

(2) It appears that the Subordinate Judge has forgotten that the dowry is given by the parents of the girl to their daughter and she is expected to be its owner and that if anybody deprives her of the same, she is normally entitled to claim it back subject to proof of such other matters as may be in dispute in a particular case. The solitary ground on which the application of the present petitioner was rejected is contrary to law. The order under revision is, therefore reversed. If the trial Court is satisfied that the applicant-petitioner is a pauper, her application shall be allowed. Since no finding on that point has been recorded by the trial Court, it is not proper for me to say anything on the merits of that matter. This revision petition is accordingly allowed, the order of the trial Court is set aside, and the application is sent back to the trial Court for being heard and decided in accordance with law after recording such evidence, if any, as the parties may wish to lead on the question of pauperism. The costs of the proceedings in this Court shall abide the result of the main application. Parties have been directed to appear before the trial Court on February 9, 1976.

N.K.S.

APPELLATE CIVIL

Before M. L. Verma, J.

KEHR CHAND DHIMAN AND ANOTHER,—*Petitioners-Appellants*

*versus*

SARVSHRI DHARAM CHAND DHIMAN ETC.,—*Respondents.*

First Appeal From The Order No. 113 of 1965

January 12, 1976.

*Arbitration Act (X of 1940) — Sections 3, 14, 30, 33 and First Schedule, Rules 2, 4 and 5—Arbitrators appointing an Umpire even before commencement of arbitration proceedings — Umpire — Whether could participate in such proceedings before the arbitrators differed — Award given by the arbitrators in consultation with the Umpire — Whether valid.*

*Held*, that the provisions contained in rules 4 and 5 of the First Schedule of the Arbitration Act, 1940 make it clear that an Umpire is not an Arbitrator *ab initio* and he cannot act as an additional Arbitrator. It is only when the Arbitrators fail to make

Kehr Chand Dhiman and another v. Sarvshri Dharam Chand  
Dhiman etc. (M. L. Verma, J.)

an award within the time allowed to them or fail to agree with each other that the Umpire comes into the picture and replaces them. Therefore, the Umpire could not participate in the deliberations of the Arbitrators before any differences had arisen between them. Since the decision of the Umpire was to be final, the Arbitrators could not over rule him even if they had agreed among themselves and neither of the Arbitrators could afford to disagree when the Umpire had agreed with the other. Thus the Umpire could not confer with the Arbitrators and he could not mould their decisions and similarly the Arbitrators could not seek any guidance from the Umpire. Hence the act of the Arbitrators in allowing the Umpire to participate in the deliberations for taking decision amounted to judicial misconduct on their part and, therefore, the award given by them in consultation with the Umpire suffers from an illegality which vitiates it.

(Para 4)

*First appeal from the order of the Court of Shri Girdhar Krishan Bhatnagar, Senior Sub Judge, Jullundur, dated 22nd April, 1965, dismissing the application of the petitioners and leaving the parties to bear their own costs.*

*Claim.—Application under section 14 of Arbitration Act X of 1940 for filing of the award.*

H. L. Sibal, Senior Advocate, G. R. Majithia, Advocate with him for the Appellants.

D. S. Nehra, Advocate, Arun Nehra, Advocate, for respondent No. 1 only.

*Nemo for the respondents.*

*Muni Lal Verma, J.—(1) The disputants including Mehar Chand are real brothers being sons of Tulsi Ram. They owned joint properties located within the limits of tehsil Phillaur and at Howrah. They too had joint businesses at Phillaur and Howrah. Since disputes had arisen between them, they, by agreement executed on November 2, 1962, appointed Shri Gurditta Ram and Shri Anant Ram as Arbitrators and referred the various disputes to them for arbitration. One of the terms of the said reference was that in the event of difference of opinion between Shri Gurditta Ram and Shri Anant Ram, they could appoint an Umpire whose decision would be final. The arbitrators, viz., Shri Gurditta Ram and Shri Anant Ram, therefore, appointed Shri Devi Chand Dhiman as Umpire, even before the commencement of the arbitration proceedings. The Arbitrators Shri Gurditta*

