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MAD SHAH.

CURRIE J.

for the purpose of attacking the decision of the revenue Courts in such cases. As both the lower Courts remarked, the present suit, though on the face of it merely one for a declaration that the plaintiffs are owners by virtue of adverse possession, is in substance one to contest their liability to ejection which has already been decided by the revenue Courts.

In my opinion, therefore, the learned District Judge rightly held that the suit was barred by virtue of the provisions of section 50-A of the Punjab Tenancy Act. I, therefore, dismiss the appeal with costs.

P. S.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

PEOPLES BANK OF NORTHERN INDIA,

LTD—Appellant

versus

KANHAYA LAL GAUBA AND ANOTHER—

Respondents.

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Feb. 5.

Letters Patent Appeal No. 1 of 1934.

Indian Arbitration Act, IX of 1899, sections 11, 14, 15 : Application under section 14 to have the award set aside or not enforced — Order of the Court — whether appealable.

On 1st January, 1930, J. L. G., the son of K. L. G., applied for 1,000 shares in the appellant Bank, which were duly allotted. Subsequently the Bank discovered that J. L. G. was a minor and asked K. L. G. to sign the application in the joint names of himself and his son, which was done on 20th February, 1930, and the entries in the Bank's registers made accordingly, no fresh allotment being considered necessary. The Bank got into difficulties and in February, 1932, K. L. G. wrote and revoked his application for shares on the ground that there had been no fresh allotment, and when the Bank repudiated this revocation he asked that the matter be

referred to arbitration under article 127 of the Bank's Articles of Association. He appointed his own arbitrator and, as the Bank made no appointment itself, he also appointed another arbitrator on its behalf. These arbitrators made an award in favour of K. L. G. which they filed in the Court of the District Judge under section 11 of the Indian Arbitration Act, 1899. K. L. G. next applied to enforce the award under section 15 of the Act, whereupon the Bank objected to its enforcement. The District Judge held that he could entertain the objection and set aside the award. A Single Bench of the High Court held that an appeal to this Court was competent and that the award must be enforced.

Held, that the Bank was entitled to apply under section 14 of the Indian Arbitration Act to have the award set aside (or not enforced) on the ground that it had been improperly procured on account of want of jurisdiction in the arbitrators and that no appeal lay from the order of the District Judge setting aside the award.

E. D. Sassoon & Co. Ltd. v. Shivji Ram-Devi Das (1), distinguished.

Jai Narain - Babu Lal v. Narain Das - Jaini Mal (2), *Punjab Marwari Chamber of Commerce v. Ram Lal - Lilu Shah* (3), and *Rochan Bai - Udho Mal v. Motu Mal - Shewa Ram* (4), relied upon.

Letters Patent Appeal from the order passed by Bhide J. in C. A. No.315 of 1933 on the 27th November, 1933, reversing that of Mr. M. M. L. Currie, District Judge, Lahore, dated 22nd December, 1932, and ordering the enforcement of the award in accordance with law.

JAGAN NATH AGGARWAL, for Appellant.

KISHAN DAYAL and BHAGWAT DAYAL, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—On the 1st January, 1930, an application was made by Jagdish Lal Gauba for the

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(1) (1929) A. I. R. (Lah.) 228. (3) (1932) I. L. R. 13 Lah. 59.

(2) (1922) I. L. R. 3 Lah. 296, 311. (4) (1932) 136 I. C. 806.

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purchase of a block of one thousand shares in the Peoples Bank of Northern India, Limited. The shares were allotted on the 3rd January, 1930, and information given to Jagdish Lal. Later it transpired that this person was the minor son of K. L. Gauba, and the Bank asked the latter to sign the application in his own name or make it in the joint names of himself and his minor son. On the 20th February, 1930, K. L. Gauba signed the application for himself and his minor son. No fresh allotment was considered necessary and the entry in the register was corrected so as to show them as joint holders. Later Rs.3,000 more were paid by K. L. Gauba, making a total payment of Rs.8,000, and he also accepted and received a dividend on the 2nd May, 1931.

The Bank got into difficulties and on the 23rd February, 1932, K. L. Gauba wrote to the Bank stating that he revoked his offer to purchase this block of shares, giving as his ground the fact that there had been no fresh allotment. The Bank repudiated this revocation and demanded the other instalments towards payment which had fallen due.

