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was a vehicle. These authorities sufficiently establish that the term "carriage" is wide enough to include a motor car. I see no reason to set aside the order complained of.

In any case there was an appeal under section 84 of the Municipal Act to the Deputy Commissioner and no appeal was preferred. That seems to me a reason why this criminal revision should not be heard.

For the reasons given I direct that the records be returned.

N. F. E.

Revision dismissed.

APPELLATE CIVIL

Before Addison and Coldstream JJ.

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May 20.

PUNJAB MARWARI CHAMBER OF COMMERCE, LTD. (DEFENDANT) Appellant

versus

RAM LAL-LILU SHAH (PLAINTIFF) Respondent.

Civil Appeal No. 1268 of 1930.

Indian Arbitration Act, IX of 1899, section 4 (a)—"Court"—whether refers to Court having cognizance of the case or District Court—order by former refusing to stay suit—whether appealable—or open to revision—Civil Procedure Code, Act V of 1908, sections 89 (1) and 104 (1) (e), (f).

In two suits instituted at Delhi the defendant filed applications for stay of proceedings under section 19 of the Arbitration Act, 1899, but the trial Judge holding that the definition of "Court" in section 4 (*a*) of that Act precluded any Court in Delhi other than the District Court from entertaining the applications, dismissed them. On appeal the following questions were raised; (1) whether an appeal lies against the order of the lower Court refusing to stay proceedings, (2) if not, whether a petition for revision may be entertained against it, and (3) if so, whether it is only the District

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Court that has power to stay proceedings on an application made to it under section 19 of the Indian Arbitration Act, or does "Court" in that section mean the Court having cognizance of the proceedings which it is sought to stay.

Held, that the Indian Arbitration Act being complete in itself was not affected by rules as to appeals laid down in the Code of Civil Procedure, and that there was no right of appeal against the order of the lower Court in this case.

Jiwan Mal-Thakur Das v. *Shahzadah Nand and Sons* (1), and *Campbell and Co.* v. *Jeshraj Girdhari Lall* (2), referred to.

Jai Narain-Babu Lal v. *Narain Das-Jaini Mal* (3), *Saya Pye* v. *U. Kundinnya* (4), and *Menghraj Khialdas* v. *Langley, Billimoria and Co.* (5), relied upon.

Nainsukh Das-Nagar Mal v. *Gajanand-Shyam Lal* (6), *Sita Ram-Nath Mal* v. *Sushil Chandra Das and Co.* (7), and *Kachauri Mal-Kalyan Mal* v. *Wali Muhammad-Abdul Latif* (8), not followed.

Held also (as regards question 2, above) that as the order refusing stay was an order in proceedings, not under the provisions of the Civil Procedure Code but under those of a special Act giving the defendant a right to apply to have the dispute decided outside the Civil Court, it could properly be held to have decided finally a separate case, for the order virtually put an end to the arbitration as an effective proceeding, and, therefore, as the trial Court must be held to have declined to exercise a jurisdiction vested in it by law, a petition for revision was competent.

Lal Chand-Mangal Sen v. *Behari Lal-Mehr Chand* (9), distinguished.

Held further (on question 3 above) that the intention in section 19 of the Act is that applications under that section for stay of proceedings should be made to the Court having cognizance of the case.

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(1) 1931 A. I. R. (Lah.) 66.
(2) (1918) I. L. R. 45 Cal 502.
(3) (1922) I. L. R. 3 Lah. 296.
(4) (1923) I. L. R. 1 Rang. 661.
(5) (1924) 81 I. C. 759 (F. B.).
(6) (1921) I. L. R. 43 All. 348.
(7) (1921) I. L. R. 43 All. 553.
(8) (1925) I. L. R. 47 All. 179.
(9) (1924) I. L. R. 5 Lah. 288 (F. B.).

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On these findings the appeals were treated as applications for revision and the orders of the lower Court were set aside.

In re Babaldas Khemchand (1), *Tatya Rowji* v. *Mathibhai Bulakidas* (2), and *Sita Ram-Nath Mal* v. *Sushil Chandra Das and Co.* (3) followed.

Radhakishna Dhanuka v. *The Bombay Co., Ltd.* (4), *Ratan Chand-Ramkishandas* v. *Sahiram-Dunichand* (5), *Jiwan Mal-Thakur Das* v. *Shahzadah Nand and Sons* (6), and *Lucas Ralli* v. *Noor Mahomed* (7) referred to.

