THE
INDIAN LAW REPORTS

PUNJAB SERIES

LETTERS PATENT APPEAL

Before A. N. Bhandari, C. J., and Bishan Narain, J.

DAMODAR PERSHAD GUPTA,—*Appellant*

versus

M/s SAXENA & CO., THROUGH SHRI C. B. SAXENA, PROPRIETOR,—*Respondents.*

Letters Patent Appeal No. 52-D of 1955.

1958

Aug., 25th

Arbitration—Nature of proceedings—Arbitration agreement—Construction of—Judicial misconduct—What amounts to—Procedure before arbitrator—How regulated—Hearing before the arbitrator—Extent of—Award—When can be set aside and when not.

Held, that an arbitration is an extra-judicial determination of a controversy by one or more unofficial persons chosen by the parties as a domestic tribunal for the purpose of settling the disputed matter submitted to it for decision and award. It provides a summary and inexpensive method of settling disputes and is encouraged by the Courts because of its economy, freedom from technicalities and business like method of resolving differences. Every arbitration agreement must be liberally construed so as to give effect to the intention of the parties and every award must be considered regular, if on the face of it, it is unimpeachable. Every presumption must be made to sustain the award. An arbitrator's decision will not be set aside because of the admission of illegal evidence, nor for an error in judgment provided he acts honestly and fairly according to such abilities as he may possess. If

however, he fails to exercise a high degree of judicial impartiality, or if his conduct is indicative of unfairness and bias, his award may be set aside on the ground of judicial misconduct.

Held, that the procedure before arbitrators may be regulated either by the statute or by agreement of submission. Where the procedure is prescribed by the agreement of submission and where such procedure is not contrary to the laws of the land, that procedure must prevail.

Held, that in the absence of specific provision to the contrary in the statute or the contract of agreement, the parties to an arbitration proceeding are entitled to a reasonable notice of the time and place of the hearing and have an absolute right to be heard and to present their evidence before the arbitrators. If they are deprived of this right, the Court will not hesitate to set aside the award on the ground of misconduct even though there may have been no improper intention. The rule that the parties to an arbitration agreement have a right to be heard is, however, subject to the qualification that where the agreement of submission provides in clear and unequivocal language that the arbitrator may proceed in the absence of the parties or that he may not hear the witnesses, or that he may give his award without enquiry, the award will not be invalidated on the ground that the arbitrator had refused to hear evidence. If the arbitrator acts within the scope of the authority conferred upon him by the agreement of the parties and if he keeps himself within the jurisdiction so conferred his award is as valid and binding as the judgment of a Court of law. When the right to a hearing is waived either expressly or by implication, the proceedings are as regular and the award is as valid as though full opportunity to be heard had been given.

Appeal under clause 10 of the Letters Patent Appeal against the Judgment of Hon'ble Mr. Justice J. L. Kapur, dated the 22nd November, 1955, passed in F.A.O. No. 86 of 1954.

S. N. MARWAH, for Petitioner.
R. S. NARULA, for Respondent.

JUDGMENT

Bhandari, C. J.

BHANDARI, C. J.—This appeal under clause 10 of the Letters Patent raises the question whether the learned Single Judge was justified in setting aside an award on the ground that the defendant was not afforded a reasonable opportunity of being heard before the arbitrator.

During the course of a protracted litigation, the parties agreed to refer the matters in controversy between themselves to arbitration, by means of submission which was in the following terms:—

> "The award of the arbitrator whether with or without enquiry made within one month from today, shall be final and binding on the parties, and it will not be open to any objection. It would be in the sole discretion of the arbitrator to take evidence or not, to hear any party or not, and to arrive at his decision in any way he likes, even behind the back of both or either of the parties. The fee of the arbitrator to be fixed by the Court will be borne by the defendants."

The arbitrator gave his award on the 8th March, 1952, and this award was made a rule of the Court. A learned Single Judge of this Court, however, set aside the award on the ground that the arbitrator had denied the defendant a reasonable opportunity of being heard. The plaintiff has appealed and the question for this Court is whether the learned Single Judge has come to a correct determination in point of law.

Mr. Narula, who appears for the defendant, contends that the arbitrator is guilty of misconduct first because he proceeded to give his award

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without hearing the evidence of the witnesses whom the defendant wanted to produce, and secondly because it was the duty of the arbitrator, before taking *ex parte* proceedings against the defendant, to give the defendant a notice of his intention so to do.

An arbitration is an extra judicial determination of a controversy by one or more unofficial persons chosen by the parties as a domestic tribunal for the purpose of settling the disputed matter submitted to it for decision and award. It provides a summary and inexpensive method of settling disputes and is encouraged by the Courts because of its economy, freedom from technicalities and business like method of resolving differences. Every arbitration agreement must be liberally construed so as to give effect to the intention of the parties and every award must be considered regular, if on the face of it, it is unimpeachable. Every presumption must be made to sustain the award. An arbitrator's decision will not be set aside because of the admission of illegal evidence, nor for an error in judgment provided he acts honestly and fairly according to such abilities as he may possess. If, however, he fails to exercise a high degree of judicial impartiality, or if his conduct is indicative of unfairness and bias, his award may be set aside on the ground of judicial misconduct.

The procedure before arbitrators may be regulated either by the statute or by agreement of submission. Where the procedure is prescribed by the agreement of submission and where such procedure is not contrary to the laws of the land, that procedure must prevail (*Emperor* v. *Angad* (1); *Mt. Aftab Begam* v. *Haji Abdul Majid Khan*

(1) A.I.R. 1929 All. 69

(1), *Debi Das and othess* v. *Keshava Dev* (2), *Durga Prosad Chamria and another* v. *Sewkishendas Bhattar and others* (3), *Baijsath and others* v. *Bajranglal Kamalia and another* (4) and *D. L. Miller and Co., Ltd.,* v. *Daluram Gopanmull* (5).