On the 24th of May, 1932, K. L. Gauba asked that the matter be referred to arbitration under article 127 of the Articles of Association. On the 30th of May, 1932, he appointed his own arbitrator, Capt. Whittaker. As the Bank did not appoint its arbitrator, he did so on its behalf on the 10th June, the second arbitrator being Mr. Tek Chand, Barrister. The arbitrators gave an award in his favour on the 15th June, 1932. Under section 11 of the Indian Arbitration Act the arbitrators filed the award in the Court of the District Judge, Lahore, on the 20th June, 1932.

K. L. Gauba then applied under the provisions of section 15 of the Act for enforcement of the award. Notice was served upon the Bank and on the 19th of October, 1932, the Bank put in a petition objecting to its enforcement on the ground that it was a mere nullity and was not given on a proper and valid reference. It is not stated in this petition that this application on behalf of the Bank was under section 14 of the Indian Arbitration Act, but it is clear that it was so, the ground being that the award had been improperly procured. The Bank's contention was that the Articles of Association did not cover such a case and thus the arbitrators had no jurisdiction. It was urged in reply that the Bank was estopped from contesting the petitioners' right to refer the dispute to arbitration as the petitioners' names were borne on its register. It was further urged that in any case the petitioners were members of the Bank in respect of other shares and thus arbitration was competent. Finally, K. L. Gauba stated in his replication that the Bank could not raise the plea at that stage and must be deemed to have waived it, in that it did not object at the time of arbitration.

The District Judge framed the following four issues :—

(1) Are Mr. K. L. Gauba and his son, J. L. Gauba, " members " of the company in respect of the 1,000 shares in dispute, and, therefore, entitled to the benefit of article 127 of the Articles of Association ?

(2) If not, are they entitled to take advantage of the fact that they hold other shares in the company, to utilize the provisions of article 127 ?

(3) Have they served notice in respect of these other shares as well, and if so, does this disentitle them from taking advantage of article 127 as " members " ?

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(4) Cannot the Bank raise the question at this stage having raised no objection at the two earlier stages, namely, at the time of reference and at the time of filing the award?

As regards the first issue, he held that the whole dispute between the parties was whether or not the petitioners were members of the Bank and he pointed out that the arbitrators had come to the conclusion in their award that they were not. He went on to say that if the said finding was correct, the petitioners could not take advantage of article 127 of the Articles of Association and demand a reference to arbitration. He, therefore, decided as regards the first issue that the reference to arbitration was incompetent and that the arbitrators had no jurisdiction.

As regards the second issue, he found that K. L. Gauba and his son were members individually as regards other shares. He held, however, that as the dispute, as regards the block of 1,000 shares, was one between the Bank and K. L. Gauba and his minor son jointly, the fact that each of them was individually a member, did not make the combination of father and son a member. He, therefore, found issue 2 also in favour of the Bank.

As regards the third issue, he considered it unnecessary to discuss it in detail, but stated that his opinion was that the question whether or not the petitioners were members in respect of the other shares, could not form the subject of a valid reference to arbitration under article 127 of the Articles of Association.

As regards the fourth issue, it was held that the Bank could raise the objection or make the application at that stage, as it had throughout repudiated and ignored the reference to arbitration.

For all these reasons, the District Judge held that the Bank was entitled to object to the enforcement of the award and to have it set aside, and he accordingly did so.

Against this decision there was an appeal to this Court. It was heard by a Single Bench. It was argued there that no appeal was competent as the decision was under section 14 of the Indian Arbitration Act. The Judge, however, came to the conclusion that proceedings for the enforcement of an award under section 15 of the Indian Arbitration Act were governed by section 47, Civil Procedure Code, and that an appeal was competent, as it related to a matter in execution. He cited his own judgment reported as *E. D. Sassoon & Co. Ltd. v. Shivji Ram-Devi Das* (1), but there is nothing in that case to the effect that an arbitration cannot be set aside under section 14 of the Indian Arbitration Act on the ground that it has been improperly procured. Having come to the conclusion that an appeal lay, he went on to disagree with the findings of the learned District Judge and, accepting the appeal, directed that the award should be enforced. Against this decision the Bank has preferred this Letters Patent Appeal.

