

REVISIONAL CIVIL

Before R. N. Mittal, J.

RULIA RAM,—Petitioner.

versus

MANGAT RAM,—Respondent.

Civil Revision No. 557 of 1974

January 16, 1976.

Arbitration Act (X of 1940)—Sections 17 and 30—Award consisting of two separable parts—One part valid and other void—Valid part—Whether can be enforced.

Held that if one part of the award is void and the remaining part is valid and the two parts are separable, the valid part can be enforced and the void part rejected. If two portions cannot be separated, then the award, as a whole, is void.

(Para 3)

Petition under Section 44 C.P.C. for revision of the order of Shri V. K. Jain, Additional District Judge, Karnal, dated 24th January, 1974, affirming that of Shri T. P. Garg, Senior Sub-Judge Karnal 28th July, 1972 passing a decree for Rs. 72,00 in favour of Mangat Ram and against Rulia Ram on the condition laid down therein.

Roop Chand, Advocate, for the petitioner.

G. C. Mittal, Advocate, for the Respondent.

JUDGMENT

R. N. Mittal, J.—(1) This civil revision has been filed against the Judgment of the Additional District Judge, Karnal, dated January 24, 1974.

(2) Briefly the facts of the case are that Rulia Ram, petitioner, took a loan of Rs. 5800 from Mangat Ram, respondent, and executed a pronote in his favour. He agreed to return the amount with interest at the rate of 1 per cent per mensem. A dispute arose between the parties and they appointed Madan Lal as the sole arbitrator by an agreement dated November 26, 1968, Exhibit P. 1. The Arbitrator, after hearing the parties passed an award on December 16, 1968, Exhibit P-4, in favour of Mangat Ram, respondent, for Rs. 7,200. The petitioner was directed to pay the amount in two instalments of Rs. 3,600 each. The first instalment was to be paid in May, 1969 and

the second, in November, 1969. It was also mentioned that if any instalment was not paid on its due date, the balance would be payable in lumpsum. A charge was also created on the immovable property belonging to the petitioner. An application was filed by the Arbitrator in the Court of the Senior Subordinate Judge, praying that the award be made a rule of the Court. The respondent filed objections to the award. He, *inter-alia*, stated that there was no valid arbitration agreement, that the Arbitrator misconducted himself and there was no valid award as it had not been registered. The trial Court held that there was valid arbitration agreement, that the Arbitrator had not misconducted himself and that the award was valid. Consequently it dismissed the objections and made the award a rule of the Court. Rulia Ram went up in appeal before the Additional District Judge, Karnal, who held that the part of the award wherein a charge had been created on the immovable property belonging to the petitioner was invalid, but the remaining part was valid. On the other matters, he affirmed the judgment of the Senior Subordinate Judge. He consequently partly accepted the appeal and modified the judgment of the Senior Subordinate Judge. Rulia Ram has come up in revision against the order of the Additional District Judge, Karnal, to this Court.

(3) The first contention of the learned counsel for the petitioner, is that the award was compulsorily registerable, as a charge was created by the Arbitrator on the immovable property belonging to the petitioner. He argues that the part of the award, which did not require registration, could not be made a rule of the Court. I regret my inability to accept this contention. It is no doubt true that the award, by which an interest is created in property worth more than Rs. 100, is compulsorily registrable. However, if one part of the award is void and the remaining part is valid and the two parts are separable, the valid part can be enforced and the void part rejected. If the two portions cannot be separated then the award, as a whole, is void. In this view I get support from *Anandi Lal Poddar v. Keshavdev Poddar and others*, (1), wherein it was observed as follows :—

“If, notwithstanding some portion of an award is void, the remaining part contains a final and certain determination of every question submitted, the valid portion may frequently

(1) A.I.R. 1949 Calcutta 549.

Kali Ram etc. v. Union of India and others (D. S. Tewatia, J.)

be maintained and the void part rejected. The bad portions, however, must be clearly separable in their nature in order that the award may be good for the residue."

In the present case, the award has been passed for the recovery of Rs. 7,200 in favour of the respondent against the petitioner and a charge has been created of that amount on the property of the petitioner. The two parts of the award are independent. Therefore, the first part will be valid whereas the second part will not be so as the award has not been got registered. In my view, the conclusion arrived at by the appellate Court on this matter is correct and I affirm the same.

(4) The second contention of the learned counsel for the petitioner, is that there was no valid agreement to refer the matter to the Arbitrator as no dispute existed between the parties. This contention was not raised before the Courts below. I however, have considered the matter but regret my inability to accept the argument of the learned counsel for the petitioner. A reading of the judgments of the Senior Subordinate Judge and the Additional District Judge shows that there was a dispute regarding the execution of the pronote. The petitioner had, in his statement before the Court even denied its execution. A disputed matter can always be referred to an Arbitrator. I, therefore, reject the contention of the learned counsel for the petitioner.

(5) For the reasons recorded above, this revision petition fails and the same is dismissed with costs.

N. K. S.

APPELLATE CIVIL

Before D. S. Tewatia, J.

KALI RAM ETC.,—*Plaintiffs-Appellants.*

versus

UNION OF INDIA AND OTHERS,—*Defendants-Respondents.*

Civil Regular Second Appeal No. 674 of 1965

January 21, 1976.

Transfer of Property Act (4 of 1882)—Section 41—Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954)—Sections 24 and 36—Evacuee property purchased bona fide and for consideration—Allotment in favour of transferor cancelled—Transferee of such property—Whether can invoke the provisions of section 41.