

Dasaundhi
and others
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and they cannot travel outside the same. Right under section 109 of the Act is given to the Panchayat to recover damages and it can only recover them under the ordinary law of the land like any other litigant. It cannot itself determine and recover the same. In this view of the matter, the order demanding Rs. 400 per head by the Panchayat is wholly unjustified.

For the reasons given above, I allow this petition and quash the order of the Gram Panchayat dated the 19th of June, 1957. It will be open to the Panchayat, if so advised, to proceed according to law. The petitioners will have their costs in this Court, which are assessed at Rs. 50.

B. R. T.

APPELLATE CIVIL

Before Bishan Narain and Inder Dev Dua, JJ.

THE STATE OF PUNJAB,—*Appellant*

versus

SURRENDER NATH GOEL,—*Respondent.*

1960

May. 20th

First Appeal from Order No. 129 of 1959.

Arbitration Act (X of 1940)—Section 29 and para 8 of First Schedule—Power of arbitrator to award future interest from the date of award and costs of arbitration—Code of Civil Procedure (V of 1908)—Section 34—Provisions of—Whether apply to arbitrators.

Held, that the provision of law contained in section 29 of the Arbitration Act cannot be reconciled with the existence of any implied power in an arbitrator to award future interest, such as is specifically conferred on the Courts by virtue of section 34, Code of Civil Procedure. By making specific provision in the Arbitration Act, itself on the question of awarding future interest, the legislature intended this provision to be exhaustive and exclusive. After the enforcement of this Act, an award is enforceable

only in accordance with its provisions, and an award, unless followed by a judgment and decree, may not even be enforceable or operative by itself. It is, therefore, difficult to visualize the existence of independent implied power in an arbitrator to grant future interest.

Held, that even a Civil Court has no inherent or implied power to grant interest from the date of the suit except under and in accordance with the provisions of section 34, Code of Civil Procedure. An arbitrator can hardly be considered to be a "Court" within the contemplation of the Code of Civil Procedure, with the result that the provisions of the Code, including section 34, would be inapplicable to the arbitrator unless specifically applied by some provision of law. An arbitrator, therefore, does not possess an implied power to grant future interest by analogy of section 34 of Code of Civil Procedure.

Held, that by virtue of para 8 of the First Schedule to the Arbitration Act, 1940 an arbitrator is fully empowered to make necessary orders with respect to costs of arbitration.

Case law discussed.

First Appeal from the Order and decree of Shri Ram Gopal Kohli, Senior Sub-Judge, Rohtak, dated the 10th day of August, 1959, making the award a rule of the Court and according to it granting a decree to the State of Punjab for Rs. 1,90,749-14-0. as principal and interest against Mr. Goel, but deleting the provisions of the award in respect of future interest and the costs of the arbitration proceedings.

B. D. MEHRA, ADVOCATE, FOR THE ADVOCATE-GENERAL,
for the Appellant.

ANAND SWAROOP, ADVOCATE, for the Respondent.

JUDGMENT

Dua, J.—The Punjab Government on 12th of December 1955 sold to Shri Surrinder Nath Goel its pottery factory at Sonapat along with the

