

REVISIONAL CIVIL

*Before Inder Dev Dua, J.*RAJ KUMAR,—*Appellant.**versus*SANT RAM AND ^{Am} OTHER,—*Respondents.*

Civil Revision No. 18 of 1963.

1964

July, 24th.

Arbitration Act (X of 1940)—Ss. 5 and 30—Arbitration agreement—Whether can be superseded or revoked by Court on grounds other than those mentioned in S.30.

Held, that once the parties have, in accordance with law, chosen their own forum, they are entitled to have adjudication of their controversy by that forum in accordance with the provisions of the Arbitration Act. The civil Court is also not free to travel outside the provisions of this Act for the purpose of superseding the reference. There is no inherent power in a Court to revoke or supersede the arbitration on non-statutory grounds. Section 30 of the Act lays down in express language that an award should not be set aside except on one or more of the grounds set out therein and the Court has no jurisdiction to set aside the award or supersede the arbitration without deciding the objections of the parties and affording them an opportunity to adduce evidence in support of their objections.

Petition under order 43 rule 1, Civil Procedure Code for revision of the order of Shri Salig Ram Seth, Senior Sub-Judge, Ambala, dated the 31st December, 1962, modifying that of Shri Harbans Singh Ahluwalia, Sub-Judge, Ambala, dated 27th March, 1962, to the extent that the lower Court will give an opportunity to the parties to lead their evidence regarding the objections taken up by the plaintiff-respondent and then he should decide whether the award is liable to be set aside or not. No order is made as to the costs and case is remanded to the learned Sub-Judge for further proceedings.

GANGA PARSHAD JAIN, ADVOCATE, for the Appellant.

PARKASH CHAND JAIN, ADVOCATE, for the Respondent.

JUDGMENT

Dua, J.

DUA, J.—Shri Raj Kumar (appellant in this Court) had instituted a suit for the dissolution of partnership and

rendition of accounts against Sant Ram and Panna Lal. Panna Lal has been stated by the lower appellate Court to be a ~~pro~~ *forma* defendant and it was Sant Ram who contested the suit. A preliminary decree was passed on 31st May, 1960; this decree was appealed against by Sant Ram but the same was dismissed on 13th March, 1961, with certain directions regarding the accounts; the case was naturally sent back to the Court of first instance with those directions. Thereafter, a Commissioner was appointed by the Court of first instance to go into the accounts but his report was set aside on objections raised by the parties. Thereupon, the parties referred their dispute to the arbitration of one Shri Lakshmi Chand, Advocate, who filed his award in the Court on 30th January, 1962. Raj Kumar plaintiff-appellant objected to this award and prayed that the same be set aside whereas Sant Ram confined his objections to the prayer that the award be remitted back to the arbitrator for decision of certain points. It appears from the order of the learned Senior Subordinate Judge that the Court of first instance had fixed a date for hearing arguments on the objections raised by Sant Ram but on 27th March, 1962, without giving any opportunity to the parties, it set aside the award.

Against this order, an appeal was taken to the Court of the Senior Subordinate Judge by Sant Ram. After disallowing a preliminary objection^s urging incompetency of the appeal, the lower appellate Court referred to its earlier judgment dated 13th March, 1961, disposing of the appeal from the preliminary decree. The Court has observed that according to the last paragraph of that judgment the shares of Raj Kumar, plaintiff and Sant Ram defendant were fixed at ten annas and six annas in a rupee in the joint business and that the date of dissolution was 18th December, 1957. It was also observed in the said paragraph that Sant Ram would be entitled at his option to such share of profit of six annas from 18th December, 1957, onwards. The award filed on 30th January, 1962, by the arbitrator, according to this judgment, shows that accounts were gone into by him up to 17th December, 1957, only and for this reason Raj Kumar objected to it for getting it set aside whereas Sant Ram defendant desired that the amount of his profit from 18th December, 1957, onwards should also be determined and for this purpose the case be sent back.

Raj Kumar
v.
Sant Ram
and another

Dua, J.

Raj Kumar
v.
Sant Ram
and another

Dua, J.

The two objections raised by the two parties having different aspects, the trial Court had fixed 27th March, 1962, for hearing arguments on the objection raised by Sant Ram. On that day, instead of giving a decision on Sant Ram's objection, the trial Court set aside the award, apparently acceding to Raj Kumar's grievance against the award. Holding that the Court of first instance should have given an opportunity to the parties to lead evidence in respect of the objections urged by Raj Kumar for getting the award set aside and that of Sant Ram for getting the award remitted did not absolve the Court of its obligation to hold the requisite enquiry enjoined by the Arbitration Act before setting aside the award, the learned Senior Subordinate Judge reversed the decision of the Court of first instance. It has been observed by the lower appellate Court that there is no law according to which if a party to the proceedings requests for remitting the award for taking decision on a certain point and the other party prays for setting aside the award, the Court can legitimately set aside the award without holding an enquiry. Allowing the appeal, the lower appellate Court modified the trial Court's orders by directing the latter to give an opportunity to the parties to lead their evidence regarding the objections raised by the plaintiff-respondent and then to decide whether or not the award is liable to be set aside. It is against this order that Raj Kumar has preferred this appeal.