Ram and Shri Anant Ram, along with the Umpire gave the award on December 15, 1962. Therefore, Mehar Chand and Kishan Chand (now the appellants) moved application under section 14 of the Arbitration Act (hereinafter called the Act) on March 5, 1963 in the Court of the Senior Subordinate Judge, Jullundur, for filing of the award and making the same the rule of the Court. The award was filed. Dharam Chand (now respondent No. 1) filed objections under sections 30 and 33 of the Act, pleading, *inter alia* that the Arbitration Tribunal had not been constituted in accordance with the agreement arrived at between the parties and the Arbitrators Shri Gurditta Ram and Shri Anant Ram, had been guilty of misconduct because they had allowed themselves to be led and dominated upon by the Umpire, viz., Shri Devi Chand Dhiman and were allowed themselves to be influenced by Shri Jetley, legal practitioner, in making the award. They (the Arbitrators) did not afford opportunity to him to adduce evidence and they had gone beyond the scope of the reference in directing the transfer of his (Dharam Chand's) share in the joint properties to Mehar Chand, Kehar Chand and Kishan Chand instead of dividing the same by metes and bounds and the award was otherwise invalid because they, viz., Shri Gurditta Ram and Shri Anant Ram, had directed him (Dharam Chand) to get the land of the factory—Messrs. Dhiman Iron and Steel Company, Phillaur which did not belong to him, transferred in favour of Mehar Chand, Kehar Chand and Kishan Chand. The said objections were resisted by Kehar Chand and Kishan Chand and they controverted the material allegations made by Dharam Chand. Hence, the following issue was settled on merits:

“Whether the award dated December 15, 1962 is liable to be set aside on the grounds mentioned in para 2 of the application of the respondent ?”

2. The trial Court returned verdict on the said issue in the affirmative and consequently the objections raised by Dharam Chand prevailed, and the application moved by Kehar Chand and Kishan Chand for making the award the rule of the Court, was dismissed. Dissatisfied with the said result, they, viz., Kehar Chand and Kishan Chand came to this Court in appeal.

3. In support of the appeal, Mr. G. R. Majithia, learned counsel for the appellants, raised the contentions that the Arbitrators were legally bound to appoint the Umpire and that Dharam Chand had been appearing before the Arbitration Tribunal, so, he was estopped

Kehr Chand Dhiman and another v. Sarvshri Dharam Chand  
Dhiman etc. (M. L. Verma, J.)

---

on principle of waiver or acquiescence from questioning the appointment of Shri Devi Chand Dhiman as Umpire or the validity of the award, and the division of the joint properties had been affected by mutual adjustment and the same constituted partition by metes and bounds for all intents and purposes, and thereby assailed the finding recorded by the trial Court on the aforesaid issue and the judgment rendered by it as unsustainable. Section 3 of the Act provides that an arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference. It is provided by rule 2 of the First Schedule of the Act that if the reference is to an even number of Arbitrators, the Arbitrators shall appoint an Umpire not later than one month from the latest date of their respective appointments. Therefore, Mr. Majithia was right in contending that the appointment of Devi Chand Dhiman as Umpire by Shri Gurditta Ram and Shri Anant Ram, Arbitrators, even prior to the commencement of the arbitration proceedings was warranted by law notwithstanding that clause (b) of paragraph 4 of the agreement of reference provided that they could appoint the Umpire in the case of difference of opinion between them on any matter.

