

Ajaib Singh
v.
 Chindo
 and others

 Tek Chand, J.

Court is not bound to accept list of witnesses filed by the prosecution from time to time. It should see which of the persons desired to be summoned are necessary witnesses.

In view of what has been stated above, I think that section 252 when correctly construed confers ample discretion on a Magistrate to allow or refuse calling or witnesses whose names have been added later on in the supplementary list. Of course the Magistrate has to carefully weigh the reasons as to why the names of the additional witnesses could not have been added in the earlier list. Section 252 leaves this matter elective and gives an option to the Magistrate to call or decline to summon the additional witnesses. On the facts of this case it appears to me that the judicial discretion vested in the Magistrate has been exercised with care and caution. In the circumstances I can not persuade myself to accept the recommendation of the learned Additional Sessions Judge. In the result the order of the Magistrate dated 9th June 1962 is upheld, the revision fails and is dismissed. The parties are directed to appear before the Magistrate on 6th May, 1963.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

SOWARAN SINGH,—*Appellant.*

versus

MUNICIPAL COMMITTEE, PATHANKOT AND
 ANOTHER,—*Respondents.*

First Appeal From Order 66 of 1961

1963

 April, 8th

Arbitration Act (X of 1940)—S. 28 and paragraph 3 of
 the first Schedule—Time for making the award beyond

four months—Whether can be extended only by Court—S. 30—Award giving no detailed reasons for the conclusions of the arbitrator—Whether liable to be set aside—Interpretation of statutes—headings prefixed to sections—How far can be considered while interpreting the statute.

Held, that the language of paragraph 3 of the First Schedule and section 28 of the Arbitration Act makes it clear that the Court alone has to be moved for enlarging the time for making the award. This conclusion stems from the mandatory provision of rule 3 and the machinery provided in section 28 for a motion to the Court. It may also be observed that the marginal heading of section 28 is "power to Court only to enlarge time for making award." It is clearly envisaged in this section by the legislature that the parties cannot by consent confer jurisdiction on an Arbitration to proceed with the reference after the expiry of four months and "Court only" has the power to enlarge the time.

Held, that when the parties choose a domestic tribunals for settlement of their disputes, the arbitrator is not bound to give reasons for the award and the award cannot be impugned on the ground that the arbitrator did not give detailed reasons for his conclusion.

Held, that the headings prefixed to a section or sets of sections in statutes cannot control the plain words of statutes but they can certainly explain an ambiguity in words if it exists. The headings cannot be used to give a different effect to clear words in the section, where there cannot be any doubt as to their ordinary meaning.

First Appeal from the decree of the Court of Shri G. K. Bhatnagar, Senior Subordinate Judge, Gurdaspur, dated the 4th day of January, 1961, making the award a rule of the Court and passing a decree for Rs. 582.75 nP., in favour of the petitioner against the respondent Municipal Committee, and leaving the parties to bear their own costs.

D. R. MANCHANDA & K. L. KAPUR, ADVOCATES, for the Appellant.

V. C. MAHAJAN, ADVOCATE, for the Respondents.

JUDGMENT

Shamsher
Bahadur, J.

Shamsher Bahadur, J.—This is an appeal from the order of the Senior Subordinate Judge, Gurdaspur, granting a decree in accordance with the award of the Arbitrator for Rs. 582.75 nP. out of the aggregate claim laid by the appellant for a sum of Rs 14,732.75 np., against the respondent Committee.

The claim of Swaran Singh appellant was made in pursuance of a contract made by him with the respondent-Municipal Committee, Pathankot, for the construction of sewage works. The Superintending Engineer, II Public Health Circle, Patiala, was appointed an Arbitrator under an agreement of the parties. The reference to arbitrator was made on 24th of November, 1959, and the award, which was sought to be made a rule of the Court was made on 5th of July, 1960.

The Arbitrator accepted the claim of the appellant only for a sum of Rs 582.75 nP. Aggrieved by the order of the Senior Subordinate Judge, passing a decree in accordance with the award, the contractor has come to this Court in appeal.

It is urged by Mr. Daulat Ram Manchanda, the learned counsel for the appellant, that the arbitrator did not send a notice to the Municipal Committee itself. It appears that the Executive Engineer conducted proceedings before the Arbitrator on behalf of the Municipal Committee which had authorised him so to act on its behalf. The Municipal Committee which might have had a valid objection never made a grievance of it and it appears that even the appellant did not think much of this matter till the stage of arguments. No such point was ever raised before the Senior Subordinate Judge and I have no hesitation at all in rejecting this ground of attack against the award.

It is next contended by Mr. Manchanda that the Arbitrator in giving his findings with regard to the various items of the claim did not discuss in detail the reasons for his conclusion. When the parties choose a domestic tribunal for settlement of their disputes the arbitrator is not bound to give reasons for the award. It is not denied that full opportunity was given by the Arbitrator to the parties to present their respective points of view and evidence was adduced before him. The award cannot be impugned on the ground that the arbitrator did not give detailed reasons for his conclusion.

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The third ground of attack against the award is, however, substantial. The award which has been made a rule of the Court was made admittedly four months after the Arbitrator had entered into reference. Paragraph 3 of the First Schedule to the Arbitration Act, 1940, says that "the arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. Sub-section (1) of section 28 of the Act is to this effect :—

"The Court may, if it thinks fit, whether time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award."

