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notice in any particular way. All that is required is that the debtor shall become aware of the transfer. When he become aware of it, it is binding upon him. Accordingly, if the assignee the moment before suit makes the debtor aware of the transfer, the latter must give effect to it. It follows that when the debtor is by the writ made aware of the transfer, it becomes binding on him. There is doubtless this difficulty that at the moment when the suit is brought, the cause of action of the assignee against the debtor may be said not to be actually complete: that it is the service of the writ itself which completes it. It would, however, we think, be taking too technical a view of the position of the parties to give effect to this objection. The plaintiff's right to the debt is complete at the date of suit. We think that we ought to follow the rulings of *Lála Jugdeo Sahai v. Brij Behári Lál*⁽¹⁾, which has itself been followed by the other High Courts—*Subbammal v. Venkataráma*⁽²⁾ and *Kalka Prasád v. Chandan Singh*⁽³⁾.

Order accordingly.

(1) I. L. R., 12 Cal., 505.

(2) I. L. R., 10 Mad., 289.

(3) I. L. R., 10 All., 20.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

MOHAN (PLAINTIFF) v. TUKA'RAM AND ANOTHER (DEFENDANTS).*

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September 30.

Dekkhán Agriculturists' Relief Act (Act XVII of 1879), Secs. 3, 12, 47 and 74—Arbitration—Award—Civil Procedure Code (Act XIV of 1882), Secs. 518—521, 522—A private award to which agriculturist debtors are parties—Filing of the award in Court.

A Civil Court can file a private award to which agriculturist debtors are parties without adjusting the accounts under the Dekkhán Agriculturists' Relief Act (Bombay Act XVII of 1879).

Gangádhár v. Mahádu⁽¹⁾ followed.

REFERENCE by Khán Sáheb Ezra Reuben, Subordinate Judge of Kopargáon in the Ahmednagar District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

* Civil Reference, No. 17 of 1895.

(1) I. L. R., 8 Bom., 70.

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The reference was made in the following terms :—

“ One Mohan valád Girdhári Márwádi, of Kopargaon, advanced a loan of Rs. 70 to one Tukárám valad Ládkuji and Linguji valad Ládkuji, both agriculturists of Kopargaon, on the 15th August, 1894, the latter agreeing to give him in exchange one khandy of wheat. Default having been made, the parties of their own accord referred the matter to arbitrators, who were, however, not conciliators appointed under the Dekkhan Agriculturists' Relief Act.

“ They framed an award on the 13th June, 1895, to the effect that the debtor should pay Rs. 95 to Mohan, and future interest on Rs. 95 at 18 per cent. per annum from the date of the award until payment.

“ Mohan having applied to the Court to have the award filed under section 525 of the Civil Procedure Code, the other parties to the award appeared, and stated before the Court that they had no objection to urge against the filing of the award.

“ It will be seen that the application for filing the award is not accompanied by a conciliator's certificate. But this point is settled by the ruling in *Gangádhár Sukhárám v. Mahádu Sántaji*. This case would appear to show, by analogy, that awards of *sávkárs* and agriculturists should be filed as they are without going into the history of the accounts. But this question is not directly decided in the case quoted, and as I entertain doubts on the point, the question that I have to refer for an authoritative decision is :—

“ Whether a private award to which agriculturist debtors are parties, can be filed by Civil Courts without adjusting the accounts under the Dekkhan Agriculturists' Relief Act ? ”

The opinion of the Subordinate Judge on the question was in the negative on the following grounds :—

“ The object of the Dekkhan Agriculturists' Relief Act is the protection of the interest of agriculturists, and this would be completely defeated if an opportunity to escape the risk attendant upon entering into the history of the accounts were given to *sávkárs* by filing awards as they are.

"I submit that such a result could never have been contemplated by the Legislature and ought not to be allowed.

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"Even in the case of arbitrators or conciliators appointed by Government, the *kaḅuláyats* or agreements, which they bring about between parties, cannot be filed without carefully scrutinizing them, and unless the agreements are found to be not only legal but equitable. *Vide* section 44 of the Dekkhan Agriculturists' Relief Act.

"While, then, the Legislature has placed so much control over the proceedings of the conciliators, it cannot be supposed that the awards framed by private arbitrators were intended to be differently treated. This would open a wide door for fraud and for escaping the responsibilities enjoined on *sāpkārs* by the Relief Act.