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manufactured goods by means of a registered sale-deed for a sum of Rs. 2,23,642. A sum of Rs. 36,000 was paid as advance money and Rs. 17,044 on account of price of finished goods were to be paid within a period of six months from the date of the sale-deed; it is admitted that this sum was duly paid. The remaining amount of Rs. 1,70,598 was agreed to be paid with interest at 5½ per cent per annum computed from the date of the sale-deed in ten years by means of half-yearly equated instalments. The first instalment consisting of Rs. 10,881-1-0 (principal and interest) was payable six months after the execution of the sale-deed and the subsequent half-yearly instalments consisting of similar amount were payable on the expiry of further six months till the whole amount including interest was paid. In case of default of any instalment the Government was entitled to recover the entire balance in lump sum. There was also an arbitration clause in the sale-deed providing for reference to the arbitration of the Secretary to Punjab Government, Industries Department, in the event of any dispute or difference arising between the seller and the purchaser as to the true intent and meaning of the contract Mr. Goel failed to pay any instalment and in the result the Government applied to the Secretary concerned to act as arbitrator, claiming Rs. 1,70,598 on account of principal and Rs. 29,151/14/- on account of interest, the total being Rs. 1,90,740-14-0. A prayer for future interest and cost of the arbitration proceedings was also made. Mr. Goel resisted the claim, but the arbitrator rejected the purchaser's defence and upholding the Government's claim gave an award for a sum of Rs. 1,90,749/14 on 15th of November 1958 with future interest at 5½ per cent per annum from the date of the application till the date of

realization. The purchaser was also directed to pay the costs of the arbitration proceedings incurred by the Government.

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In February 1959 the Government applied under sections 14 and 17 of the Indian Arbitration Act for filing in Court the award and for making it a rule of the Court. After the award was filed Mr. Goel raised objections contending *inter alia* that the arbitrator had misconducted himself and the proceedings and that the reference could not be made to him in terms of the arbitration clause. The Government controverted the objections. Two issues were tried; one relating to the alleged misconduct on the part of the arbitrator and the other to the validity of the arbitration. In the present appeal we are only concerned with one of the objections covered by issue No. 1. According to this objection the arbitrator had exceeded the terms of the agreement of reference by awarding costs and future interest to the Government which, according to Mr. Goel, were not expressly included in the agreement embodied in the sale-deed. Following the decision in *Sewdutraï Narsaria v. Tata Sons, Ltd.* (1), the Court held that the provision of the award regarding future interest was invalid and could not be enforced.

In the reported case Greaves, J., observed that an arbitrator is not entitled to award interest after the date of the award. For this view reliance was placed by the learned Judge on *In re Morphett* (2), where it was held that an arbitrator cannot award the payment of interest subsequent to the date of the award unless the submission expressly gave him power to do so. On behalf of the Government no decided case holding to the contrary was

(1) A.I.R. 1921 Cal. 576

(2) (1845) 14 L.J.Q.B. 259.

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brought to the notice of the Court. It was also held that the arbitrator had no jurisdiction to make an order regarding costs of the arbitration proceedings. Holding these two provisions to be severable the learned Senior Subordinate Judge deleted them, upholding the award in all other respects and making it a rule of the Court.

It is against this judgment that the State of Punjab has preferred this appeal and Mr. Bhagwan Das Mehra has addressed us on behalf of the appellant. I may mention at this stage that the purchaser had also filed cross-objections but they are not being pressed, and in my opinion rightly.

In so far as the question of making an order as to costs is concerned Mr. Mehra has drawn our attention to para 8 of the First Schedule to the Arbitration Act (Act No. X of 1940), which contains "Implied Conditions of Arbitration Agreements." This para lays down that:—

"8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by, whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client."

When confronted with this para, the counsel for the respondent had practically nothing to say in justification of the trial Court's order with respect to costs, with the result that in my view the arbitrator was fully empowered to make necessary orders with respect to costs and the learned Senior Subordinate Judge was wrong in holding to the contrary.

In so far as the question of future interest is concerned, the point is not free from difficulty. Mr. Mehra has placed reliance on a Division Bench decision of the Calcutta Court in *Bhowanidas Ramgobind v. Harasukhadas Balkishendas* (1), in which at page 562 the observations of Greaves, J., in the case of *Sewdutra Narasaria v. Tata Sons, Ltd* (2), were dissented from and the decision in *Uttamchand Saligram v. Mahmood Jewa Mamooji* (3), in which case interest had been allowed by the arbitrators, was approvingly referred. It was also observed that the decision in *In re Morphett* (4) proceeded upon its own peculiar facts. *Bhowanidas's case* (1) also contains the following observations on which Mr. Mehra has placed special reliance :—

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“In the case before us, there is no controversy that if the matter in dispute went to trial, the Court would in ordinary course have allowed interest as has been awarded by the arbitrators.”