4. I may also agree with Mr. Majithia who is supported by judgment in *Firm Gaurishankar-Shyamsunder v. Biharilal son of Bissessarilal* (1) that the participation of Shri Devi Chand in the arbitration proceedings will not be a sufficient ground for setting aside the award. Shri Devi Chand could even sit along with the Arbitrators and hear the evidence and the effect of Dharam Chand's appearing before the Arbitrators and the Umpire may constitute waiver or acquiescence on his part to the extent that he may not be able to challenge the appointment of Shri Devi Chand as Umpire by the Arbitrators prior to the commencement of the arbitration proceedings or his (Shri Devi Chand Dhiman's) participation in the arbitration proceedings. But, the act of Dharam Chand's appearing in the arbitration proceedings with the knowledge that he (Shri Devi Chand Dhiman) had been appointed as Umpire by the Arbitrators and that Shri Devi Chand Dhiman was participating in the arbitration proceedings cannot be construed as his assent to the Arbitrators' viz., Shri Gurditta Ram and Shri Anant Ram, seeking advice from Shri Devi Chand Dhiman or the latter's influencing that

---

(1) A.I.R. 1952 Nagpur 314.

in the matter of making the award. The award, when read carefully, leaves no manner of doubt that the decisions were taken and the award was made unanimously by the Arbitrators (Shri Gurditta Ram and Shri Anant Ram) and the Umpire (Shri Devi Chand Dhiman). The award is signed by all the three of them. It is also mentioned in first paragraph of the award that Shri Devi Chand Dhiman had been appointed as Umpire by Shri Gurditta Ram and Shri Anant Ram and its third paragraph relating to the decisions taken, contains the word "wah" which means Shri Gurditta Ram, Shri Anant Ram and Shri Devi Chand Dhiman. The most important question for determination is whether Shri Devi Chand could participate in the deliberations of Shri Gurditta Ram and Shri Anant Ram before any differences had arisen between them. My answer to the said question would be in the negative. Since Shri Devi Chand Dhiman was the Umpire and his decision was to be final, Shri Gurditta Ram and Shri Anant Ram could not overrule him even if they had agreed among themselves, and neither of the Arbitrators could afford to disagree when Shri Devi Chand Dhiman had agreed with the other. Therefore, Shri Devi Chand could not confer with Shri Gurditta Ram and Shri Anant Ram, and he could not mould their decisions and similarly Shri Gurditta Ram and Shri Anant Ram could not seek any guidance from Shri Devi Chand in taking decisions. Since it is evident from the award that Shri Devi Chand Dhiman had deliberated with Shri Gurditta Ram and Shri Anant Ram and, as such, the possibility of his moulding the decisions of Shri Gurditta Ram and Shri Anant Ram with his advice cannot be excluded. I am supported in this view by *Chouthmal, Jivrajjee Poddar v. Ramchandre Jivrajjee Poddar and other* (2) and *Maqanlal Gangaram Rathor and another v. Ramaji Bontdarji and others* (3). The said view is further fortified by the provisions contained in rules 4 and 5 of the First Schedule of the Act which specify the functions of an Umpire. Rule 4 of the said Schedule provides that if the Arbitrators have allowed their time to expire without making an award or if they have delivered to any party to the arbitration agreement or to the Umpire a notice in writing stating that they cannot agree the Umpire shall forthwith enter on the reference in lieu of the Arbitrators. Rule 5 of the said Schedule says that the Umpire shall make his award within two months of entering the reference or within such extended time as the Court may allow. It is, thus, clear from the provisions contained in the said rules 4 and 5 that an Umpire is not an Arbitrator ab

(2) A.I.R. 1955 Nagpur 126

(3) A.I.R. 1966 Madhya Pradesh 157.

Kehr Chand Dhiman and another v. Sarvshri Dharam Chand  
Dhiman etc. (M. L. Verma, J.)

*initio* and he cannot act as a third Arbitrator. It is only when the Arbitrators fail to make an award within the time allowed to them or fail to agree with each other that the Umpire comes into the picture and replaces them (the Arbitrators). When the award shows, as the award in the case in hand does, that the conclusions recorded in the award were arrived at as a result of deliberation between the Umpire and the Arbitrators, it would amount to illegality because the participation of the Umpire in the deliberations had moulded the decision of the Arbitrators. Thus, I have no hesitation in agreeing with the trial Court and accepting the contention advanced by Shri D. S. Nehra, learned counsel for Dharam Chand, that the act of Shri Gurditta Ram and Shri Anant Ram, Arbitrators in allowing Shri Devi Chand Dhiman Umpire to participate in the deliberations for taking decision amounted to judicial misconduct on their part and, therefore, the award suffers from an illegality which vitiates it.