It was not disputed before us that proceedings under section 14 of the Indian Arbitration Act could be taken before the District Judge, but it was contended that the application in question was not an application which purported to fall within section 14. It was also not disputed that if the District Judge's order was one under section 14, no appeal lay to this Court. One authority which may be referred to in this connection is *Jai Narain-Babu Lal v. Narain Das-Jaini Mal* (2), particularly at page 311, where it was

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(1) 1929 A. I. R. (Lah.) 228. (2) (1922) I. L. R. 3 Lah. 296, 311.

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said that "unless the award is set aside under section 14, it becomes enforceable as if it were a decree of the Court—*vide* section 15. Whether the Court rejects the objections to the award or accepts them, it seems that the order made by it is not called an order filing or refusing to file the award. The Court, therefore, never passes an order of that description and consequently its decision on the objections is not appealable under any law." This question is also discussed in *Punjab Marwari Chamber of Commerce v. Ram Lal-Lilu Shah* (1), where it was 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 a Court in matters coming under that Act.

The mere fact that section 14 was not quoted in the application made by the Bank, makes no difference. The application or objections were obviously under section 14, on the ground of want of jurisdiction in the arbitrators. It is contended on behalf of the Bank that this plea amounts to a plea that the award had been improperly procured and thus falls within section 14. A case which is on all fours with the present is *Rochan Bai-Udho Mal v. Motu Mal-Shewa Ram* (2). "A party in his objection to an award under section 14, Arbitration Act, can make an objection which challenges the factum of the reference so far as he is concerned and which goes to the root of the jurisdiction of the arbitrator, and it is within the jurisdiction of the Court to hear this objection." All the case law on the subject is set out by the Additional Judicial Commissioner and we are in agreement with his

(1) (1932) I. L. R. 13 Lah. 59. (2) (1932) 136 I. C. 806.

conclusion. It is true that a Bench of the Calcutta High Court in *Matulal Dalmia v. Ram Kissen Das-Madan Gopal* (1), stated that their opinion was that when an award was challenged on the ground that there was no submission to arbitration by the parties, that matter should be decided in a regular suit. They gave no reasons and did not say that it could not be decided under section 14 of the Arbitration Act. The subject was touched upon by their Lordships of the Privy Council in *E. D. Sassoon & Co. v. Ramdutt-Ram Kissen Das* (2), where it was held that a suit could be maintained for a declaration that an award was void on the ground that the appointment of the arbitrator was not valid, and accordingly an application under section 14 of the Act to set aside the award was not the only remedy open to the respondent. As regards the first part of section 14, their Lordships expressed their opinion clearly when they said: "Any objection to an award on the ground of misconduct or irregularity on the part of the arbitrator ought, no doubt, to be taken by motion to set aside the award; but where (as in the case before them) it is alleged that an arbitrator has acted wholly without jurisdiction, his award can be questioned in a suit brought for that purpose." They did not state that the second part of section 14 did not apply as well to such a case as the present.

We are, therefore, of opinion that the Bank was entitled to apply under section 14 of the Indian Arbitration Act to have the award set aside (or not enforced) on the ground that it had been improperly procured on account of want of jurisdiction in the arbitrators and that no appeal lay from the order

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of the District Judge. This does not, of course, necessarily mean that the persons in whose favour the award has been made have no other remedy.

We were asked to interfere on the revision side if we were of the opinion that the District Judge had given a wrong decision. Such a reason, however, is no ground for interference on revision.

For the reasons given, we accept this appeal, reverse the order of the Single Bench and restore the order of the District Judge setting aside or refusing to enforce the award. The Bank will have its costs throughout.

A. N. C.

Appeal accepted.

APPELLATE CRIMINAL.

Before Young C. J. and Abdul Rashid J.

NAND LAL (CONVICT) Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 1700 of 1934.

*Indian Penal Code, Act XLV of 1860, section 302 :
 Death caused by one blow — in sudden quarrel and heat of
 moment — proper sentence.*

Where there has been no premeditation, but a sudden quarrel and abuse, and in the heat of the moment one blow was struck by one party causing the death of the other party.

Held, that this is the type of case for which the second alternative sentence, i.e. transportation for life, is provided by section 302 of the Indian Penal Code.

Appeal from the order of Mr. I. M. Lall, Sessions Judge, Hoshiarpur, dated 13th December, 1934, convicting the appellant and sentencing him to death.

B. R. PURI, for Appellant.

D. R. SAWHNEY, Public Prosecutor, for Respon-
 dent.

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