Mr. Anand Swaroop has, on the other hand, placed reliance on section 29 of the Arbitration Act of 1940 and has contended that the decision in *Bhowanidas's case* was in 1924, under the old law and that section 29 of the present Act has conferred on the Court the power of ordering interest on the principal sum as adjudged by the award and confirmed by the decree from the date of the decree at such rate as the Court deems reasonable. According to the counsel, this provision, by necessary implication, negatives the existence of any power or jurisdiction in the arbitrator to make any order with respect to future

(1) A.I.R. 1924 Cal. 524

(2) A.I.R. 1921 Cal. 576

(3) I.L.R. 46 Cal. 534

(4) (1845) 14 L.J.Q.B. 259

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interest. This section is in the following terms:—

“29. *Interest on awards*.—Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree”.

Reference has also been made to the commentary on the Arbitration Act by N.D. Basu (Third Edition) at page 380, where after noticing the conflicting case-law including the decisions in *Uttamchand Saligram's case*, (1) *In re Morphett*, (2) and in *Bhowanidas's case* (3) the learned author has concluded by saying that by the incorporation of this section (section 29) all these conflicts have been set at rest. Mr. Mehra, however, contends that this power is given to the Court to order payment of interest from the date of the decree and that the power of the arbitrator to order payment of future interest from the date of the award cannot, by implication, be deemed to have been taken away by this section. He has also contended that this section would be attracted only if the arbitrator does not award any interest and that if the latter does make an order with respect to future interest, then the Court would not be in a position to vary the award in this respect except on a ground lawfully raised and justifying interference.

S. D. Singh has also in his *Law of Arbitration* (Fourth Edition) at page 286 noticed the conflicting views taken by various Courts about arbitrator's power to grant future interest after the date

(1) I.L.R. 46 Cal. 534
(2) (1845) 14 L.J.Q.B. 259
(3) A.I.R., 1924 Cal. 524

of the award and has concluded that to avoid the anomalous position section 29 gives specific powers to the Court to award interest from the date of the decree. The English Arbitration Act of 1950 contains specific provisions about the sum payable by an award to carry interest from the date of the award at the same rate as the judgment debt. English decisions, would, therefore, after 1950 not be of much assistance. In fact no arguments have been addressed to us relying on or explaining the relevant provisions of English law on the subject, and indeed no decision of English Courts was cited at the Bar in support of either view except a reference to the decision in *In re Morphett* (1). No other decided cases, even of Indian Courts, have been brought to our notice and the arguments addressed at the Bar have not clarified the exact scope and effect of section 29.

I find it a little difficult to reconcile the provision of law contained in section 29, Arbitration Act, with the existence of any implied power in an arbitrator to award future interest, such as is specifically conferred on the Courts by virtue of section 34, Code of Civil Procedure. It can be argued with a certain amount of plausibility that by making specific provision in the Arbitration Act itself on the question of awarding future interest, the Legislature intended this provision to be exhaustive and exclusive. It is to be borne in mind that the Arbitration Act of 1940 is a consolidating and amending Act relating to arbitration and, therefore, the presumption of section 29 being exhaustive cannot be considered illegitimate. Besides, after the enforcement of this Act an award is enforceable only in accordance with its provisions, and an award, unless followed by a judgment and decree, may not even be enforceable or operative by itself. It is, therefore, difficult to visualize

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the existence of independent implied power in an arbitrator to grant future interest.

