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 PORATION,
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doubt, a case in which the owner had to be compensated when his property was innocently destroyed, and the Courts have made a distinction between that which is done innocently by error and that which is done by fraud. The defendants were wrong in selling off the said car, but I cannot under the facts and circumstances of the case go so far as to say that there was any fraud on their part. The actual damage, therefore, that the plaintiff has sustained is the value of the car to him at the date of conversion, that is, December 11, 1924, and in the absence of any evidence of such value on the part of the plaintiff, the best evidence under the circumstances of the case would be the sale proceeds of the car which realized Rs. 3,200. As the sale was wrongful, the defendants are not entitled to the costs of the sale, and the plaintiff would, therefore, be entitled to recover the sum of Rs. 3,200 less the amount of instalments payable by him and less interest thereon, as and by way of damages.

Decree for the plaintiff for Rs. 3,200 and Rs. 184-5-0 less Rs. 1,590 and less interest on Rs. 1,590 at six per cent. per annum from October 2, to December 11, 1924. Costs and interest on judgment at six per cent. per annum till payment.

Attorneys for plaintiff : Messrs. *Bhimji & Co.*

Attorneys for defendants : Messrs. *Payne & Co.*

Suit decreed.

B. K. D.

ORIGINAL CIVIL

Before Mr. Justice Rangukar.

LALLUBHAI BRIJMOHAN v. JAMNADAS HARAKHJI SANGHAVI.

Indian Arbitration Act (IX of 1899), section 12—Arbitration—Award made beyond time—Court—Power to enlarge time after award published.

Under the Indian Arbitration Act, 1899, the Court has power, under section 12 of the Act, to extend the time for making the award, even after the award has in fact been published.

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Tejpal Jamunadas v. Nathmull & Co.⁽¹⁾; *Martirosi v. Subrahmanyam Chettiar*⁽²⁾; and *Knowles & Sons, Limited v. Bolton Corporation*⁽³⁾, relied on.

Raja Har Narain Singh v. Chaudhrai Bhagwant Kuar,⁽⁴⁾ distinguished.

PETITION under the Arbitration Act, 1899, for extending time for making the award.

Lallubhai a building contractor (the petitioner) was employed by Jamnadas (the respondent) to carry out certain repairs to his buildings under an agreement dated February 16, 1927. After the completion of the work a dispute arose between them, as to the amount payable by the respondent to the petitioner. All matters in dispute between them were referred to the sole arbitration of an engineer Mr. Mistry on September 17, 1927. The arbitrator entered on the reference on March 8, 1928, and published his award on July 31, 1928, by which he directed the respondent to pay a sum of Rs. 1,253 to the petitioner. On the respondent's failure to pay the amount, the petitioner on November 20, 1928, filed a suit in the Court of Small Causes at Bombay to recover the same. When the suit came on for hearing, it was contended on behalf of the respondent that the award was not a valid award inasmuch as it was made beyond the time allowed by law. On this the Court stayed the suit to enable the petitioner to apply to the High Court for enlarging the time for making the award.

The petitioner applied to the High Court.

B. K. Desai, for the petitioner.

M. S. Vakil, for the respondent.

RANGNEKAR, J. :—The summons raises the question whether in a case governed by the Indian Arbitration Act, IX of 1899, the Court has, under section 12 of the Act, power to extend the time for making the award

⁽¹⁾ (1919) 46 Cal. 1059.

⁽²⁾ (1927) 51 Mad. 103 F. B.

⁽³⁾ [1900] 2 Q. B. 253.

⁽⁴⁾ (1891) L. R. 18 I. A. 55 s. c. 13
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after the time for making the award had expired, and although the award has in fact already been made.

