

The reports of the Director, Central Food Laboratory, are final and conclusive proof of the contents. These reports supersede the reports of the Public Analyst in these cases. Since the Director had found the samples of milk deficient in milk solids not fat, the samples P-6 are, therefore, held to be adulterated and both the accused in the two cases referred to above are held guilty of commission of offence under section 16(1)(a)(i) read with section 7 of the Act.

(5) In these cases samples of milk were purchased about 10 years ago and they are now to be sentenced for selling adulterated milk. They were earlier sentenced under section 16(1) (a) (ii) of the Act for selling milk without any licence as stated above. It will not be appropriate after 10 years to send the accused to jail. The ends of justice would be met if they are sentenced to imprisonment already undergone and to pay an additional fine of Rs. 1,000 each in default of payment of fine, they would undergo rigorous imprisonment for three months. It is so ordered while accepting the appeal.

R.N.R.

Before V. K. Jhanji, J.

MOHINDER SINGH,—*Petitioner.*

versus

THE ESTATE OFFICER, U.T. ADMINISTRATION, CHANDIGARH
AND ANOTHER,—*Respondents.*

Civil Revision No. 2524 of 1986.

30th May, 1991.

Arbitration Act, 1940—Ss. 14, 16, 17—Arbitration award—Amount, however, left undetermined—Arbitrator remitting the matter to Estate Officer for determining the amount claimed—Application moved for making award rule of the Court—Award liable to be remitted to Arbitrator for full determination.

Held, that where the Arbitrator has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred, the

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Court may remit the award to the Arbitrator or umpire for consideration upon such terms as it thinks fit. Thus, once matter was referred to the Arbitrator, it was he who had to determine the claim of the petitioner instead of asking someone else to decide on his behalf. (Paras 7 and 8)

Petition under Section 115 C.P.C. for Division of the order of the Court of Shri Gopi Chand, PCS, Senior Sub Judge, Chandigarh dated 13th June, 1986 dismissing the petition for making the award a rule of the Court.

Inderjit Malhotra, Advocate, for the Petitioner.

Prabodh Mittal, Advocate, for the Respondent.

JUDGMENT

V. K. Jhanji, J.

(1) The present revision petition has been preferred by the petitioner against the order dated 13th June, 1986 of the learned Senior Sub Judge, Chandigarh, dismissing the petition filed by the petitioner under Sections 14 and 17 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act'), for making the award dated 19th February, 1985 a rule of the Court. The learned Senior Sub Judge concluded that the award is vague, indefinite and the arbitrator has not determined the differences between the parties rather he has left the matter in dispute undecided, and directed the parties to produce evidence before the Estate Officer, Chandigarh. In view of this finding, the petition for making the award a rule of the Court, was dismissed. The petitioner has impugned the said order by way of this present revision petition.

(2) Briefly, the facts of the case are that the petitioner who is transferee of Site No. 3418, Sector 23-D, Chandigarh, secured a loan of Rs. 14,000 from the Estate Officer, Chandigarh, for the construction of a house on the said site, on the terms and conditions set out in the Security-cum-Mortgage Deed which was executed by the petitioner with the Estate Officer, on 14th June, 1958. According to Clause 3 of the Security-cum-Mortgage Deed, the petitioner was required to pay back the amount of loan together with interest, in 30 half yearly instalments. However, the petitioner made default in making payment of instalments of loan, and to recover the said instalments, the Estate Officer directed the Collector, Chandigarh, to

recovery the same as arrears of land revenue. The house of the petitioner was attached and was auctioned under Section 76 of the Punjab Land Revenue Act, 1887, on 24th July, 1970. The sale was confirmed by the Commissioner on 24th November, 1971. The petitioner challenged the attachment as well as sale, in this Court, and a Division Bench of this Court quashed the sale of the house. In pursuance of the judgment of this Court, the house was released to the petitioner in December, 1972. The house was again attached for the recovery of the amount of Rs. 11,374 and remained under attachment from 30th December, 1973 to 13th January, 1975. After release of the house to the petitioner in January, 1975, the petitioner filed an application for arbitration, under Clause 14 of the Security-cum-Mortgage Deed, before the then Finance Secretary, Chandigarh Administration, for the adjudication of the dispute, on 4th February, 1979. The said application was dismissed, as the learned Finance Secretary was of the view that the reference for arbitration was not competent. Thereupon, the petitioner filed an application under Section 20 of the Act, in the Court of learned Sub Judge 1st Class, Chandigarh, for the appointment of an Arbitrator and for making reference for the adjudication of the dispute. The learned Sub Judge 1st Class, Chandigarh,—*vide* the order dated 22nd April, 1983, referred the dispute to the arbitration. The concluding para of the judgment reads as under :—

“As a result of above discussions, the matter in dispute is referred to the arbitrator i.e. Chief Administrator, U.T. Chandigarh, for decision. The arbitrator shall give notice to the parties and thereafter, he shall give opportunity to the parties to lead evidence in support of their cases and submit his award. The agreement which has been produced by the respondent be also sent to the arbitrator. The copy of the order be sent to the arbitrator for compliance.”

