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DORAISWAMI IYER & CO., IN THE MATTER OF.

I think, therefore, on every ground the Rule must be discharged with costs.

Solicitors for the petitioners : Messrs. *Bhaishankar, Kanga & Girdharlal.*

Solicitor for the respondents: Mr. *J. C. G. Bowen.*

Rule discharged.

G. G. N.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

GOPALJI KALLIANJI, APPELLANTS AND DEFENDANTS *v.* CHHAGANLALI VITTHALJI, RESPONDENTS AND PLAINTIFFS*.

1920. *December* 14.

Arbitration—Consent order for extension of time presented before award—Order signed after making of award—Validity of award—Application to set aside—Form of—Indian Limitation Act (IX of 1908), Schedule II, Article 158—Civil Procedure Code (Act V of 1908), Schedule II—Practice.

Both parties to a suit, which had been referred to arbitration, having consented to an order for the extension of time for making the award, the order was taken to the proper officer (*sc.* the Prothonotary) for signature. In the ordinary course of events the latter would have exercised his discretion to sign the order on the same day, but owing to pressure of work the order was not signed till some days later, the award itself having been made in the interval.

Held, that, though the Prothonotary had actually exercised his discretion later, his decision must in the circumstances be thrown back to the day on which the order was presented for his signature, and, as the order ought to have been signed as of that day, the award was not invalid.

The form which an application to set aside an award under the Second Schedule of the Civil Procedure Code should take is nowhere prescribed or indicated. It is sufficient if some notice is given to the proper office that the party objects to the award and the date on which such notice is given is, for the purpose of the Indian Limitation Act, the date on which the application is made.

* O. C. J. Suit No. 1144 of 1918 ; Appeal No. 39 of 1920.

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THE facts of the case are sufficiently stated in the judgment of the learned Chief Justice.

Inverarity and *Munshi*, for the appellants.

Jinnah and *Coltman*, for the respondents.

MACLEOD, C. J. :—The plaintiffs filed this suit against the defendants to recover damages for breach of contract. On the 29th September 1919 an order of reference was made by consent, whereby the matters in dispute were referred to the arbitration of the arbitrators chosen by the parties. The order prescribed a period of one month within which the award was to be made. This period was extended from time to time by a number of orders until the 10th of April 1920. The 10th of April was a Saturday and the last day of the term. On that day evidence was taken and it was arranged that the arbitrators should intimate to the parties the market rate on which damages were to be assessed and on those rates the parties would submit the figures for the award. On the 12th of April the arbitrators announced the rates, and the final award was in accordance with those rates prepared on the 13th. As the period for delivering the award had expired on the 10th of April, both parties signed a consent order for an extension of the period, and that was handed into the Prothonotary's office on the 12th, and in the ordinary course of events the Prothonotary would have signed that order to which both parties had consented on the same day. But owing to its being the first day of the vacation, apparently there was a considerable press of work in the Prothonotary's office, and the solicitor who brought the order for signature did not wait to get it signed. Then owing to the vacation and various other reasons the order was not eventually signed until the 22nd of April. On the 6th of July the award was submitted and on the 16th of July the

defendants filed an affidavit in the Prothonotary's office objecting to the award. On the 21st of July the plaintiffs issued a notice of motion that they would ask for judgment in accordance with the award of the 6th of July. On the 22nd of July the defendants gave notice that they would move the Court on the 29th that the award be set aside. The plaintiffs' motion came on for hearing on the 26th of July, and under High Court Rule No. 348 the plaintiffs ought to have obtained a certificate from the Prothonotary that no application had been made to set aside the award or that if made it had been disallowed. We are told that the Prothonotary declined to give such a certificate but left it open to the plaintiffs to ask the Court for a decision that as a matter of fact no application had been made to set aside the award. An objection was then taken before the learned Judge that the defendants had made no application within the time prescribed by Article 158 of the Indian Limitation Act, and that objection found favour with the learned Judge, so he held that no application could be said to have been made within the meaning of Article 158 until either a notice of motion had been given or a Rule *nisi* had been obtained. We think that is taking too technical a view of what is required by Schedule II, Rule 15. The second Schedule nowhere prescribes the form which the application to set aside an award should take. Nor do the High Court Rules or the Indian Limitation Act give any indication as to the form in which the application should be made.

