

the defendant. Ordinarily he would have to defend the suit through the defendant, and, therefore, he must in the first instance offer to the insured that he shall indemnify him against the consequence of defending the suit and request the insured to defend the suit. But if the insured unreasonably refuses to defend the suit on those terms, it seems to me that this Court has ample jurisdiction to authorise the insurer to enter an appearance and to defend the suit in the name of the insured so that the judgment does not go by default."

M/s. British  
India General  
Insurance  
Co. Ltd.  
v.  
Captain Itbar  
Singh, etc.  

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Chopra, J.

The present is not a case where the insured has refused to defend the suit or to defend it on the terms offered by the insurer.

9. For all these reasons, I would dismiss the petitions with costs. Ordered accordingly.

B.R.T.

#### LETTERS PATENT APPEAL

*Before A. N. Bhandari, C. J., and A. N. Grover, J.*

MST. ANGURI DEVI,—Appellant.

*versus*

BAL RAM AND OTHERS,—Respondents.

**L: P: A: No: 79 D of 1956:**

*Arbitration Act (X of 1940)—Section 14 (2)—Application under, for getting the award filed in Court and for giving notice to the parties of the same—Limitation for making such an application—Indian Limitation Act (IX of 1908—Article 181—Whether applicable—Terminus a quo for such application.*

1959  

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Sept., 11th

*Held* that Article 181 of the Indian Limitation Act governs the case of an application under Section 14 (2) of the Arbitration Act for getting the award filed in Court and for giving notice to the parties of the same. The period of limitation will commence to run from the date the award was announced to the parties. An application under Section 14 (2) of the Arbitration Act is not dependent upon compliance with Section 14 (I) of the Act.

*Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Khosla, dated 5th March, 1956, in F. A. O. 78-D/59, against the order of Shri Barindra Singh, Sub-Judge, 1st Class, Delhi, dismissing the application.*

BHAGWAT DYAL AND MR. YOGESHWAR DYAL, for Petitioner.

TARA CHAND, BRIJMOHAN LAL AND MR. B. C. MISRA, for Respondent.

#### JUDGMENT

Grover, J.

Grover, J.—The main point which arises for determination in this appeal is whether any period of limitation is prescribed for an application under Section 14(2) of the Arbitration Act for getting the award filed in Court and for giving notice to the parties of the same and if so, which Article of the Indian Limitation Act will apply.

The facts may shortly be stated. It was alleged that some business was being carried on in partnership between the parties and disputes arose with regard to it which were referred to the arbitration of one Munshi Lal. Although an award is said to have been made in March, 1948, the arbitrator gave no notice in writing of making of the award as required by Section 14(1) of the Arbitration Act. On 11th July, 1953, an application was made by Balram respondent for filing of the award and for issue of a notice to the parties with regard to it. An objection was taken on behalf of the appellants

that the application was barred by time. Notice was issued to the arbitrator who filed only a copy of the award. One of the issues that was raised was whether the applications for the filing of the award was within time. The Court of first instance held that an application made under Section 14(2) of the Arbitration Act was governed by Article 181 of the Indian Limitation Act. Consequently the application was dismissed. An appeal was brought to this Court and the learned Single Judge was of the view that the matter was concluded by a decision of a Division Bench of this Court in *Ganga Ram v. Radha Kishan* (1) and that Article 178 of the Indian Limitation Act did not apply. It was further considered that there was a clear declaration by the Supreme Court that Article 181 of the Indian Limitation Act applied only to applications made under the Civil Procedure Code, and therefore, that Article could not be made applicable. The operative part of the judgment of the learned Single Judge runs as follows :—

“The result is that since no notice was served upon the parties, the application cannot be held to be barred by time by the operation of Article 178 of the Indian Limitation Act. Limitation may be governed by the provisions of Article 120 or it may be taken that the limitation has not yet begun to run because no notice was served upon the parties. In any view of the matter the application was within time and the decision of the lower Court must be set aside.”

After disposing of the point of compulsory registration of the award which was raised before him the learned Judge proceeded to direct that the

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

(1) (1955) 57 P.L.R. 253=I.L.R. 1955 Punj. 402

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others

Grover, J.

award be made a rule of the Court. The present appeal under Clause 10 of the Letters Patent is directed against that order.