Miscellaneous first appeal from the order of Khan Sahib Chaudhri *Niamat Khan, Senior Subordinate Judge, Delhi, dated the 4th July 1930, rejecting the application.*

JAGAN NATH AGGARWAL and JAGAN NATH BHANDARI, for Appellant.

J. L. KAPUR, for Respondent.

COLDSTREAM J. COLDSTREAM J.—The firm Tulsi Das-Harbhagwan Das of New Delhi instituted two suits against the Punjab Marwari Chamber of Commerce, Limited, Delhi in the Court of the Senior Subordinate Judge, Delhi. The defendant applied to the Court in each case to stay proceedings under section 19 of the Indian Arbitration Act, 1899. The Senior Subordinate Judge, holding that the definition of 'Court' in section 4 (*a*) of that Act precluded any Court in Delhi other than the District Court from entertaining the applications, dismissed them. Against this decision two appeals were preferred to this Court. They came before Addison J. who in view of the conflict of authority on the points arising referred the appeals to a

(1) (1921) I. L. R. 45 Bom. 1.
(2) (1928) I. L. R. 52 Bom. 420.
(3) (1921) I. L. R. 43 All. 553.
(4) (1929) I. L. R. 56 Cal. 755.
(5) (1919) 52 I. C. 139 (F. B.).
(6) 1931 A. I. R. (Lah.) 66.
(7) (1907) I. L. R. 31 Bom. 236.

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Division Bench. The points on which decisions are required are:—

(1) Whether an appeal lies against the order of the lower Court refusing to stay proceedings;

(2) if not, whether a petition for revision may be entertained against it, and

(3) if so, whether it is only the District Court that has power to stay proceedings on an application made to it under section 19 of the Indian Arbitration Act or does ' Court ' in that section mean the Court having cognizance of the proceedings which it is sought to stay.

The contention of the appellant that an appeal lies is based on section 104 (1) (*e*), Civil Procedure Code, read with section 89 (1). Section 89 (1) is " Save in so far as is otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the time being in force, all references to arbitration whether by an order in suit or otherwise and all proceedings thereunder shall be governed by the provisions in the Second Schedule." The Arbitration Act does not provide for any appeal and it is argued that as there are no rules made under section 20 of the Arbitration Act relating to appeals an appeal lies under section 104 (1) (*e*).

The Indian Courts have differed on the question. The appellant's counsel relies on the rulings of the Allahabad Court *Nainsukh Das-Nagar Mal* v. *Gajanand-Shyam Lal* (1), *Sita Ram-Nath Mal* v. *Sushil Chandra Das & Co.* (2) and *Kachauri Mal-Kalyan Mal* v. *Wali Muhammad-Abdul Latif* (3). The first of these judgments decided that an appeal lay under

(1) (1921) I. L. R. 43 All. 348. (2) (1921) I. L. R. 43 All. 553.
(3) (1925) I. L. R. 47 All. 179.

section 104 (1) (*e*) against an order in proceedings under clause 2 of section 11 of the Indian Arbitration Act. The second entertained an appeal against an order of a lower Court refusing to stay proceedings on the ground that it had no power (not being the District Court) but ordering a temporary stay or, rather, an adjournment. In this case it was apparently not disputed that an appeal lay. The third judgment dealt with an appeal against an order by a District Judge who had accepted an appeal against the first Court's order refusing to stay a suit. The High Court decided that the appeal to the District Judge was competent under section 104 (1) (*e*) of the Code of Civil Procedure.

These are the only decisions cited before us of a High Court and published by authority which support the contention that an appeal lies by virtue of section 104 (*e*) and (*f*) of the Procedure Code against an order passed in proceedings under the Arbitration Act.

The point now under consideration was raised in this Court in *Jiwan Mal-Thakur Das* v. *Shahzadah Nand & Sons* (1), before Dalip Singh J. who, dissenting from these decisions, held that no appeal lay. He referred in his judgment to *Campbell & Co.* v. *Jeshraj-Girdhari Lall* (2). The view there taken was that section 104 (*f*) does not apply to proceedings under clause 2 of section 11 of the Arbitration Act but only to proceedings under the provisions of the Second Schedule to the Code, and that no appeal lies under that section against an order refusing to set aside an award filed under the provisions of the Arbitration Act. The Calcutta judgment was cited with approval by the learned Chief Justice in this Court in

(1) 1931 A. I. R. (Lah.) 66. (2) (1918) I. L. R. 45 Cal. 502.