* * * * *

"In support of my views I take the liberty to quote below from the remarks of the Honourable Mr. Justice Ranade (at the time Special Subordinate Judge under the Dekkhan Agriculturists' Relief Act) in reference to the case reported in Indian Law Reports, 8 Bom., 20. * * * 'If such applications to file private award were entertained by the Civil Courts, they would *pro tanto* defeat the main purpose of this protective legislation. * * * Besides, though the application to file an award is not a suit, the award when filed has the force of a decree. The precautions deemed necessary to secure responsible work and prevent fraud presuppose that the general law is controlled by the special law. * * *

"Before concluding I may add that under the present award in question for the advance of Rs. 70, the debtors are made liable to pay Rs. 95, which includes interest at the (in my opinion) 'unreasonable' rate of 43 per cent. per annum. Besides the amount of interest is converted by the award into principal, and future interest at 18 per cent. per annum is allowed on the aggregate amount.

"This, I submit, is not in accord with the provisions of section 13 (d) and section 71 A of the Dekkhan Agriculturists' Relief Act.

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"I have further to state that the order filing the award is final and unappealable. Hence this reference * * *"

Shivráam V. Bhándárkar (*amicus curiæ*), for the plaintiff:—
There is nothing in the Dekkhan Agriculturists' Relief Act to prevent an award made on a reference by parties outside the Court being filed in Court and a decree framed in the terms of the award. Section 45 of the Act authorizes the Court to file such an award, and it is not necessary to enter into the previous history of the transaction. Section 15 of the Relief Act, which allowed the Court to refer a dispute to arbitration, has been repealed by Act VI of 1895. Section 12 of the Act requires the Court to file an award and to pass a decree in its terms. The award is not a suit in which alone the Court can inquire into the previous history of the transaction. Section 47 of the Act lays down that no suit will lie without a certificate from a conciliator. But this provision would not apply to awards to be filed in Court. Even the Civil Procedure Code does not contemplate that filing an award is filing a suit. It only says that the application for filing an award should be treated as a suit. The words *as a suit* are important; the application is not a suit when it is filed. It is not necessary to produce a conciliator's certificate in connection with a reference and an award made outside the Court—*Gangadhar Sakharám v. Mahádu Santáji*⁽¹⁾.

Vishnu K. Bhatávdékar (*amicus curiæ*) for the defendant:—
The award should not be filed, because even in the view of the Judge it is iniquitous. There being no provision in the Dekkhan Agriculturists' Relief Act in connection with the filing of an award made out of Court, sections 525 and 526 of the Civil Procedure Code apply. Section 12 of the Relief Act relates to arbitration after suit. Section 526 of the Civil Procedure Code lays down that the award should be filed, provided it does not militate against certain conditions. Section 44 of the Relief Act would apply by analogy to a matter of this sort.

[FARRAN, C. J.:—The real point is whether this is a suit.]

We contend that section 12 of the Act would apply if it is a suit. If it be not a suit, then section 44 of the Act would apply by analogy.

(1) I. L. R., 8 Bom., 20.

[FARRAN, C. J.:—An express provision of law cannot be applied by analogy.]

The ruling in *Vásudev v. Náráyan Jagannáth*⁽¹⁾ shows that the proceedings in filing an award are of the nature of a suit. Thus the proceedings being of the nature of the suit, all incidents of a suit are applicable to the proceedings. Formal adjudication on an award is spoken of as a decree, and decree as defined in the Civil Procedure Code is the adjudication of a suit or appeal. The policy of the Act also should be taken into consideration—Maxwell on Statutes, p. 333.

Shivram V. Bhándárkar, in reply :—A decree passed in terms of an award is not a decree passed after adjudication. The Court-fee paid on an application to file an award is not the Court-fee of a suit. A decree passed on an award being not a decree passed after adjudication, is not a decree within the definition given in the Civil Procedure Code.

FARRAN, C. J.:—Our acknowledgments are due to the pleaders who as *amici curiæ* have afforded us their assistance upon this reference.

The question upon which our opinion is requested is whether a private award to which agriculturist debtors are parties can be filed by Civil Courts without adjusting the account under the Dekkhan Agriculturists' Relief Act?

The answer to it depends upon whether an application to file an award under section 525 of the Code of Civil Procedure is a suit within the meaning of sections 3, 12 or 47 of the Dekkhan Agriculturists' Relief Act. If it is not, section 74 of the Act entails upon the Court the duty of dealing with the application in accordance with the provisions of the Civil Procedure Code. If it is a suit, the provisions of section 12 of the Act come into play, and the Court must follow the directions contained in that section when the award is submitted to it.