5. The judgments reported in *Sukh Lal v. Mamchand* (4); *Tikaram-Khupchand v. Hansraj Hazarimal and other* (5) and *R. Prince and Company v. Governor General in Council* (6) cited by Mr. Majithia do not lay down a different proposition of law. These cases dealt with the appointment of Umpire by Arbitrators even before any difference of opinion between them (the Arbitrators) had arisen or taking part in the proceedings by the parties knowing full well about such an appointment of the Umpire or when the Umpire sat with the Arbitrators and heard the evidence with them or failure of the Arbitrators to appoint the Umpire in accordance with the provisions contained in rule 3 of the First Schedule of the Act. But, in none of these cases the participation of the Umpire in the deliberations of the Arbitrators for making the award or the effect of the same had been subject of discussion or decision. So, none of the aforesaid judgments is an authority on the point that an Umpire can join the Arbitrators in making the award or that the award made by the Arbitrators in consultation with the Umpire without their having been in disagreement between them (the Arbitrators) can be regarded as valid. It has to be remembered that the attendance of an Umpire in arbitration proceedings is totally different from his participating in the deliberations of the Arbitrators for making the award. Therefore, none of

(4) A.I.R. (32) 1945 Lahore 84.

(5) A.I.R. 1954 Nagpur 241.

(6) A.I.R. 1955 Punjab 240.

the aforesaid judgment relied upon by Mr. Majithia can render any assistance to the appellants.

6. The point other than illegality pointed out in the preceding para which invalidates the award, canvassed by Mr. D. S. Nehra, learned counsel for Dharam Chand, is that the award is otherwise invalid. The expression 'otherwise invalid' occurring in clause (c) of section 30 of the Act is of wide amplitude and it covers all forms of invalidity including the objection relating to the scope of reference and the jurisdiction of the arbitrators to decide a matter. Mr. Nehra maintained that the Arbitrators had travelled beyond the scope of reference and thereby had gone out of jurisdiction because, firstly, they had partitioned some property against the mode of partition agreed to by the parties and also failed to partition the fourth property; secondly, they had recorded decision about the property belonging to the sons of Dharam Chand who were not parties to the agreement of reference, thirdly, they (the Arbitrators) had decided rights of the parties in business houses which were not referred for arbitration and fourthly, they omitted to record decision about the rights of the parties in the factory—Messrs. Dhiman Iron and Steel Company, Phillaur. Para 1 of the agreement of reference (Exhibit P. 1) required the Arbitrators to partition four properties mentioned thereunder by metes and bounds. So, the parties had provided the mode of partition of the said properties in the agreement of reference. The Arbitrators along with the Umpire had, however, directed in the award that Dharam Chand would transfer his one-fourth share in three out of the aforesaid four properties to the appellants and Mehar Chand, and assessed the value of his aforesaid share in the said three properties at Rs. 19,500. The said three properties were, residential house known as 'Dhiman Bhawan', situate at Phillaur, six houses situate in village Nangal and agricultural land measuring twelve standard acres situate in the area of tahsil Phillaur. The utmost that can be said is that the aforesaid decision of the Arbitrators may constitute adjustment of the shares of the parties, but in no case it can be termed partition by metes and bounds. It is, thus, manifest that the Arbitrators had changed the mode of partition agreed to by the parties respecting the aforesaid three properties. The Arbitrators allowed the fourth property, i.e., residential house known as "Tulsi Niwas' No. 115 Benaras Road, Salkia, Howrah to continue to be joint of the properties. That means that they did not decide the matter regarding partition of the said property.