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Jai Narain-Babu Lal v. *Narain Das-Jaini Mal* (1), where (at page 311) he discussed the applicability of section 104 (*f*) to proceedings under section 19 of the Arbitration Act, and pointed out that the decision of a Court on an objection to an award under the Arbitration Act is not appealable under any law.

That no appeal lies where a Court has filed or refused to file an award made under the Arbitration Act has been held by the Rangoon High Court in *Saya Pye* v. *U. Kundinnya* (2), and the Full Bench decision of the Sind Judicial Commissioner's Court in *Menghraj-Khialdas* v. *Langley Billimoria & Co.*, (3) is also against the appellant, the latter decision having reference to an appeal against a stay order and clause (*e*) of section 104 (1) of the Code of Civil Procedure. The arguments taken before us were considered by the Sind Court whose conclusion was that in the absence of an express provision that section 104 (1) (*e*) of the Code applies to the Arbitration Act as well as the Civil Procedure Code it would not be proper for Judges to assume its existence.

It appears to me clear that section 104 (*e*) of the Code of Civil Procedure relates to an order under paragraph 18 of the Second Schedule to the Procedure Code, that the Indian Arbitration Act is complete in itself and not affected by rules as to appeal laid down in the Code with reference to the Second Schedule, and that there is no right of appeal against the order of the lower Court in this case.

The answer to the next question—whether, no appeal being competent, a petition for revision may be entertained—will depend on the decision on the last

(1) (1922) I. L. R. 3 Lah. 296, 311. (2) (1923) I. L. R. 1 Rang. 661.
(3) (1924) 81 I. C. 759 (F. B.).

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point referred to us. I pass therefore to the question whether the learned Senior Subordinate Judge's decision, that 'Court' in section 19 of the Indian Arbitration Act means the District Court is correct or not.

If it is not correct, it can only be so because there is a repugnancy in the subject or context of section 19 to the application of the definition in section 4 (*a*) of the Act, which is that in the Act 'the Court' means elsewhere than in the Presidency Towns the Court of the District Judge.

In *Lucas Ralli* v. *Noor Mahomed* (1), Dawar J. held that the Bombay High Court had power on an application being made under section 19 to stay proceedings in the Small Cause Court. This was after a Full Court of the Small Cause Court had held that it had no power to pass the order, and an application had accordingly been made to the High Court and it was argued that, as the Act was not intended to apply to the Small Cause Court, the High Court had no power to stay proceedings in that Court. In rejecting this objection and finding that he had jurisdiction to entertain the application, Dawar J. remarked "to hold that I have no jurisdiction to entertain this application * * * would be tantamount to holding that the provisions of the Indian Arbitration Act applied only to the High Courts in Presidency Towns and to the District Court in the Mufassil. This could never have been the intention of the Legislature * * *".

A different view was, however, taken in *In re Babaldas-Khemchand* (2) by Pratt J. who held that "the Courts in section 4 (*a*) are the Courts enforcing the machinery of arbitration in the areas where the

(1) (1907) I. L. R. 31 Bom. 236. (2) (1921) I. L. R. 45 Bom. 1.

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Act applies." To apply the definition in such a case would, he pointed out, give the Bombay High Court a power to stay a suit perhaps in the Punjab which would conflict with the provisions of section 56 (*b*) of the Specific Relief Act. "The Legislature could not have intended that a Court which had not cognizance of the dispute should intervene and decide whether the Court of trial should or should not give way to the arbitrator. The Court of trial is in a better position to decide whether there should or should not be arbitration." This judgment was approved by a Division Court in *Tatya Rowji* v. *Mathibhai Bulakhidas* (1), where reference was made to *Sita Ram-Nathmal* v. *Sushil Chandra Das & Co.* (2), in which the Allahabad High Court had expressed the same view upon this point.