The submission of Mr. Manchanda is that the arbitrator must either submit his award within four months of his entering on the reference or the Court should be moved to allow extension of time. That this provision of law is mandatory admits of

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no doubt. Reference may be made to the Supreme Court authority of *Hari Shankar Lal v. Shambu Nath and others* (1). Mr. Justice Subha Rao, in delivering the majority judgment observed at Page 80 that "rule 3 of the First Schedule to the Act is couched in a mandatory form and it imposes a duty on the arbitrators to make their award within one or other of the three alternative periods mentioned therein." What appears to have been done in this case is that the representatives of the Municipal Committee assented to the Arbitrator proceeding with the reference after the statutory period of four months had expired. This clearly does not fall within any of the three methods which it is obligatory for an Arbitrator to adopt. The language of paragraph 3 of the First Schedule and section 28 of the Arbitration Act makes it clear that the Court alone has to be moved for enlarging the time for making the award. This conclusion stems from the mandatory provision of rule 3 and the machinery provided in section 28 for a motion to the Court. It may also be observed that the marginal heading of section 28 is "power to Court only to enlarge time for making award." It is clearly envisaged in this section by the legislature that the parties cannot by consent confer jurisdiction on an Arbitrator to proceed with the reference after the expiry of four months and "Court only" has the power to enlarge the time. I am not unmindful of the rule of construction that the headings prefixed to section or sets of sections in statutes cannot control the plain words of statutes but they can certainly explain an ambiguity in words if it exists. As stated in Maxwell on Interpretation of Statutes (1962 edition) at page 49, while the Court is entitled to look at the headings

(1) A.I.R. 1962 S.C. 78.

in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is quite clear that you cannot use such headings to give a different effect to clear words in the section, where there cannot be any doubt as to their ordinary meaning." Now, the heading of section 28 makes clear beyond doubt what is already expressed so plainly in the section itself. Thus, the heading is not in any way against the tenor and phraseology of section 28, rather it clarifies that the enlargement of time can be obtained only by a motion to Court.

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The learned counsel for the appellant has brought to my notice two Division Bench authorities in support of his proposition which to my mind flows clearly from the language of the statute itself. *Kamta Pd. Nigam v. Ram Dayal and others* (2), is a Division Bench authority of Bind Bansi Prasad and Mustaq Ahmad, JJ. of the Allahabad High Court, where it was held that an award by the arbitrators has to be made within the fixed time unless the time has been extended by Court under section 28. It cannot be pleaded that the party raising an objection is estopped by conduct from challenging the award on this ground as there is no estoppel against statute. It may be that the representative of the Municipal Committee did not object or tacitly agreed to the Arbitrator proceeding with the reference after the statutory period of four months had expired. This would not, however, confer jurisdiction on the Arbitrator on the simple ground that there can be no estoppel against statute. This Bench decision of the Allahabad High Court was followed in a Division Bench judgment of the Patna High Court of Sinha and Dayal, JJ., in *Lakhmir Singh v. Union of India* (3). In the case before the Patna High Court the Arbitrator

(2) A.I.R. 1951 All. 711.

(3) A.I.R. 1957 Pat. 633.

Sowaran Singh entered into reference on 8th of January, 1947, and
 v. it was on 27th of June, 1947 that the award was made.
 Municipal Com- Four months expired on 8th of May, 1947, and on
 mittee, Pathan- 9th of May, 1947, the claim of the plaintiff was per-
 kot and another mitted to be amended before the arbitrator. It was

 Shamshe Bahadur, J. held by the Division Bench that on a simple calcula-
 tion the award was beyond four months of the arbit-
 rator entering on the reference and was, therefore,
 clearly hit by paragraph 3 of Schedule 1. The
 plaintiff was not estopped by his own conduct from
 challenging it as there was no estoppel against the
 statute. On behalf of the respondent reliance is
 placed on an earlier Division Bench judgment of the
 Patna High Court in which the provisions with re-
 gard to arbitration were somewhat different in
 language but it is submitted that in effect they were
 not much different from what is now contained in the
 Indian Arbitration Act. In that case of *Bibi Patto
 Kumari Saheba v. Upendra Nath Ghosh* (4), it was
 held by the Bench of Atkinson and Das, JJ., that where
 parties attend and recognise that the arbitrator has
 jurisdiction to continue the arbitration, even though
 the time for making the award has expired, they are
 estopped by their conduct from seeking to impugn the
 award on the ground that it was invalid by reason of
 being filed out of time. The decision in this case was
 based primarily on some old English decisions and the
 principle of law was stated thus at page 56:—

“If the law in this country is to be administ-
 ed on the basis of equity and good con-
 science, then certainly I say it is not
 equity, nor is it in keeping with good con-
 science, that a party to an arbitration pro-
 ceeding should invite a Court of arbitrators
 to do a certain act for his benefit and ad-
 vantage; and when he has gained such

(4) (1919) 50 I.C. 52.

benefit and advantage, but failed to secure final success in the proceeding itself, that such person should be permitted to repudiate the award of the arbitrators solely and only on the ground that because the arbitrators conceded to him the benefit he sought, and of which he availed himself; that thus their award is so vitiated by such transparent illegality as to coerce a Civil Court to set aside the award so made."

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As has been made clear by the learned Judges, they considered themselves bound in administering the law of arbitration to be governed by the principles of equity and good conscience. It is not legitimate to extend the beneficent rule of equity enunciated in this authority to determine a matter which has been so clearly and unequivocally provided for in the statute itself. The scope for administering the law on basis of equity and good conscience cannot be extended in the present instance where the statute has made a clear provision for the Court to be moved when extension of time is sought for. There can be no conferment of jurisdiction by consent where none exists and the authority of a party's representative cannot be enlarged to waive the rule which has been laid down by the statute itself.

In this view of the matter, I consider that the award of the Arbitrator must be set aside and I would accordingly allow this appeal and set aside the award. As there is divided success of the parties with regard to the points raised in this appeal, I would made no order as to costs.

B.R.T.