(3) In pursuance of the above judgment, the petitioner submitted his Claim before the learned Finance Secretary, who was appointed as an Arbitrator. The petitioner claimed that a sum of Rs. 12,380 was refundable to him as a result of excess payment made by the petitioner and the recovery effected by the Estate Officer through the Collector, from the tenants, during the period the house remained under attachment. He also submitted that at the time when the house was attached on 17th April, 1968, the house was let out at a monthly rent of Rs. 255 per month, and during the

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period of attachment, it was the duty of the Collector to administer the said property in a proper way and to collect the rent at the rate of Rs. 255 per month. The petitioner further submitted that a sum of Rs. 12,720 should have been recovered by the Collector and credit to this extent should have been given to the petitioner's account. In this way, he claimed that a sum of Rs. 12,380 ought to have been refunded to him.

(4) The Arbitrator after giving opportunity to the parties to lead evidence, concluded that the grievance of the petitioner is genuine and he has been over-charged by the Estate Officer. However, instead of determining the excess amount which was over-charged by the Estate Officer/Collector, during the two attachments of the said house, the Arbitrator remitted the matter to the Estate Officer for the said purpose. The concluding para of the award reads as under :—

“Under these circumstances, I award that the Estate Officer should recast the account of the petitioner carefully and while doing so the petitioner should be afforded credit of the amount which should have been recovered by the Collector during two attachments of the said house and not of the amount which was actually recovered by the Collector. The petitioner is directed to produce evidence before the Estate Officer in support of his contention that during the first attachment, his house had been let-out at a monthly rent of Rs. 255 and not at Rs. 178 p.m. as stated by the representative of the Estate Officer. The claim put forward by the petitioner for payment of interest at the rate of 18 per cent p.a. is rejected. The Estate Officer is further directed to settle this claim of the petitioner within a period of one month reckonable from the date of the issue of this award.”

(5) The petitioner thereupon filed a petition under Sections 14 and 17 of the Act, for making the award a rule of the Court. The said petition was contested by the respondents. The learned Senior Sub Judge dismissed the said petition holding that the award is vague, indefinite and incomplete, and the arbitrator has left the matter in dispute, undetermined.

(6) The learned counsel for the petitioner has contended that the petitioner as well as the respondents agreed before the learned

Senior Sub Judge and also gave in writing that the award be sent back to the arbitrator as he has not determined the matter referred to him.

(7) After hearing the learned counsel for the petitioner, I am of the view that the learned Senior Sub Judge, instead of dismissing the application under Sections 14 and 17 of the Act, ought to have remitted the award to the arbitrator for reconsideration as he has left the matter referred to him, for adjudication of the dispute, undetermined. Clause (a) of sub-section (1) of Section 16 of the Act provides that where the Arbitrator has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred, the Court may remit the award to the Arbitrator or umpire for reconsideration upon such terms as it thinks fit. Clause (a) and (b) of sub-section (1) of Section 16 of the Act, provides that the Court may remit the award for reconsideration before the Arbitrator :

- (a) where the award has left undetermined any of the matters referred to arbitration; or
- (b) where the award determines any matter not referred to arbitration and such matter cannot be separated from the award without affecting the matters referred for determination."

When such matters cannot be separated, the proper remedy is that mentioned in sub-section (a) of Section 15 of the Act.

(8) In the present case, the Arbitrator was required to determine the claim set out by the petitioner before him. The Arbitrator in his award, dated 19th February, 1985 has concluded that the petitioner's grievance is genuine and he has been over-charged by the Estate Officer, but instead of determining as to the amount which was over-charged by the Estate Officer, the Arbitrator sent back the matter to the Estate Officer, to determine the amount. The petitioner was also directed to produce evidence before the Estate Officer in support of his claim. Once the matter was referred to the Arbitrator, it was he who had to determine the claim of the petitioner instead of asking someone else to decide on his

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behalf. In view of this, he left the matter referred to him, undetermined. The learned Senior Sub Judge while dismissing the petition under Sections 14 and 17 of the Act, has also observed :

“The arbitrator has not determined the differences between the parties rather he has left the matter in dispute undecided and directed the parties to lead evidence before the Estate Officer, Chandigarh.”

(9) The learned Senior Sub Judge in view of this finding ought to have remitted the award under clause (a) of sub-section (1) of Section 16 of the Act, to the Arbitrator for reconsideration and to determine finally the claim of the petitioner, in terms of reference dated 22nd April, 1983. Thus, the impugned order of the learned Senior Sub Judge, dismissing the petition under Sections 14 and 17 of the Act, for making the award a rule of the Court, is liable to be set aside. I, therefore, set aside the impugned order. Consequently, the revision petition is allowed, but with no order as to costs. The case is remanded back to the learned Senior Sub Judge, Chandigarh, who shall remit the award to the Arbitrator with a direction to determine the matter finally within four months from the date the parties appear before the arbitrator.

(10) The parties through counsel are directed to appear before the learned Senior Sub Judge, Chandigarh on 8th July, 1991.

R.N.R.

Before S. S. Grewal, J.

KISHORE KUMAR GUPTA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Criminal Misc. No. 7862-M of 1989.

19th July, 1991.

Indian Penal Code, 1860—Ss. 149, 420, 406, 498-A—Code of Criminal Procedure, 1973 (II of 1974)—Ss. 156(3), 482—FIR lodged against husband and his relatives on a complaint made by wife—No specific allegations of cruelty etc. made in the FIR—Mere vague and