

APPELLATE CIVIL.

Before Harrison and Addison JJ.

BEHARI LAL-MADHO PARSHAD (DEFENDANT)

1932

Appellant

Oct. 24.

versus

THE SIRSA TRADING COMPANY, LIMITED

(PLAINTIFF) Respondent.

Civil Appeal No. 1196 of 1931.

Indian Companies Act, VII of 1913, Section 152 (1), and Indian Arbitration Act, IX of 1899, Section 11: Arbitration between a Company and others—Civil Procedure Code, Act V of 1908, Section 104 (1) (f): Appeal—from an order filing award—competency of.

Held that, in view of the repeal of the *proviso* to section 3 of the Arbitration Act on the passing of section 152 of the Companies Act, the former Act applies to all references to arbitration under the Indian Companies Act wherever they take place, for by virtue of Section 152 (3) of the Companies Act Section 2 of the Arbitration Act, including the *proviso* to that Section, is deleted in cases where the arbitration is under the Companies Act.

Held further, that the meaning of the words used in subsection (3) of Section 152 is that the whole of the Arbitration Act shall apply to arbitrations under the Companies Act except Section 2, and no question arises of any extension by notification of the Indian Arbitration Act to any local area.

Attock Oil Co. Ltd. v. Abdul Majid (1), *Ruplal Agarwala v. Dhansar Coal Co.* (2), and *Firm Dilsukh R.u.Lal Chand v. The Sirsa Trading Co., Ltd.* C. A. No. 1347 of 1930 (unreported), followed.

Sundar Mal-Lakhu Mal v. The Paris Business Co-operation (3), dissented from.

Miscellaneous First Appeal from the order of R. S. Lala Ghanshyam Das, District Judge, Hissar,

(1) 1929 A. I. R. (Lah.) 246. (2) (1932) 136 I. C. 445.

(3) (1931) 32 P. L. R. 444.

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dated the 9th July, 1931, overruling the objection regarding the inapplicability of the Indian Arbitration Act in the Hissar District.

SHAMAIR CHAND and QABUL CHAND, for Appellant.
J. G. SETHI, for Respondent.

ADDISON J.—There was a dispute between the Sirsa Trading Company, Limited, and the firm Behari Lal-Madho Parshad which was decided by arbitration. When the award was put into Court under section 11 of the Indian Arbitration Act, 1899, an objection was taken on behalf of the firm mentioned that the Indian Arbitration Act did not apply as it had not been extended to any part of the Hissar district by special notification under the *proviso* to section 2 of the Act. The District Judge repelled this objection and held that the other objections had no force. The objections were, therefore, overruled and the award became a decree of the Court. Against this decision the firm Behari Lal-Madho Parshad has preferred civil appeal No. 1196 of 1931 and civil revision No. 485 of 1931, it being noted that it is doubtful whether an appeal or a revision lies. The appeal and the revision have been referred to a Division Bench as there are conflicting decisions of this Court whether the Indian Arbitration Act applies.

It has not been argued before us whether an appeal or a revision lies and it is not necessary to say anything on this question.

There is no doubt that the agreement to refer is governed by section 152 of the Indian Companies Act. Sub-section (3) of that section runs as follows :—“ The provisions of the Indian Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject matter of the arbitration, shall

apply to all arbitrations between companies and persons in pursuance of this Act." These words are not ambiguous and mean that all the provisions of the Indian Arbitration Act, except those restricting the application of the Act in respect of the subject matter of the arbitration, shall apply to arbitrations under the Indian Companies Act. By section 1 of the Indian Arbitration Act, 1899, that Act extends to the whole of British India but by section 2 of the Act its application is limited to cases where if the subject matter submitted to arbitration were the subject of a suit, the suit could be instituted in a presidency town, whether with leave or otherwise, while there is a proviso to section 2 adding that the Local Government may by notification declare the Act applicable in any other local area as if it were a presidency town. For the purpose of this argument section 23 of the Indian Arbitration Act which is an addition to section 2 need not be discussed. Section 2 is the only section which restricts the application of the Act in respect of the subject matter of the arbitration. The meaning of the words used in section 152 (3) of the Indian Companies Act, therefore, is that the whole of the Indian Arbitration Act shall apply to arbitrations under the Companies Act except section 2. It follows that, as section 1 of the Indian Arbitration Act extends that Act to the whole of British India, all the clauses of the Indian Arbitration Act except section 2 apply where there is an arbitration under the Companies Act. In other words, the facilities in the matter of arbitration under the Indian Companies Act are not to be restricted by section 2 of the Indian Arbitration Act which limits the application of the Act to cases where the subject matter could be the subject of a suit in a presidency town or in a specially notified area. When

