is no power as to review or revise its earlier judgment, except to correct clerical error.

(9) In our view, making the sentence of imprisonment to run concurrently instead of consecutively would involve the review of the judgment and by no stretch of imagination can this be considered to be a correction of a clerical error. The Court has to take a conscious decision after due application of mind as to whether the sentence is to run concurrently or consecutively. It does so in the light of all the facts and circumstances of a case including the gravity of the offence or otherwise.

(10) For the reasons, aforementioned, we find no merit in this application and dismiss the same.

R.N.R.

Before D. V. Sehgal, J.

PUNJAB SMALL INDUSTRIES AND EXPORT CORPORATION LTD.,—*Petitioner.*

versus

SARDUL SINGH and others,—*Respondents.*

Civil Revision No. 412 of 1986.

August 5, 1987.

Arbitration Act (X of 1940)—Sections 17 and 39—Limitation Act (XXXVI of 1963)—Article 119(b)—Code of Civil Procedure (V of 1908)—Section 115—Award made rule of the Court ex-parte before 30 days limitation prescribed for filing objections to the Award—Judgment and decree passed by the trial Court in accordance with the award—Whether liable to be set aside in revisional jurisdiction—Appeal against such a decree—Whether maintainable.

Held, that the trial Court in having made the award rule of the Court within less than a period of 30 days for filing application for setting aside the award as even from the date of the making of the award by the Arbitrator, it has acted in the exercise of its jurisdiction illegally and with material irregularity. It was obligatory on the trial Court to have allowed the prescribed time of 30 days under Article 119(b) of the Limitation Act, 1963, for

filing application for setting aside the award to expire before it made the award a rule of the Court and pronounced judgment in accordance therewith followed by a decree. The judgment and decree under revision passed in flagrant violation of section 17 of the Arbitration Act, 1940, cannot be sustained and are, therefore, liable to be set aside. (Paras 3, 4, and 8)

Held, that a perusal of section 39 of the Arbitration Act shows that an appeal *inter alia* lies against an order filing or refusing to file an arbitration agreement. But no appeal is provided against the order filing an award and pronouncing a judgmnet according to the award. In fact, section 17 of the Act lays down clear terms that no appeal shall lie against a decree which follows pronouncement of judgment according to the award. Hence it has to be held, that the judgment and decree of the trial Court are revisable by this Court under section 115 of the Code of Civil Procedure.

(Paras 5 & 7)

Code of Civil Procedure (V of 1908)—Section 115—No specific resolution passed by a body corporate authorising the filing of a revision petition—Order under revision held plainly illegal—Want of specific resolution—Improper presentation—Effect on revision petition—Stated.

Held, that where conditions of section 115 C.P.C. are satisfied and interference in any particular case is found necessary, the High Court may on its own motion, call for the record and pass the necessary orders. It is necessary that a revision petition by a party should be instituted. It is also well settled that the High Court cannot throw out a revision petition on the ground that it was not properly presented after the same has been admitted, entertained and listed for final hearing. When the illegality in the exercise of jurisdiction by the trial Court has come to its notice, the exercise of revisional jurisdiction cannot be hampered by such technicalities as want of a valid resolution by a corporate body supporting the revision petition. If this objection is allowed to prevail, it would amount to perpetuation of the illegal exercise of jurisdiction. (Para 9)

Rewa Chand *v.* K. C. Kapoor, A.I.R. 1954 Ajmer 9.

Gopal Das *v.* S. Kesar Singh, A.I.R. 1966 J. & K. 133.

DISSENTED FROM.

Petition under section 115 C.P.C. against the order of the Court of Shri G. C. Suman, P.C.S., Additional Senior Sub-Judge,

Ludhiana, dated 20th September, 1985, decreeing the suit of the plaintiff to the extent of Rs. 2,00,000 in favour of the plaintiff and against the defendants Punjab State Small Industries and Export Corporation alongwith interest claimed and also with future interest at the same rate till the entire amount is realised by the plaintiff from the defendants/respondents.

N. K. Sodhi, Sr. Advocate with R. N. Raina, Advocate, *for the Petitioner.*

J. R. Mittal, Advocate with Miss Mona Anand, Advocate. *for the Respondents.*

JUDGMENT

D. V. Sehgal, J.

(1) This revision petition filed by the Punjab Small Industries and Export Corporation Limited (for short 'the Corporation') is directed against the judgment and decree dated 20th September, 1985 passed by the learned Additional Senior Sub-Judge, Ludhiana.