Now it is only by an extension of the usual meaning of the term that an application to file an award can be regarded as a suit. The Code of Civil Procedure does not treat it as a suit, though it directs it to be numbered and registered as one. It

(1) 9 Bom. H. C. Rep., 299.

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does not make the provisions of the Code which are applicable to suits apply to it, but treats it in the same manner as an award on an order of reference made by the Court itself. Upon such an application no summons is issued, no hearing takes place, but if the special provisions contained in section 518—521 are inapplicable to it, judgment is passed in accordance with its terms (section 522). It is in truth an application to have legal operation given to a legal decision already arrived at *by a judge chosen by the parties*. If from the express wording of the Act or by necessary or reasonable implication from its provisions it appeared to be the intention of the Legislature to treat an application to file an award as a suit, we should be bound to give the necessary extension to the latter term and to treat an application to file an award as falling within its extended meaning. That is clear law—Maxwell, page 84. Now it is admitted that there are no *express* words in the Act to show that a “suit” is used throughout it in other than its ordinary sense. It is, however, contended that it is apparent from the general scope of its provisions that it must have been the intention of the Legislature to bring awards, like all monetary engagements which agriculturists enter into, under the scrutiny of, and to render them subject to correction by, the Court. That does not appear to us to be so. We rather infer from the provisions of the Act that it was not so intended. When the parties go before a conciliator, and in pursuance of his advice a reference to arbitration takes place, and an award is made, effect is given to the award without scrutiny (section 47). Where the parties are before the Court and agree to refer the dispute to arbitrators, effect must be given to their agreement (section 12); upon which the usual results are evidently, we think, intended to follow if an award is made. It must be filed under section 522 of the Civil Procedure Code. This right of the parties to refer to arbitration is still preserved, though the power of compulsory reference by the Court is now taken away (Act VI of 1895, sec. 3). If the Legislature has thus thought fit to preserve the full effects of an award in the case of a reference to arbitrators made after proceedings begun, there is, we think, no reason for presuming that it had a contrary intention in the case of a reference and award prior to such proceedings.

We think that we ought to follow the ruling in *Gangulhar v. Mahadu*⁽¹⁾, and hold that the award should be filed without inquiry under section 12. It must be remembered that the Judge before filing such an award can upon objection by the debtor inquire into the matters specified in section 521 of the Code, and if he is in doubt as to its *bona fides* or freedom from fraud, can refer the parties to a regular suit, where the whole matter can be re-opened under section 12.

Order accordingly.

(1) I. L. R., 8 Bm., p. 20.

ORIGINAL CIVIL.

Before Mr. Justice Fulton.

GOKULBHOY MULCHAND (PLAINTIFF) v. TULLOCKCHAND
HARNA'ATH AND ANOTHER (DEFENDANTS).*

1896.

June 23.

Registration—Suit to compel re-istration—Discretion of registrar in acceptance of document for registration under Section 24 of the Registration Act—Registrable document with another document annexed, the latter if presented by itself being beyond time—Registration Act (III of 1877), Secs. 24, 73, 75 and 77.

A registrable document, which had been executed by the plaintiff on the one part and by the defendant Tullockchand and one Motichand on the other part, was accepted for registration by the sub-registrar of Bombay after four months from the date of execution under section 24 of the Registration Act (III of 1877). Motichand subsequently admitted execution, and the document was registered as against him; but the defendant Tullockchand objected to its registration and the registrar refused to register it. The plaintiff then brought this suit under section 77 of the Registration Act praying for an order directing the registration of the document. The defendant contended that the document ought not to have been accepted for registration without inquiry as to whether the failure to present it within four months had been caused by urgent necessity or unavoidable accident, and at the hearing of the case counsel for the defendants proposed to ask the registrar's clerk in his examination whether any such inquiry was made.

Held, following *Durga Singh v. Mathura Dits*⁽¹⁾, that the question should be disallowed, the Court having no jurisdiction to enquire into the exercise of the registrar's discretion under section 24 of the Registration Act.

The defendants executed and delivered two documents A and B to the plaintiff, A being an agreement of equitable mortgage and B an agreement that they would

* Suit No. 251 of 1896.

(1) I. L. R., 6 All., 400.