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the Indian Arbitration Act was passed in 1899 the second *proviso* to section 3 expressly exempted arbitration under the Indian Companies Act from its operation. That *proviso* to section 3 has been repealed because of the passing of section 152 of the Indian Companies Act which rendered it unnecessary. It follows that the Indian Arbitration Act applies to all references to arbitration under the Indian Companies Act wherever they take place, whether they take place within a presidency town or in a place to which the Local Government has extended the provisions of the Indian Arbitration Act by virtue of the *proviso* to section 2 or in places outside presidency towns where the Local Government has not extended the Indian Arbitration Act under the *proviso* mentioned. No question in fact arises as to whether the Local Government has or has not made any notification under the *proviso* to section 2 when there is a reference under the Indian Companies Act; for by virtue of section 152 (3) of the Indian Companies Act section 2 is deleted in cases where the arbitration is under the Indian Companies Act. Some attempt was made to argue that though section 2 must be held to be deleted from the Indian Arbitration Act in cases where the arbitration is under the Indian Companies Act the words used in section 152 (3) of the Companies Act still left the *proviso* to section 2 untouched and therefore arbitrations under the Indian Companies Act could only take place where the Local Government had extended the provisions of the Act by notification. There can, however, obviously be no *proviso* without a section. The qualifying clause, "other than.....of the arbitration," in section 152 (3) of the Indian Companies Act can have no other meaning than that the whole of section 2 (including the *proviso*) of

the Indian Arbitration Act has no effect in cases of arbitration under the Companies Act. The matter appears to me to be free from any difficulty.

The District Judge followed a decision of mine in *Firm Dilsukh Rai-Lal Chand v. The Sirsa Trading Company, Limited* (civil appeal No. 1374 of 1930). This judgment is very brief, it being practically conceded before me that the Indian Arbitration Act did apply in cases of arbitration under the Companies Act. The same view was taken by Dalip Singh J. in *Attock Oil Company, Limited v. Abdul Majid* (1). That was a case of an agreement to refer to arbitration under the Indian Companies Act. Instead of the provisions of the Indian Arbitration Act being followed, the respondent applied under schedule II, paragraph 17 of the Code of Civil Procedure to file the agreement of reference to arbitration. The Court below granted the application and called upon the parties to name their arbitrators. On appeal it was contended that under section 152 of the Companies Act the Arbitration Act was made applicable to all arbitrations and agreements of reference and that by virtue of section 3 of the Arbitration Act, schedule 2, paragraph 17 of the Civil Procedure Code was excluded from the operation of that Act. This position was conceded by counsel for the respondent and the learned Judge considered it to be correct though he added that he must not be taken to express any considered opinion on the point.

Jai Lal J., however, in *Sundar Mal-Lakhu Mal v. The Paris Business Co-operation* (2) took the opposite view and held that section 152 of the Indian Companies Act is "subject to the applicability of the

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Indian Arbitration Act to the local area in which the Court in which the suit is instituted is situated.” With great respect I am unable to agree, as in my opinion this overlooks the words of the clause, “other than of the arbitration,” in section 152 (3) of the Companies Act. These words exclude section 2 from the Act in cases of arbitration under the Indian Companies Act and no question arises of any extension by notification of the Indian Arbitration Act to any local area. It might be mentioned that a Single Judge of the Patna High Court considered the decisions of Dalip Singh J. and Jai Lal J. in the above cases and approved of the decision of Dalip Singh J. and dissented from that given by Jai Lal J. The case in question is *Ruplal Agarwala v. Dhansar Coal Company* (1).

For the reasons given I would dismiss the appeal with costs. The revision is also dismissed but without costs.

HARRISON J.

HARRISON J.—I agree.

N. F. E.

Appeal dismissed.

(1) (1932) 136 I. C. 445.