The first point that has been raised by Mr. Bhagwat Dyal, learned counsel for the appellant, is that that application filed in the present case under Section 14(2) of the Arbitration Act was governed by Article 181 of the Indian Limitation Act which was the residuary Article as Article 178 did not apply. The aforesaid Article before the amendment made by Section 49 of the Arbitration Act read with the Fourth Schedule was as follow :—

“178. Under the same Code Six months. The date for the filing in Court of the an award in a suit award. made in any matter referred to arbitration by order of the Court or of an award made in any matter referred to arbitration without the intervention of a Court”.

The following was substituted for it :—

“178. Under the Arbitration Ninety The date of Act, 1940, for the filing Days. service of in Court of an award. the notice of the making of the award.

A Division Bench of this Court in *Ganga Ram Radha Kishan*, (1), held that Article 178 governed cases falling within Section 14(1) of the Arbitration Act where notice in writing of the making of the award was given. Where such notice was not

given by the Arbitrator, Article 178 did not apply and the case was not governed by it nor had that Article any applicability to applications for enforcement of the award made by parties to the arbitration agreement. In that case certain disputes had been referred to arbitration and an award had been made which was signed by both parties and presented for registration. No further action was taken by the parties till a suit was instituted by one of them for a declaration that by the award he had become the owner of the property etc. The suit was decreed by the first Court but the Senior Sub-Judge dismissed it. The High Court affirmed the decree of the Senior Sub-Judge. While the appeal was pending in the High Court an application was made under Section 17 of the Arbitration Act for making a decree in accordance with the award. In resisting that application the opposite party pleaded *inter alia* that the application was barred by time. The first Court found the application to be within time and it was in that connection that the matter came to be examined by the Division Bench at the stage of appeal on a reference having been made by a learned Single Judge. Harnam Singh, J., was of the view that Article 178 would govern an application made under Section 14(1) of the Act and not under Section 14(2). It is not clear from his judgment whether the counsel pressed the applicability of Article 181. After making a passing reference to an observation of their Lordships of the Supreme Court in *Sha Mulchand and Company, Ltd. v. Jawahar Mills, Ltd.* (1), Harnam Singh, J., concluded his judgment in the following words :

“In my judgment, Article 178 of the Indian Limitation Act has no Application to applications for the enforcement

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  
Grover, J.

(1) 1953 S.C.R. 351

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

of the award made by the parties to the arbitration agreement and there being no period of Limitation prescribed for such an application the application made by Radha Kishan must be regarded to be within time."

Kapur, J., wrote a separate judgment. After holding at page 262 that the application filed by Radha Kishan on 22nd February, 1948, which purported to be under Section 17 of the Arbitration Act "for making the award the rule of the Court and passing a decree in accordance there with" was not barred by Section 14(2) and was competent under the provisions of the Arbitration Act read with the rules made by this Court, the learned Judge held that in the absence of a notice of the making of the award under Section 14(2) of the Arbitration Act, Article 178 of the Indian Limitation Act was not applicable. The learned Judge then observed at page 263 as follows :

"It may be that this is a case where no period of limitation is prescribed, and there is no provision in the Limitation Act, or it may be covered by the rule laid down by the Supreme Court in *Shah Mulchand & Co., Ltd. (In Liquidation) v. Jawahar Mills, Ltd.* (1), where it was held that Article 181 applied to applications under the Code of Civil Procedure, and if an application under the Indian Companies Act is not governed by Article 181, then Article 120 would be applicable. Although this Article applies to suits the Supreme Court has applied it to applications under the

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(1) 1953 S.C.R. 351

Companies Act and it would by analogy be applicable to the present case. I am, therefore, of the opinion that the application made by Radha Krishan was not barred by time when it was made."