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In the absence of specific provisions to the contrary in the statute or the contract of agreement, the parties to an arbitration proceeding are entitled to a reasonable notice of the time and place of the hearing and have an absolute right to be heard and to present their evidence before the arbitrartors. If they are deprived of this right, the Court will not hesitate to set aside the award on the ground of misconduct even though there may have been no improper intention. The rule that the parties to an arbitration agreement have a right to be heard is, however, subject to the qualification that where the agreement of submission provides in clear and unequivocal language that the arbitrator may proceed in the absence of the parties or that he may or may not hear the witnesses, or that he may give his award without enquiry, the award will not be invalidated on the ground that the arbitrator had refused to hear evidence. If the arbitrator acts within the scope of the authority conferred upon him by the agreement of the parties and if he keeps himself within the jurisdiction so conferred his award is as valid and binding as the judgment of a Court of law.

A perusal of the arbitration proceedings makes it quite clear that the arbitrator gave the parties a reasonable opportunity to be heard. He issued

(1) A.I.R. 1924 All. 800
(2) A.I.R. 1945 All. 423
(3) A.I.R. 1949 P.C. 334
(4) A.I.R. 1938 Cal. 166
(5) A.I.R. 1956 Cal. 361

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a notice to the parties on the 2nd February, 1952, to appear before him on the 16th February and to produce all the evidence in support of their respective calims, warning them that no adjournment would be given. The parties and their counsel appeared before the arbitrator on the 16th February, but the latter adjourned the hearing to the 23rd February, as the defendant was anxious to produce certain documents in support of his defence. On the 23rd February, the plaintiff and his counsel, and Mr. S. D. Mehra, counsel for the defendant, appeared before the arbitrator. The defendant was absent. Mr. Mehra requested the arbitrator to grant an adjournment to enable the parties to come to a compromise. The arbitrator acceded to the request and directed the parties to arrive at a compromise by the 29th February at the latest. No compromise was arrived at by the due date and on the 29th February the arbitrator issued notices to the parties to appear before him on the 1st March and to produce all evidence in support of their respective claims. The plaintiff appeared before the arbitrator on the 1st March but the defendant was not present either in person or through counsel. The counsel for the defendant, however, sent a written representation in which he asked the arbitrator to adjourn the case to the second week of March as the notice issued to his client was not long enough to enable him to present himself in Court on the 1st March. The arbitrator acceded to this request, adjourned the case to the 8th March directed the parties to bring all their evidence on the said date and warned them that no further opportunity would in any case, be allowed. On or about the 3rd March the arbitrator received a communication dated the 1st March in which the defendant requested the former to adjourn the case to any date between the 10th and 15th March as he wanted to issue summons to

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his witnesses and to procure written statements from Mr. King and Mr. Milkhi Ram, the principal witnesses in the case. As this letter reached the arbitrator on or about the 3rd March, after he had adjourned the case to the 8th March at the request of the counsel for the defendant, and as the defendant wanted his witnesses to be summoned through the agency of the Court, the arbitrator declined to grant a further adjournment. Neither the defendant nor his councel appeared on the 8th March and the arbitrator accordingly made his award in the absence of the parties.

The proceedings which took place before the arbitrator make it quite clear that the defendant was afforded a reasonable opportunity of being heard. He failed to appear before the arbitrator on the 8th Mach although his counsel was duly informed of this date, and it must be assumed therefore that if he had any right to be heard at all, he relinquished or waived his right. When the right to a hearing is waived either expressly or by implication, the proceedings are as regular and the award is as valid as though full opportunity to be heard had been given.

But I am of the opinion that the defendant had no right to a hearing at all. As a party to the arbitration agreement he empowered the arbitrator to take evidence or not, to hear any party or not, and to arrive at a decision even at the back of either or both of the parties, and he cannot be allowed to complain if the arbitrator, acting within the scope of his authority, gave an award without affording the parties and opportunity of being heard. It may be that the arbitrator in the present case allowed reasonable facilities to the defendant to produce his evidence, but as the defendant did not produce his witnesses when he was required

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so to do, he cannot complain that he was not afforded an opportunity of being heard. There is not an iota of evidence on the record to justify the conclusion that the arbitrator misconducted himself in the proceedings.

Nor is there any force in the contention that the arbitrator had no power to proceed *ex parte* on the 8th March without informing the defendant that he wanted to proceed *ex parte*. He was empowered by the terms of the agreement to decide the case behind the back of the parties and was under no obligation to inform the parties that he intended to proceed *ex parte*.

For these reasons I would accept the appeal, set aside the order of the Learned Single Judge, restore that of the trial Court and dismiss the defendant's objections with costs througout. Ordered accordingly.

Bishan Narain, J.—I agree.

B. R. T.

SUPREME COURT

Before P. B. Gajendragadkar and A. K. Sarkar, JJ.

NARAIN AND OTHERS,—*Appellants*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 186 of 1956.

1958

Dec., 4th

Evidence Act (I of 1872)—Section 167—Scope of—Prosecution not producing one of the witnesses cited—Effect of—Witnesses that the prosecution is bound to produce indicated.

Held, that under Section 167 of the Evidence Act the question is not so much whether the evidence rejected would not have been accepted against the other testimony on the record as whether that evidence "ought not to have varied the decision". Where the prosecution does not