In this connection it is relevant to observe that even a Civil Court has no inherent or implied power to grant interest from the date of the suit except under and in accordance with the provisions of section 34, Code of Civil Procedure. In my opinion the arbitrator can hardly be considered to be a 'Court' within the contemplation of the Code of Civil Procedure, with the result that the provisions of the Code, including section 34, would be inapplicable to the arbitrator unless specifically applied by some provision of law. It is in the circumstances not possible for me to accede to the contention that, by analogy of section 34 of the Code, the arbitrator should be held to possess an implied power to grant future interest. The provision with respect to future interest was, in my opinion, rightly deleted from the award by the Court below and the appellant's contention to the contrary is positively untenable.

Mr. Bhagwan Das Mehra has, in the alternative, contended that even if the Court alone be held to possess the power or jurisdiction of ordering future interest, in the case at Bar, the lower Court has, without sufficient reason and without applying its mind to the question, refused to exercise that power, with the result that we should, on appeal, exercise it and order payment of future interest. Mr. Anand Swaroop has, on the contrary, contended that his client has been and is willing to pay the amount due, which liability he has, in fact, virtually admitted, and is making his best efforts to pay the instalments according to the sale-deed, and that payment by way of lump sum has already worked as a hardship on him. In the interest of justice, says the counsel, future interest should not be awarded in the exercise of our discretion.

It is not disputed that the term 'Court' in section 29, Arbitration Act, may well include the appellate Court, with the result that we have the power to pass the necessary order as contemplated by this section. There are, however, two questions which would immediately arise and require our notice. In the first place there is no ground of appeal in this Court that the learned Senior Subordinate Judge has wrongly failed to exercise jurisdiction under section 29 of the Arbitration Act and, therefore, either the case be sent back to him for redecision or this Court should decide the question of future interest, as contemplated by the above provision of law. Secondly, as the judgment of the Court below shows, this question does not seem to have been raised before it and the Court does not appear to have been asked to exercise the power under section 29 and itself determine the question of future interest. The controversy seems merely to have centred round the power of the arbitrator to grant future interest. It is, therefore, a question for consideration whether in these circumstances we should allow the appellant to raise this new point, which is not even included in the memorandum of appeal.

After giving my anxious thought to this question, I do not think it is a fit case in which the appellant should be permitted to raise this point. It is not denied that the power under section 29 is not to be exercised as a matter of course but is discretionary and the discretion is to be exercised on certain well-recognised judicial principles, keeping in view all the circumstances of the case before the Court. In order to give effect to this new point, we will have to consider all the facts and circumstances of the case, including the reason for the default and the effect on the parties

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concerned of the grant of future interest, including the rate which in our opinion would, in the circumstances of this case, be reasonable. The appellant has, in my view, not made out any case for us to adopt this procedure.

For the reasons given above this appeal is allowed in part and the order of the Court below is varied only in so far as deletion of the provision regarding costs of the arbitration proceedings from the award is concerned. In so far as the order about the grant of future interest is concerned, the order of the Court below is hereby upheld. In the circumstances of the case the parties are left to bear their own costs in this Court both with respect to the appeal and the cross-objections.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Bishan Narain and I. D. Dua, JJ.

THE PUNJAB NATIONAL BANK,—Appellant

versus

R. B. L. BANARSI DAS AND Co.—Respondent.

Regular First Appeal No. No. 61 of 1954

1960

May, 24th

Banker and Customer—Customer handing over a bill for collection to bank with instructions to collect through a particular bank—Position of the latter bank qua the customer and the former bank—Indian Contract Act (IX of 1872)—Sections 211 to 214—Duty of the collecting bank to realize the amount due on the instruments entrusted to it for collection—Extent of—Liability of the collecting bank for negligence in collecting the bill—Extent of—Limitation Act (IX of 1908)—Claim of set-off in a suit—Whether governed by periods of limitation provided in the Act.

B handed over a bill for collection to bank P with instructions to realize it through bank M. P sent bill for collection to M bank, who realized it from the drawee and issued a draft in favour of P bank, which was not honoured as the financial position of bank M was weak and it closed its doors. B claimed the amount from P bank, which denied its liability.