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

It is contended by Mr. Bhagwat Dyal that the facts were quite different in the case decided by the Division Bench and that that authority could not be taken to have finally decided that no period of limitation is prescribed for an application of the nature filed in the present case or that it would by analogy be governed by Article 120 of the Limitation Act. Reference has been invited to a previous judgment of Kapur, J., himself in *Union of India v. Kiroo Mal-Nawal Kishore* (1), in which it was held that Article 181 of the Limitation Act applied to applications made to the Court under the various provisions of the Arbitration Act, in the absence of any other specific Article governing the application. In that case an application had been made under Section 20 of the Arbitration Act praying for the filing of the arbitration agreement and it was held that Article 181 applied. It cannot, therefore, be said that the previous Division Bench laid down authoritatively that Article 181 would not govern a case of this kind although it was laid down quite clearly that Article 178 would have no applicability where no notice of making of the award had been given under Section 14(1) of the Arbitration Act. In *Misri Lal and another v. Bhagwati Prasad* (2), and in *Jagdish Mahton and others v. Sunder Mahton and others* (3), it was held that Article 178 would not govern an application under Section 14(2) unless a written notice of the making of the award had been

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(1) 1952 P.C.R. 350

(2) A.I.R. 1955 All. 573

(3) A.I.R. 1949 Pat. 393

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

served on the applicant but the further question whether Article 181 would apply was not considered. Both in the Allahabad and the Patna cases an application had been filed within three years and, therefore, the only question was whether Article 178 was applicable or not.

It was contended by Mr. Tara Chand Brij Mohan Lal on behalf of the respondent that Article 178 would be applicable but only the cause of action had not accrued when the application was filed as notice of service of making of the award had not been given. So long as the notice is not given the limitation does not begin to run and as no notice was admittedly given in the present case by the arbitrator of making of the award the period of limitation could not commence to run at all. It is not possible to accede to this argument because on the language of Article 178 read as a whole and according to the previous decision of a Bench of this Court, Article 178 does not apply in circumstances that obtain in the present case.

Mr. Bhagwat Dayal submits that Article 181 which is the residuary Article would apply by virtue of Section 8 of the General Clauses Act in as much as by necessary implication all applications under the Code of Civil Procedure should be deemed to be covered by Article 181 of the Limitation Act and that was the position before the repeal of that part of the Code which was embodied in the Second Schedule containing the provisions relating to arbitration, that part having been re-enacted in the Arbitration Act. There can be no doubt and it is not even seriously disputed that if the words "under the Code" had existed in the first column of that Article then by virtue of Section 8 of the General Clauses Act owing to the repeal of the Second Schedule of the Code, the provisions of

which are with modification re-enacted in the Arbitration Act an application not specifically provided for filed under the provisions of the Arbitration Act would be governed by the aforesaid Article. The only question is that there is no express mention of the Code at the place mentioned above in the aforesaid Article and a great deal of controversy arose whether Article 181 was confined to applications made under the Code or that it governed applications made under other enactments. In *Sha Mulchand & Co., Ltd., (In Liquidation) v. Jawahar Mills, Ltd.* (1), Das, J. (as he then was) observed that the preponderating view undoubtedly was that Article 181 applied only to applications under the Code (page 369). At page 371 it was observed :—

“This long catena of decisions may well be said to have, as it were, added the words “under the Code” in the first Column of that article.”

If these words by necessary implication were to be considered to have always been there in the first column of Article 181 then the argument raised by Mr. Bhagwat Dayal would certainly have a great deal of substance. In *Moradhwaj v. Bhudar Das* (2), a Full Bench applied Section 8 of the General Clauses Act in an arbitration case where the question was whether an appellate court could refer to arbitration the dispute in an appeal. The Full Bench has laid down that the Arbitration Act incorporates the provisions of the repealed Second Schedule of the Code of Civil Procedure and is in ‘*pari materia*’ with that Code. The Limitation Act and the Civil Procedure Code apply to arbitrations under the Arbitration Act (*vide* Section 37 and 41 respectively). Words used in Acts ‘*pari materia*’

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

(1) 1953 S.C.R. 351

(2) A.I.R. 1955 All. 353 (F.B.)