To begin with, the respondents have raised a preliminary objection to the competency of the appeal, seeking support for their objection from *The Union of India v. Mohindra Supply Company* (1), and *Mam Raj v. Mst. Kishni and others* (2). The objection, as is conceded by the appellant's learned counsel, is well-founded. It has, however, been prayed on behalf of the appellant that this Court may treat the second appeal as a revision. In the interest of justice, I will go through this case on the revisional side, though I think that there was no justification for presenting this appeal under Order 43, Rule 1, of the Code of Civil Procedure. Had it been preferred as a revision, the admitting Judge would have scrutinised the matter from an entirely different angle and would perhaps have not admitted the case.

(1) A.I.R. 1962 S.C. 256.

(2) A.I.R. 1951 Simla 183.

Treating it as a revision, I now come to the merits of the controversy raised before me. The learned counsel for the petitioner Raj Kumar has submitted that the learned Senior Subordinate Judge was wrong in reversing the order of Shri Harbans Singh Ahluwalia, Subordinate Judge, 1st Class, Ambala, dated 27th March, 1962, setting aside the award dated 29th January, 1962, inasmuch as the learned Subordinate Judge felt that both the parties were dissatisfied with the award and, therefore, it would promote the cause of justice better if the learned Subordinate Judge himself decided the controversy. The order superseding the reference, according to the learned counsel, should have been upheld because after all the only result was that the Court would decide the controversy and not a layman arbitrator and emphasis is laid on section 5 of the Arbitration Act, which, according to the contention, fully empowers the Court to revoke the authority of an appointed arbitrator. By way of analogy, reference has been made to *Dr. Hardit Singh v. Bhagat Jaswant Singh and others* (3), where I transferred a case from the Court of a learned Subordinate Judge to the Court of the learned District Judge, though I was of the view that the aggrieved party had not established any grievance entitling him to claim as of right an order of transfer on the ground of bias or partiality on the part of the Court. In my opinion, the analogy is completely misconceived because the power to supersede a reference cannot be equated with the power of this Court in the larger interests of justice to transfer a civil suit from one competent Court to another. Reference has next been made to *Bhola Nath v. Ragunath Das Mithan Lal, etc.* (4), in which a Division Bench upheld inherent jurisdiction in a Court to intervene and supersede the arbitration on grounds other than those mentioned in Schedule 2, Rules 5, 8 and 15 of the Code of Civil Procedure provided the case fell under section 151 of the Code, viz., where in the ends of justice or prevention of abuse of the process of the Court such an order becomes necessary. This observation in the reported case is followed by the remark that the Court can intervene only if it is satisfied that the ends of justice urgently require its intervention or that without such intervention there would be an abuse of the process of the Court. Needless to say that in the reported case the

Raj Kumar
v.
Sant Ram
and another

Dua, J.

(3) (1964) 66 P.L.R. 331.

(4) A.I.R. 1929 All. 743,

Raj Kumar
v.
Sant Ram
and another
—
Dua, J.

High Court reversed the order of the Subordinate Court supersealing the reference to arbitration. Reliance has also been placed on *Ram Gopal Ram Sarup v. Kesharao Kanoria and Co.*, (5), in which according to S. R. Das Gupta, J., different considerations may arise in an application to set aside an award on the ground that the arbitrators are biased, but in an application under section 5 of the Arbitration Act it is not necessary to show that the arbitrators had in fact been biased and it would be enough to show that there is a reasonable ground for an apprehension that the arbitrators would be biased.

I am wholly unable to sustain the contention of the petitioner's learned counsel. This case is governed by the provisions of the Arbitration Act (No. X of 1940) which consolidates and amends the law relating to arbitration. In the case in hand, there is no question of bias urged either in the Court below or before me. After an award is made, the Arbitration Act lays down the procedure by which such an award can be enforced or objected to. Section 30 of the Act ~~is~~ⁱⁿ express language lays down that an award shall not be set aside except on one or more of the following grounds, namely :—

- “(a) that an arbitrator or umpire has misconducted himself or the proceedings;
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;
- (c) that an award has been improperly procured or is otherwise invalid.”

The Court is, therefore, enjoined by the statute to go into the allegations of the parties and determine the controversy raised by the pleadings. Under section 33 any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of such an agreement or an award or to have the effect of either determined has to apply to the Court and the Court has to decide the question on affidavits, unless the Court deems

it just and expedient to set down the application for hearing on other evidence also. There is no inherent power in a Court on non-statutory grounds to revoke or to supersede the arbitration. In the present case, however, it was neither party's prayer that the arbitration be superseded. The learned Subordinate Judge has, in my opinion, completely misconceived the law by taking upon himself the duty of going through the accounts after the matter had been referred to arbitration. Once the parties have in accordance with law chosen their own forum, in my opinion, they are entitled to have adjudication of their controversy by that forum in accordance with the provisions of the Arbitration Act and the Civil Court is also not free to travel outside the provisions of this Act for the purpose of superseding the reference. In the case in hand, it is not disputed that Raj Kumar had merely prayed for setting aside the award on certain objections whereas Sant Ram wanted to have the award remitted for decision of certain points. The learned Subordinate Judge had also, as the order of the lower appellate Court shows, fixed a date for hearing arguments on the objections taken by Sant Ram. On that day, without caring to dispose of the objections, the learned Subordinate Judge should not have superseded the reference and his order is clearly tainted with a material irregularity in the exercise of jurisdiction. Justice, as has so often been repeated by the superior Courts, must not only be done but must also be clearly seen to be done and the Courts of law and justice must never pass an order without properly hearing the parties affected. The learned Judge of the trial Court appears to me to have ignored both these aspects and without any justification.

For the foregoing reasons, this appeal fails and is dismissed with costs.

Raj Kumar
v.
Sant Ram
and another

Dua, J.