(2) The facts in brief are that Sardul Singh, Government Contractor, plaintiff-respondent No. 1, filed a suit for the recovery of Rs. 2 lacs against the Corporation. During the pendency of the suit,—*vide* his order dated 23rd November, 1983 the then learned Sub-Judge 1st Class, Ludhiana, before whom the suit was pending, directed the dispute, which was the subject-matter of the suit, to be referred to the Arbitrator on the statements made by the learned counsel for the parties. That order was apparently passed in exercise of powers under section 21 of the Arbitration Act, 1940 (for short 'the Act'). The Arbitrator made his award on 22nd August, 1985 and filed the same in Court. The learned Trial Court issued a notice regarding the filing of the award in Court to the parties and adjourned the proceedings to 13th September, 1985. However, on that date no one appeared on behalf of the Corporation in spite of service of notice. *Vide* order of the same date the learned Additional Senior

Sub-Judge proceeded against the Corporation *ex parte* and ordered the original file to be summoned for further proceedings for 20th September, 1985. On that date, through the impugned judgment it was observed that in spite of service of notice no one had appeared on behalf of the Corporation and *ex parte* proceedings had been taken against it. Therefore, "a well based inference" can be drawn that it had already accepted the award. As a result the award was made a rule of the Court and a decree for Rs. 2 lacs was passed in favour of respondent No. 1 and against the Corporation along with interest claimed by the said respondent as also the future interest at the same rate till the entire amount was realised by him. Decree-sheet was accordingly directed to be drawn. A certified copy of the decree-sheet of the same date has been filed along with the revision petition.

(3) The grievance made on behalf of the Corporation is that under section 17 of the Act the award could be made a rule of the Court and a judgment could be pronounced in accordance with it only after the time for making an application to set aside the award had expired. Article 119(b) of the Schedule to the Limitation Act, 1963 prescribes a period of 30 days for filing an application for setting aside an award from the date of service of the notice of the filing of the award. It is contended that the award was made by the Arbitrator on 22nd August, 1985. After it was filed in the Court, a notice of its filing was issued by the Court. The period of 30 days for filing application for setting aside the award was to commence from the date of service of such notice. The learned trial Court, however, made the award a rule of the Court on 20th September, 1985, i.e. within less than 30 days even from the date of the making of the award by the Arbitrator. It is, therefore, contended that the impugned judgment and decree passed by the learned trial Court are without jurisdiction and should, therefore, be set aside.

(4) The learned counsel for respondent No. 1 has, however, raised the following contentions against the plea of the Corporation:—

(1) That the judgment pronouncing the decree in accordance with the award was appealable. No Revision petition against the same can be maintained in this Court.

(2) The award was made by the Arbitrator on a reference made by the trial Court in a pending suit. Therefore, the

procedure laid down in sections 14 and 17 of the Act regarding giving of the notice of the filing of the award by the Court to the parties and making it a rule of the Court after the time for making an application for setting aside the award has expired is not applicable. Since in spite of service, no one was present on behalf of the Corporation before the trial Court on 13th September, 1985, it was rightly proceeded against *ex parte* and on the adjourned date, i.e. 20th September, 1985, a decree in accordance with the award was passed.

(3) The revision petition filed by the Corporation is not properly presented. There is no resolution passed by its Board of Directors for filing the present revision petition. The same is, therefore, without authority and ought to be dismissed on this solitary ground.

I have considered the rival contentions of the learned counsel for the parties. I am of the view that the learned trial Court has acted in the exercise of its jurisdiction illegally and with material irregularity. The judgment and the decree under revision were passed in flagrant violation of section 17 of the Act and, therefore, cannot be sustained. Now, I proceed to deal with the submissions made by the learned counsel which would make evident the reasons for the view that I have taken.

(5) In support of his first submission, the learned counsel for respondent No. 1 has relied on *Rewa Chand* v. *K. C. Kapoor* (1), and *Gopal Das* v. *S. Kesar Singh* (2). In my view, however, these authorities do not lay down good law. In *Rewa Chand's* case, it has been observed by the learned Judicial Commissioner that the decree passed by the Court is in fact an order filing the award from which an appeal lies under section 39 of the Act. A perusal of section 39 of the Act, however, shows that an appeal *inter alia* lies against an order filing or refusing to file an arbitration agreement. But no appeal is provided against the order filing an award and pronouncing a judgment according to the award. In fact, section 17 of the Act lays down in clear terms that no appeal shall lie against a decree which follows pronouncement of judgment according to the award. *In Gopal Das's* case the view taken is that omission of the Court to give notice of the filing of the award amounts to refusal to set aside

(1) A.I.R. 1954 Ajmer 9.
(2) A.I.R. 1966 J & K 133.

the award. As such a judgment pronouncing decree in accordance with the award would be appealable under section 39 of the Act. It is clearly observed in that judgment that there is no direct authority on the point yet reliance was placed on *Swastika Scientific Engineering Co.* v. *Union of India* (3), wherein it was held that the words of section 39 are quite clear. An appeal lies against an order setting aside or refusing to set aside an award. Application was made on 7th January, 1949 for setting aside the award. Whatever the reason for the Court not setting aside the award, the order still remains an order refusing to set aside the award and an appeal lies under section 39. With respect, I may point out that the judgment of this Court in *Swastika Scientific Engineering Company's case* (supra) did not take the view which was adopted in *Gopal Das's* case (supra). In the former case application for setting aside the award had been filed but the award was made a rule of the Court in spite of the said application. This clearly amounted to refusing to set aside the award. I, therefore, do not agree with the ratio of the law laid down in *Gopal Das's case* (supra).