Briefly the facts are as follows. The respondent employed the petitioner to carry out some repairs and structural alterations to his building under a written agreement dated February 16, 1927. The petitioner carried out the work, but a dispute arose between the parties as to his bills. Ultimately, on September 17, 1927, all matters in dispute between the petitioner and the respondent were by mutual consent referred to the sole arbitration of an engineer. The agreement to refer contained no provision as to the time within which the award was to be made. The arbitrator entered on the reference on March 8, 1928. It is clear, therefore, that by virtue of section 6 of the Act the third provision in the first schedule to the Act applied to the reference under submission, and the arbitrator had to make his award within three months after entering on the reference. The arbitrator, however, made his award on July 31, 1928, whereby he awarded a sum of Rs. 1,253 in favour of the petitioner. On November 20, 1928, the petitioner filed a suit on the award in the Court of Small Causes to recover the amount due to him under the award. The respondent filed his written statement on February 1, 1929, and *inter alia* contended that the award was invalid as it was made after the time allowed by law. The Small Causes Court stayed the suit to enable the petitioner to apply to this Court for enlarging the time for making the award. Accordingly the plaintiff has now moved the Court under section 12 of the Act to enlarge the time for making the award.

Section 12 of the Indian Arbitration Act provides that the time for making an award may, from time to time, be enlarged by order of the Court, whether the time for making the award has expired or not.

There is nothing in the section itself which fixes or limits the time for making an application to the Court for extension of time for making an award. It is clear that the Court can enlarge the time even after the time for making the award has expired. The question is whether the Court can enlarge the time when the award has in fact already been made.

It is well known that arbitrators, particularly laymen, often overlook the fact that the award has to be made within the period allowed by law or the Court. Arbitration is a particular method for the settlement of disputes in a speedy and inexpensive way, and the Courts generally are inclined, and ought, in my opinion, to be inclined, towards validating the acts of an arbitrator, unless the same are manifestly contrary to law or equity. It is for this purpose that the statute gives power to the Court to extend the time for making the award.

The result of holding otherwise would lead to an anomaly. If the date for making the award is, say, January 2, an application made on February 1, for extension of time would be granted normally by the Court, unless there is anything gross in the circumstances of the case which would make it necessary to refuse an application of this nature. If, however, the arbitrator makes an award on January 3, and an application is made, say on January 4, it must be rejected, if the respondent's contention is correct. I am unable to see why. In my opinion, to construe section 12 of the Act in this manner would tend to defeat the very object which the law and the statute have in view.

There is considerable authority for the view I am taking.

In *Tejpal Jamunadas v. Nathmull & Co.*⁽¹⁾ it was held that, under section 12 of the Indian Arbitration

⁽¹⁾ (1919) 46 Cal. 1059.

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Act, the Court had power to extend the time though the time for making the award had expired, and even though the award had been in fact made. It was pointed out by Sanderson C. J. that section 9 of the English Arbitration Act, 1889, was in all material respects identical with section 12 of the Indian Arbitration Act, and that with reference to that section it was held by the Court of Appeal in *Knowles & Sons, Limited v. Bolton Corporation*⁽¹⁾ that the Court had jurisdiction to extend the time for making the award although the award had been in fact made. It was urged in that case that the Judicial Committee of the Privy Council in *Raja Har Narain Singh v. Chaudh-rain Bhagwant Kuar*⁽²⁾ had not followed the English cases. Sanderson C. J. with reference to that case observed that the case before the Privy Council was decided entirely upon the construction of the Civil Procedure Code then in force (i.e., the Code of 1882), and, therefore, that decision would not apply to the case before him which was governed by the provisions of the Indian Arbitration Act.

Under the Code of 1882, section 521, an award was not a valid award unless made within the period allowed by the Court. This clause is now omitted from the Code of 1908, and instead thereof we have in paragraph 15, sub-clause (e), of the arbitration schedule to the Civil Procedure Code of 1908, the words "or after expiration of the period allowed by the Court."

The effect of this alteration is that the only remedy now open to the party impeaching an award on the ground that it was made after the expiration of the period allowed by the Court is to apply under paragraph 15 of the arbitration schedule to the Civil Procedure Code of 1908 to set aside the award. But if a party does not do so, or if his application is not granted,

⁽¹⁾ [1900] 2 Q. B. 253.⁽²⁾ (1891) 13 All. 300 P. C.

the award though made after expiry of the period is not of itself invalid. The award becomes final under this paragraph, and no appeal will lie from a decree passed upon the award. Therefore, with all respect, it seems to me that it is doubtful if the decision in *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar*⁽¹⁾ would be a good decision under the present Code.

