
claiming the relief to a suit as has been laid down by the Supreme Court in the decision reported in *State of Orissa v. Dr. (Miss) Binapani Devi* A.I.R. 1967 S.C. 1269."

(22) Accordingly, we hold that in the circumstances of the present case, the writ of mandamus cannot be issued and even otherwise where an enquiry into complicated question of facts would arise, the High Court in its discretion, would decline to go into the same in petition under Article 226 of the Constitution. The writ petition is dismissed.

(23) In the circumstances of the present case, we relegate the petitioner to a civil suit where the disputed question of fact will be gone into after recording evidence oral and documentary and after giving the parties adequate opportunity of hearing. We direct that the Civil Court will dispose of the suit within three months from the date, the plaint is filed before it.

P.C.G.

Before J. V. Gupta and Ujagar Singh, JJ.

HOSHIARPUR CENTRAL COOPERATIVE BANK LTD.,
—Petitioner.

versus

THE URMAR HARMONIUM REED WORKSHOP AND OTHERS,
—Respondents.

Civil Revision No. 430 of 1980.

November 30, 1988.

Code of Civil Procedure (V of 1908)—S. 51—Arbitration award—Validity of such award not challenged in appeal—Award becoming final—Execution of such award—Power of the executing Court—Whether the executing Court can go behind the award.

Held, that the executing Court could only declare an award a nullity if it was passed without jurisdiction and/or the defect, if any was not curable. It is in this context that it has been laid down that the executing Court cannot go behind the decree or the award. It could only do so if it was made by the Arbitrator who had no

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jurisdiction to pass the same, which is not the case of either party. If an appeal had been filed against the award on the ground that it was a non-speaking order the appellate authority would have set aside the award and remanded the case for passing a fresh award whereas now the executing Court after declaring the award a nullity could not send it back for giving a fresh award. In case the award does not conform to the provisions of the statute, then it could not be successfully argued that it was a nullity and void *ab-initio* because such a defect, if any, was a curable one and could be cured on remand under law.

(Para 7).

Petition under Section 115 C.P.C. for the revision of the Order of the Court of Shri G. L. Chopra, PCS, Senior Sub Judge, Hoshiarpur dated 20th September, 1979 accepting the objection petition and hold that the award which is being executed is a nullity and it cannot be executed. Consequently, the execution application based on this award stands dismissed.

B. S. Khoji, Advocate. for the Petitioner.

Nemo, for the Respondents.

ORDER

J. V. Gupta, J.—

(1) This case has come up before us on a reference by the learned Single Judge as there were two conflicting decisions of this Court in the *Lalru Cooperative Agricultural Service Society Ltd., Lalru v. The Patiala District Wholesale Cooperative Supply and Marketing Society*, (1) and the *Pandhwa Co-op. Agricultural Service Society v. Sukhdev Singh* (2). The controversy between the parties is; whether the award given by the Arbitrator under the Punjab Co-operative Societies Act, 1961, (hereinafter called the Act) can be held to be a nullity by the executing Court if it is a non-speaking one ?

2. In the present case, there was an award in favour of the Hoshiarpur Central Co-operative Bank Ltd. for a sum of Rs. 35,311.70. When the execution of the said award was being sought, objections were filed on behalf of the judgment-debtor alleging that the award

(1) 1979 PLJ 66.

(2) 1979 PLJ 287.

was void, illegal and invalid; hence it could not be executed. According to the judgment-debtor, no notice was given by the Arbitrator before the award was announced and that the Arbitrator had no jurisdiction to award the future interest. It was also pleaded that the award was a non-speaking one and, thus, a nullity. The said objections were contested on behalf of the decree-holder, the petitioner. The executing Court found that the judgment-debtor did receive the notice regarding the arbitration and, therefore, the plea that no notice was issued to it was negatived. However, the executing Court found that the arbitrator had no powers to grant future interest and that the award was a non-speaking one. It was therefore held to be a nullity on these grounds. In coming to this conclusion, reliance was placed on the *Lalru Cooperative Agricultural Service Society Ltd., Lalru's case* (supra).

