authority in the case *Surya Narain Jha v. Banwari Jha and others* (1), (a decision of the Calcutta High Court in a case very similar to the present) in which it was held that no application having been made within the time prescribed by Article 158 it was not competent

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to the Court to extend the time prescribed by that article.

It was argued, however, that the petitioner was deceived by the order of the Court. This appears to me to be of no consequence. The law is quite clear. Ten days was the proper period. That time could not be extended by the Court and it was for the plaintiff if he desired to present objections, to do so within the period prescribed by law.

The result is that this revision must fail and I dismiss the petition, but leave the parties to bear their own costs here as the point raised is a novel one.

A. N. C.

Revision dismissed.

APPELLATE CIVIL.

Before Mr. Justice Ffordc and Mr. Justice Campbell.

ISHAR DAS-DHARAM CHAND (DEFENDANTS)

Appellants

versus

KHANNU MAI-GHAMMANDI LAL (PLAINTIFFS)

Respondents.

Civil Appeal No. 1351 of 1922.

Contract—Goods delivered—Suit by buyer—for recovery of price paid—insufficient grounds—delay in institution of suit—Damage—burden of proof of.

The plaintiff agreed to buy, and on delivery at Karachi paid for, a shipment of five bales of piece-goods, but, having retained the goods for four months in his possession unopened, sued for recovery of the purchase price on the ground that the numbers on the bales were not those stated in the invoice and, secondly, that the goods had been booked *via* Bombay to Karachi instead of to Karachi direct.

Held, that the plaintiff's objections (as stated) were insufficient to entitle him to reject the goods, there being no term in the contract under which those grounds were conditions precedent to performance.

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