In *Tejpal Jamunadas v. Nathmull & Co.*⁽²⁾ an earlier decision of Harington J. in *Shib Krishna Dawn & Co. v. Satish Chunder Dutt*⁽³⁾ was referred to. In that case the learned Judge held that the Court had no power to extend time so as to validate an award which had been made after the time allowed by the Court had expired. The case was not one under the Indian Arbitration Act, but depended upon the provisions of the Civil Procedure Code.

In *Sri Lal v. Arjun Das*⁽⁴⁾ Chitty J. doubted whether, having regard to the change in the law made by the wording of section 148, and schedule II, paragraphs 8 and 15, of the Code of 1908, the decision in *Shib Krishna Dawn & Co. v. Satish Chunder Dutt*⁽⁴⁾ or the decision of their Lordships of the Privy Council in *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar*,⁽¹⁾ was binding authority. The learned Judge pointed out that their Lordships of the Privy Council in *Har Narain's* case⁽¹⁾ held that an award made out of time was invalid, and that the arbitrators by such effluxion of time werè *functi officio*. In so doing, they followed the express words of section 521 of the Code of 1882 which were "no award shall be valid unless made within the period allowed by the Court."

Apart from this, the present case is governed by the provisions of the Indian Arbitration Act and not by the Civil Procedure Code.

⁽¹⁾ (1891) 13 All. 800 P. C.

⁽²⁾ (1919) 46 Cal. 1059.

⁽³⁾ (1911) 38 Cal. 522.

⁽⁴⁾ (1914) 18 C. W. N. 1325.

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The decision in *Tejpal Jamunadas v. Nathmull & Co.*⁽¹⁾ was followed by a Full Bench of the Madras High Court in *Martirosi v. Subrahmanyam Chettiar.*⁽²⁾ In that case the award was remitted by the Court for reconsideration of the umpire under section 13 of the Indian Arbitration Act. But the Court did not fix any time in the order remitting the matter for reconsideration of the umpire for submitting his award. The arbitrator, therefore, had to make his award within three months as required by section 13 of the Indian Arbitration Act. He did not do so, and it was contended that the award was invalid. The appellant made an application to the Court that the time for the delivery of the award remitted may be enlarged in order to validate the award. The principal judgment of the Full Bench was delivered by Kumaraswami Sastri J. who held that the Court has, according to the decisions, both English and Indian, power to extend the time under section 12 of the Indian Arbitration Act, which corresponds to section 9 of the English Arbitration Act, even after the award had been delivered, and there was no reason why when an award was remitted under section 13 of the Indian Arbitration Act, a similar power should not exist. With reference to the Privy Council case of *Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar*⁽³⁾ the learned Judge observed that the decision of their Lordships of the Privy Council, which was passed under the Civil Procedure Code of 1882, did not constrain him, in dealing with sections 12 and 13 of the Indian Arbitration Act, to put a restriction on the power of the Court under section 13, and to hold that although under section 13 the Court may extend the time beyond three months, if it did so in the order of remission, it had no power to do so once the award had been passed.

⁽¹⁾ (1919) 46 Cal. 1059.

⁽²⁾ (1927) 51 Mad. 103. F. B.

⁽³⁾ (1891) 13 All. 300 P. C.

It is argued that both the decisions to which I have referred were under section 13, clause (2), of the Indian Arbitration Act, and were cases in which the award had come before the Court, and was remitted under section 13 of the Act. It is to be noted, however, that Sanderson C. J. in *Tejpal Jamunadas v. Nathmull & Co.*⁽¹⁾ observed that the proposition that the Court had power under section 12 of the Indian Arbitration Act to extend the time for making an award, even though the award had been in fact made, was not strenuously disputed. But the argument before him was that the jurisdiction given by section 12 could not be exercised by the Court after the award had been remitted, as it was in that case, under section 13 of the Act. That contention was rejected by the learned Chief Justice who held that the power given to the Court by section 12 was not limited and may be exercised from time to time, and even after the award had been remitted by the Court to the arbitrators.