In Calcutta, however, the opposite view has recently (1928) been taken by the High Court in *Radhakrishna Dhanuka* v. *The Bombay Co., Ltd.* (3), where the later Bombay ruling and the Allahabad decision last cited were dissented from by Lort-Williams J., who found support for his interpretation in the difference between the wording of section 19 of the Indian Arbitration Act and that of the corresponding provision in the English Act, where although 'Court' is defined as the High Court of Justice, it is expressly made clear that an application for stay is to be made to that Court in which the legal proceedings are being taken. The Calcutta view was that which had been adopted by the majority (Pratt J., dissenting) of the Full Bench of the Judicial Commissioners, Sind, in *Rattan Chand-Ramkishandas* v. *Sahiram-Dunichand* (4), where also reference

(1) (1928) I. L. R. 52 Bom. 420.
(2) (1921) I. L. R. 43 All. 553.
(3) (1929) I. L. R. 56 Cal. 755.
(4) (1919) 52 I. C. 139 (F. B.).

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was made to the English Statute. In giving judgment Crouch A. J. C. indicated that the proper procedure for the trying Court would be to grant an adjournment and allow the award or the order of the Court thereon to be put in as conclusive evidence.

In this Court the point in issue came before Dalip Singh J. in the case to which reference has been made above *Jiwan Mal-Thakur Das* v. *Shahzadah Nand & Sons* (1). Following the decisions of the Bombay and Allahabad Courts he held that 'the Court' in section 19 of the Indian Arbitration Act means the trying Court and not the District Court.

Having given the question and the authorities cited careful consideration I am of opinion that the meaning of section 19 must be that the application for stay is to be made to the Court having cognizance of the case. I have no doubt that the intention was to reproduce section 4 of the English Act. The omission to make it clear that the definition did not apply does not in my opinion justify the inference that a different procedure was laid down for Indian practice. The words of the section seem to me to point clearly to this interpretation. Any party to such legal proceedings, so the section runs, may at any time after appearance and before filing a written statement or taking any other steps in the proceedings apply to the Court to stay the proceedings. Surely, had the intention been that the application is to be made elsewhere than in the Court where the proceedings are in progress, this would have been clearly expressed. The context appears to me to be repugnant to the application of the definition here and following the judgments of the Allahabad and Bombay Courts, for the reasons

(1) 1931 A. I. R. (Lah.) 66.

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given in *Sita Ram-Nath Mal* v. *Sushil Chandra Das & Co.* (1) and *Tatya Rowji* v. *Mathibhai Bulakhidas* (2), I would decide the question referred to us accordingly.

There remains now the question whether, a revision petition against the order refusing to stay the suit can be entertained.

In the case decided by Dalip Singh J. to which I have twice referred above it was held by the learned Judge that an order under section 19 of the Indian Arbitration Act staying a suit was open to revision, for the order completed the proceedings so far as the Court was concerned. The present case, however, where the Court has refused an order of stay, is different, for the proceedings pending before it in the suit have not been completed by the order.

In view of the decision on the last question dealt with above it must be held that the learned Subordinate Judge declined to exercise a jurisdiction vested in him by law. It has still to be seen whether in so doing he has "decided any case." If his order was nothing more than an interlocutory order in the suit, then the matter is concluded by the Full Bench decision of this Court in *Lal Chand-Mangal Sen* v. *Behari Lal-Mehr Chand* (3), to the effect that an interlocutory order does not decide a case merely because it may decide a branch or part of a "case."

The word "case" in section 115 of the Code of Civil Procedure has always been interpreted as a more comprehensive term than suit, and including other proceedings. Regarded merely as a proceeding in the suit before the lower Court the order refusing

(1) (1921) I. L. R. 43 All. 553. (2) (1928) I. L. R. 52 Bom. 420.
(3) (1924) I. L. R. 5 Lah. 288 (F. B.).

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stay was no doubt merely an interlocutory one. But it was clearly more both in nature and effect than a mere refusal to stay those proceedings. It was an order in separate proceedings not under the provisions of the Procedure Code but under those of a special Act, giving the defendant a right to apply to have the dispute decided outside the Civil Court. From this point of view the order refusing stay may properly be held to have decided finally a separate case, for virtually it put an end to the arbitration as an effective proceeding. I would, therefore, hold that, in the present instance, a petition for revision would be competent.

Entertaining the appeals as if they were applications for revision, I think, that, on the merits, the case is one in which interference with the learned Senior Subordinate Judge's procedure is necessary in so much as he has refused to exercise his jurisdiction to consider the defendants' applications for stay and in doing so has contravened the provisions of section 19 of the Arbitration Act.

I would accordingly set aside the orders under reference and remand the cases to the lower Court for disposal of the defendants' applications according to law.

ADDISON J.— I agree.

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N. F. E.

Appeals accepted;
Case remanded.