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

are to be interpreted in one and the same sense, unless the contrary appears. The provisions of the Arbitration Act in regard to arbitration in pending suits are practically the same as they were in the Second Schedule. In the case of appeals, Section 107 read with Section 8 of the General Clauses Act empowers an appellate Court to refer a dispute in a suit for arbitration. In *Jagtu, etc. v. Bahadur Singh* (1), decided by G. D. Khosla, Acting C. J., and Dulat, J., the Full Bench decision of the Allahabad High Court was followed. Section 14(2) is in 'pari materia' with para 20 of the Second Schedule as it originally existed in the Code. As that part of the Code has been repealed and re-enacted in Section 14(2), Section 8 of the General Clauses Act would be at once attracted read with Sections 37 and 41 of the Arbitration Act. Apart from what has been discussed above with reference to the applicability of Section 8 of the General Clauses Act there is authority for the view that Article 181 of the Limitation Act governs applications made under the Arbitration Act. In *L. Amar Nath v. The Union of India and others* (2), a Division Bench of the Allahabad High Court held that an application under Section 20 of the Arbitration Act must be made within three years of the date on which the right to make it accrues. *Union of India v. Firm Kiro Mal-Nawal Kishore and another* (3), and *Shah and Co. v. Ishar Singh Kirpal Singh and Co.* (4), were referred to with approval. Mr. Bhagwat Dayal submits that although some of the reasons given in the decisions relied upon may not hold good now in view of the observations of their Lordships of the Supreme Court in *Sha Mulchand & Co., Ltd. (In Liquidation) v. Jawahar Mills, Ltd.*, (5)

(1) L.P.A. 68 of 1955

(2) A.I.R. 1957 All. 206

(3) A.I.R. 1952 Punj. 423

(4) A.I.R. 1954 Cal. 164

(5) 1953 S.C.R. 351

but the reason founded on Sections 37 and 41 of the Arbitration Act appears to be, with respect, sound. It must, therefore, be held that Article 181 would govern the present case and the Court of first instance rightly held the application to be barred by time under that Article.

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

It was contended by Mr. Tara Chand Brij Mohan Lal that even if Article 181 applied the right to apply had not accrued as no notice had been received by the respondent of the making of the award. In the award itself it was stated that it had been announced to the parties on the date it was made. It is not in these circumstances possible to hold that the right to apply did not arise as soon as the respondents had knowledge of the making of the award. It is true that under Article 178 knowledge of making of the award is immaterial but for the purposes of Article 181 it has not been shown that limitation will not commence to run from the date the award was announced to the parties. The Court of first instance was right in stating that an application under Section 14(2) was not dependent upon compliance with Section 14(1) of the Arbitration Act.

The next contention that has been raised by Mr. Bhagwat Dayal is that the learned Single Judge erred in ordering that the award be made a rule of the Court in disregard of the provisions of the Arbitration Act relating to giving of a notice of the filing of the award and an opportunity to file objections to the award within the time prescribed and without deciding such objections as might have been raised on the merits. It is pointed out that the question of limitation was tried as a preliminary issue and there was no determination on the merits with regard to any objections because that

Mst. Anguri  
Devi  
v.  
Bal Ram  
and others  

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Grover, J.

stage did not arise as the application under Section 14(2) was held to be barred by time by the trial Court. There is a good deal of force in this contention and it is not possible to see how the award could be ordered to be made a rule of the Court in this manner without following the procedure laid down in the Arbitration Act consequent upon an application under Section 14(2) being granted or dismissed.

Mr. Bhagwat Dayal also wanted to assail the view of the learned Single Judge with regard to the necessity of getting the award compulsorily registered. It is unnecessary to decide that point in view of the conclusion that the application was barred by time.

In the result, the appeal is allowed and the order of the learned Single Judge is set aside and that of the trial Court restored with costs.

Bhandari, C. J.

Bhandari, C.J.—I agree.

B.R.T.

#### APPELLATE CIVIL

*Before K. L. Gosain and Harbans Singh, JJ.*

COURT OF WARDS DADA SIBA ESTATE AND ANOTHER,—  
*Appellants.*

*versus*

RAJA DHARAM DEV CHAND,—*Respondent.*

#### Regular First Appeal No. 143 of 1952.

1959  

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Sept., 23rd

*Indian Contract Act (IX of 1872)—Sections 32 and 56—  
Doctrine of frustration—Effect of—Whether applicable to  
contracts creating an estate in land and to leases—Transfer  
of Property Act (IV of 1882)—Section 108 (e)—Whether ap-  
plicable to leases for agricultural purposes—Contract of  
lease—When can be avoided.*