The same view was taken by Kumaraswami Sastri J. in the Full Bench decision of the Madras High Court in *Martirosi v. Subrahmanyam Chettiar.*⁽²⁾ Kumaraswami Sastri J. said (p. 110):—

“ It seems to me that if the Court could extend the time under section 12 even after the delivery of the award, there is no reason why it should not have power to do so under section 13.”

It is clear that in both these decisions it was not seriously contended that the Court had no power under section 12 of the Indian Arbitration Act to enlarge the time even though the award had in fact been made. And that is the position here.

The position under the English law is the same. I have already pointed out that sections 12 and 13 of the Indian Arbitration Act are taken almost verbatim from sections 9 and 10 of the English Arbitration Act.

⁽¹⁾ (1919) 46 Cal. 1059.

⁽²⁾ (1927) 51 Mad. 109 F. B.

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At page 162 Russell (on power and duty of an arbitrator, 11th Edition) observes as follows:—

“ The power can be exercised although the award has in fact already been made after the period fixed for making it has expired.

All the cases both before the Arbitration Act, 1889, and after the Arbitration Act, 1889, will be found collected by Russell.

I may refer to one of those cases, and that is the case of *May v. Harcourt*.⁽¹⁾ It was a case before the English Arbitration Act, 1889. The facts in that case are somewhat similar to the facts before me. There, as here, disputes were referred to two surveyors, one appointed by either party, to measure up and determine the value of the work done by one of them. There was no clause in the reference as to the extension either by the arbitrator or otherwise, of the time for making the award. The award was to be made within one month from the date of the agreement. The arbitrators, however, made their award nearly two months after the time for making the award had expired. The party in whose favour the award was made commenced an action against his opponent, and in that action the defendant moved to set aside the award on the ground that it was made out of time. The plaintiff, on the other hand, moved for enlarging the time for making the award until the day it was actually made. It was held that the Court had power subsequently to the making of the award to enlarge the time under section 15 of the Common Law Procedure Act, 1854. It may be stated that section 15 of the Common Law Procedure Act provides that for good cause shown the Court may enlarge from time to time the time for making the award. It will be seen that the section is in terms similar to section 12 of the Indian Arbitration Act.

The same view was taken in *Knowles & Sons, Limited v. Bolton Corporation*,⁽²⁾ which was a case under the

⁽¹⁾ (1894) 13 Q. B. D. 688.

⁽²⁾ [1900] 2 Q. B. 253.

Arbitration Act of 1889. Lord Justice Smith observed that (p. 257):—

“There cannot... be a doubt... that there was jurisdiction in the Court or a judge to make the order asked for, [under section 9 of the Act to extend the time for making the award] although the time for making the award had elapsed before the application was made... and although the award has been in fact made.”

I am, therefore, of opinion that I have power to extend the time for making the award under section 12 of the Indian Arbitration Act so as to validate the award.

Is there, then, anything in the facts of the case which disentitles the petitioner to the relief sought by him? No arguments on the facts have been addressed by the learned counsel for the respondent, except that he contended that I should not exercise the power in favour of the petitioner as there was delay in this case. Looking to the dates to which I have already referred, I do not think that the plaintiff has been guilty of delay.

In the result, therefore, the summons will be made absolute. Each party to bear his own costs.

Attorneys for petitioner: Messrs. *Nanoobhai & Co.*

Attorneys for respondent: Messrs. *Natvarlal & Co.*

Summons made absolute.

B. K. D.

ORIGINAL CIVIL.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

JAMNABAI (ORIGINAL DEFENDANT No. 3), APPELLANT *v.* VASUDEO SAGARMAL AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS Nos. 1 AND 2), RESPONDENTS.*

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September 17.

Hindu Law—Mitakshara—Partition—Partition between father and son—Grand mother not entitled to a share—Consent decree—Share allotted to mother absolutely—The share devolving on her death on her grand-sons, absolutely—Such share in hands of grand-sons not joint family property.

Under the Mitakshara, on partition between a father and son, the grand-mother is not entitled to a share.

*O. C. J. Appeal No. 29 of 1929; Suit 1203 of 1917.

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