We think, therefore, that it is sufficient if some notice is given to the proper office, which in this case would be the Prothonotary's office, that the party objects to the award. If in this case this affidavit had been brought to the notice of the Prothonotary, it would have been open to him to issue a notice to the

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other side that an application to set aside the award had been filed. But we are told that the usual practice is first to file a petition or affidavit in the Prothonotary's office objecting to the award and then to issue a notice of motion as was done by the present defendants on the 22nd of July. However that may be, it seems clear to us that for the purpose of the Indian Limitation Act the date on which the application is filed is the date on which it can be said that the application is made. We think, therefore, that the learned Judge was wrong in coming to the conclusion that the application to set aside the award was out of time.

We can, therefore, deal with the defendants' notice of motion, and if we can possibly do that without remanding the case, we shall do so. The real gist of the defendants' application to set aside the award lies in their contention that at the time the award was made the period allowed to the arbitrators by the Court for making the application had expired and that, therefore, any extension after the award had been made would not validate the award. Under Schedule II, para. 8, the time for making the award may be extended by the Court either before or after the expiration of the period fixed for the making of the award. But it was held in *Raja Har Narain Singh* v. *Chaudhrain Bhagwant Kuar*[1] that an extension of time must be made before the award has been delivered, and we do not think that the alteration which was made in para. 8 of the second Schedule, as compared with the corresponding section 514 of the Code of 1882, makes any difference in that respect. As a matter of fact it had been contended that under section 514 once the period had expired, it could not be

[1] (1891) L. R. 18 I. A. 55.

extended, but the decisions of the Indian Courts were to the effect that in spite of the wording of section 514, the period could be extended before the award had been delivered, and those decisions were given effect to by the decision I have referred to of the Privy Council. If, then, the time was extended after it had expired on the 22nd of April, then it is clear the time was extended after the award and the award would be invalid. But in this case we do not think that is the proper view to take. Both parties consented to the order for extension on the 12th ; it was taken to the proper officer and it was merely because the proper officer on that day had too much work or the vacation hours were too short, that this order was not signed on that day. We think that when as a matter of fact he came to take up this particular business, he ought to have signed the order as of the day on which it was presented for signature. Otherwise if the defendants' objection to this order, which is of an extremely technical nature, were allowed it would work very great injustice against the plaintiffs, because on the merits of the case it is perfectly clear that the defendants are out of Court.

I think, therefore, although we do not agree with the learned Judge as regards his decision on the question of limitation, we think that his final order was correct and that therefore the appeal must be dismissed with costs.

We are not prepared to say that it was merely a question of procuring the signature of the Prothonotary on this consent order. Rather it is correct to say he could exercise an independent judgment in putting his signature thereto, because the Prothonotary like a Judge is not obliged to put his signature to an order merely because the parties ask him to do so. The

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point on which we decide this appeal is this that although the Prothonotary may be said to have actually exercised his discretion whether he should or should not sign on the 22nd of April, his decision owing to the circumstances of the case must be thrown back to the 12th, and the order ought to have been signed as of that day.

SHAH, J. :—I agree.

Solicitors for the appellants : Messrs. *Soonderdas & Co.*

Solicitors for the respondents : Messrs. *Motichand & Devidas.*

Appeal dismissed.

G. G. N.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Crump.

1920.

September 22.

EMPEROR *v.* NARANDAS KARSANDAS*.

City of Bombay Municipal Act (Bombay Act III of 1888 as amended by Bom. Act II of 1911), section 394†—Schedule M ‡—Storing of oils without license—Vegetable oils are "oil (other sorts)".

*Criminal Application for Revision No. 222 of 1920.

†The material portion of the section runs as follows :—

Except under and in conformity with the terms and conditions of a license granted by the Commissioner no person shall—

(*a*) keep, in or upon any premises, for any purpose whatever,

* * * *

(*ii*) any article specified in Part II of Schedule M, in excess of the quantity therein prescribed as the maximum quantity of such article which may at any one time be kept in or upon the same premises without a license ;

* * * *

‡ The material portion of Schedule M, Part II, is as follows :—

* * * *

Petroleum as defined in the Indian Petroleum Act, 1899	... 40 gallons.
Dangerous Petroleum as defined in the same Act	... 20 gallons.
Oil (other sorts)	... 15 gallons.