Kehr Chand Dhiman and another v. Sarvshri Dharam Chand  
Dhiman etc. (M. L. Verma, J.)

---

Para 2 of the award points out that the Arbitrators directed Dharam Chand to get land of the factory—Messrs. Dhiman Iron and Steel Company, Phillaur, transferred from his sons in favour of the appellants and Mehar Chand. That means that the land of that factory was found by the Arbitrators to belong to the sons of Dharam Chand. They, viz., the sons of Dharam Chand, were not parties to the agreement of reference. Therefore, the Arbitrators had no jurisdiction to decide about the transfer of the said land in absence of the sons of Dharam Chand. So, that part of the award directing Dharam Chand to get the said land transferred in favour of the appellants and Mehar Chand from his sons is without jurisdiction.

Para 3 of the award reveals that the Arbitrators had decided the rights of the parties in three business houses, (a) Messrs. D. C. Dhiman and Brothers (Private) Limited, Calcutta, (b) Messrs. Western India and Welding Company (Private) Limited, Calcutta, and (c) Messrs. The Steel Equipment and Construction Company (Private) Limited, Calcutta. But, the agreement (Exhibit P. 1) does not indicate that the dispute respecting the aforesaid three business houses between the parties had been referred for arbitration. Mr. Majithia referred to an agreement alleged to have been arrived at between the parties on August 4, 1962 in order to show that the parties had contemplated to refer the dispute relating to their rights to the aforesaid three business houses for arbitration. I have been unable to agree with him because there is nothing on record to show that the said agreement, dated August 4, 1962 formed a part of the agreement of reference (Exhibit P. 1), secondly, the said agreement, dated August 4, 1962 had not been duly proved; and thirdly, there is nothing on record which reveals that the parties had ever contemplated to refer the dispute, if there was any between them, respecting the aforesaid three business houses to Shri Gurditta Ram and Shri Anant Ram, for arbitration. Thus, the aforesaid part of the award relating to the transfer or division of the rights of the parties in the aforesaid three business houses was beyond the scope of the agreement of reference and, as such, the same is invalid for want of jurisdiction.

7. The award does not contain any decision with regard to the rights of the parties in the factory—Messrs. Dhiman Iron and Steel Company. So, the omission to record any decision in the award by

---

the Arbitrators in relation to the said factory, in my opinion, amounts to judicial misconduct of the Arbitrators.

(8) True, it is remarked by the trial Court in para 1 of the judgment that the other objections were not pressed by the learned counsel for Dharam Chand and relying on the said remarks, Mr. Majithia argued that Dharam Chand was estopped from raising the contentions, referred to in para 6 above.

(9) It is well-settled that an Arbitrator derives jurisdiction from the agreement of reference. Therefore, the question whether he has acted within his jurisdiction or not depends solely upon the agreement of reference. Lack of inherent jurisdiction in the Arbitrator goes to the root of the matter and vitally affects his powers to adjudicate upon the dispute between the parties. Neither assent nor acquiescence of the parties can grant the inherent jurisdiction to an Arbitrator to decide the dispute. Therefore, waiver of objections including the one respecting jurisdiction with the Arbitrators to decide disputes relating to the three business houses at Calcutta and the land belonging to the sons of Dharam Chand does not estop him from challenging the award on the ground of want of inherent jurisdiction of the Arbitrators. *Mahadeo Prasad and others v. Kamala Varma and others* (7) and *Jagannath Kapoor and another v. Premier Credit and Instalment Corporation (Private) Limited* (8), support my view in this connection.

10. It, thus, follows from the discussion above, that the award is also 'otherwise invalid' as contended by Mr. Nehra.

11. For the foregoing reasons, I find that the impugned judgment does not suffer from any infirmity and there is no merit in this appeal.

(12) Consequently, I, maintaining the impugned judgment, dismiss this appeal with costs.

---

(7) A.I.R. 1965, Allahabad 51.

(8) A.I.R. 1973, Allahabad 49.