(6) On the other hand, in *Koduri Krishnamma* v. *Koduri Channayya and another* (4), the facts were almost parallel to those in the present case. A decree was passed on the basis of an award before the expiry of limitation for filing objections to the award. There was nothing to show that the aggrieved party had waived its right to object to the award. It was held that the decree so passed was in the illegal exercise of jurisdiction and that the remedy of the aggrieved party is by way of a revision. The same view was taken in *Ravibhai Kashibhai* v. *Dahyabhai Zaberbhai Patel* (5). The provisions which came up for interpretation therein were those of para 16(2) of Schedule 2 of the Code of Civil Procedure, 1908, which before their repeal contained provisions analgous to those of section 17 of the Act. It was held that where the Court did not allow a party the time which the law allows him to make objections, but proceeded to pass a decree in accordance with the award, the remedy open to the aggrieved party was not by way of appeal as no appeal was maintainable. It was further observed that in such a case the High Court may exercise its discretion under section 115 of the Code of Civil Procedure.

(3) A.I.R. 1953 Pb. 129.
(4) A.I.R. 1949 Mad. 276.
(5) A.I.R. 1921 Bombay 32.

(7) In view of the above discussion, I find no force in the first submission made by the learned counsel for respondent No. 1 and hold that the judgment and the decree of the trial Court are revisable by this Court under section 115 of the C.P.C.

(8) The second submission of the learned counsel for respondent No. 1 also need not hold me much longer. Chapter IV of the Act makes provision for arbitration in suits. Section 25 which finds place in this chapter lays down that the provisions of the other chapters of the Act shall, so far as they can be made applicable, apply to arbitrations under this Chapter. It is, thus, clear that after the award was filed by the Arbitrator in the trial Court in the pending suit it was obligatory on it to have allowed the prescribed time of 30 days for filing application for setting aside the award to expire before it made it a rule of the Court and pronounced judgment in accordance therewith followed by a decree.

(9) In reply to the third submission, the learned counsel for the petitioner invited my attention to a resolution passed by the Board of Directors of the Corporation authorising its Managing Director to file suits and take other legal proceedings. The learned counsel for respondent No. 1, however, by getting support from *The Municipal Committee, Ludhiana* v. *Surinder Kumar* (6) and *Garib Chand* v. *Municipal Committee, Budhlada* (7) contended that before the revision petition could be filed a specific resolution ought to have been passed by the Board of Directors of the Corporation resolving to file the revision petition against the impugned judgment and the decree and authorising its Managing Director to file the same. A perusal of these judgments shows that these govern the appeals instituted without specific resolutions of a corporate body. It is well known that where conditions of section 115, C.P.C., are satisfied and interference in any particular case is found necessary, the High Court may on its own motion, call for the record and pass the necsssary orders. It is not necessary that a revision petition by a party should be instituted. It is also well settled that the High Court cannot throw out a revision petition on the ground that it was not properly presented after the same has been admitted, entertained and listed for final hearing. When the illegality in the exercise of jurisdiction by the trial Court has come to its notice, the exercise of revisional jurisdiction by it cannot be hampered by such technicalities as want

(6) 1970 Curr. L.J. 631.
(7) 1979 R.L.R. 341.

of a valid resolution by a corporate body supporting the revision petition. If this objection is allowed to prevail, it would amount to perpetuation of the illegal exercise of jurisdiction by the trial Court and allowing respondent No. 1 to enjoy the fruits of the judgment and the decree passed by the trial Court without jurisdiction. When illegality in the exercise of jurisdiction has once come to the notice of this Court, it has ample power under section 115, C.P.C., on its own motion to undo the same.

(10) In view of the above discussion, I allow this revision petition with costs and set aside the judgment and the decree dated 20th September, 1985 passed by the learned Additional Senior Sub-Judge, Ludhiana.

(11) The parties through their learned counsel are directed to appear before the learned trial Court on 14th September, 1987. The Corporation shall file its objections against the award before the trial Court on that date and further proceedings shall be taken in accordance with law.

R.N.R.

Before : H. N. Seth, CJ and M. S. Liberhan, J.

BEEGEE CORPORATION PRIVATE LTD.—*Appellant.*

versus

M/S PUNJAB FINANCIAL CORPORATION, CHANDIGARH,—*Respondent*

Letters Patent Appeal No. 711 *of* 1987

August 10, 1987.

State Financial Corporation Act (LXIII of 1951)—*Sections* 31 *and* 32—*Proceedings for sale of property to recover amounts due—Determination of loanee's liability towards financial institution—Whether limited to period anterior to date of application under Sections* 31 *and* 32—*Liability—Whether extends till realisation.*

Held, that for the purposes of proceedings under Sections 31 and 32 of the State Financial Corporation Act, the loanee's upto-date liability has to be taken into account and not his liability as