(3) So far as the question of the grant of the future interest by the Arbitrator is concerned, the matter stands concluded by the Full Bench judgment of this Court in the *State of Punjab v. Ajit Singh*, (3), wherein it has been held that the Arbitrator has the jurisdiction to grant future interest in references under sections 55 and 56 of the Act.

(4) Thus, the only controversy as observed earlier is: whether the award can be held to be a nullity by the executing Court if it is a non-speaking one ?

(5) In *Lalru Cooperative Agricultural Service Society Ltd., Lalru's case* as well as in *Sukhdev Singh's case* (supra), reliance was placed on the judgment of this Court in *Mathra Dass v. The State of Punjab* (4). According to the *Lalru Cooperative Agricultural Service Society Ltd. Lalru's case* (supra), the decision in *Mathra Dass's case* (supra), was that the proceedings before the Arbitrator are quasi-judicial and that the Arbitrator is bound to give reasons for his decision. According to the learned Single Judge in the said-case, since no reasons were given by the Arbitrator *inter alia* awarding the costs, the award was a nullity. An argument raised on behalf of the respondent that the executing Court cannot go beyond and decree even if some error of law has been committed by the Arbitrator while passing the award, was repelled with the observations that it was not sustainable because section 63 of the Act says that the

(3) 1979 PLR 334.

(4) 1975 PLJ 42.

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award duly made would be deemed to be a decree which obviously means that only that award would be deemed to be a decree which conforms to the provisions of the statute. Subsequent thereto, when in *Sukhdev Singh's case* (supra) *Mathra Dass's case* (supra), was cited, the learned Single Judge observed that the decision in *Mathra Dass's case* (supra), was not only made in a different context, but also it was not laid down therein that a non-speaking award would be *non est* and a nullity. It was further held therein that the executing Court cannot go behind the decree unless it comes to the conclusion that the same is a nullity. No decree is a nullity if the Court that passed it had the inherent jurisdiction and the parties involved were duly represented. In the present case, admittedly, as it has also been held by the executing Court itself that the Arbitrator had the jurisdiction to pass the award and that the parties had the notice and were afforded due opportunity. The infirmity of the omission of the reasons from the award would not render it *non est* and a nullity. A decree which can be said to be *non est* and a nullity is the one which a Court having no jurisdiction to pass it, passed it, or it was a decree against a dead person or against a person who at no stage was legally present before the Court which passed the decree.

6. The learned counsel for the petitioner also cited *Amir Hassan Khan v. Sheo Baksh Singh*, (5) to contend that the Arbitrator had the authority to decide rightly or wrongly and jurisdiction to decide the same, even if he decided wrongly, he did not exercise the jurisdiction illegally or with material irregularity. A reference was also made to *Yusufbhai Ismailbhai v. Manilal Mohanlal*, (6) wherein it was held that it is not open to the executing Court to question the terms of the decree or to question the validity of any part of the decree; hence it was not open to the executing Court to hold that a part of the decree violated the provisions of section 23 of the Bombay Money Lenders Act and, therefore, could not be executed

7. After hearing the learned counsel for the parties and going through the case law cited at the bar, we are of the considered opinion that the *Lalru Cooperative Agricultural Service Society Ltd.*

(5) (1885) ILR XI Cal. 6, P.C.

(6) AIR 1965 Guj. 282.

Lalru's case (supra), has not been correctly decided and, therefore, is to be overruled whereas the view taken in *Sukhdev Singh's case* (supra) is to be affirmed. In *Mathra Dass's case* (supra), the matter was discussed by the learned Single Judge in paragraph 7 of the judgment and what was held therein was that the award made by the Arbitrator was in accordance with law. That being so, in the writ petition, the impugned award of the Arbitrator and the order of the appellate authority were quashed and the matter was remanded to the Arbitrator for deciding the matter afresh in accordance with law keeping in view the observations made therein. There is another reason also. If an appeal would have been filed against the award on the ground that it was a non-speaking one, the appellate authority would have set aside the award and remanded the case for passing a fresh award whereas now the executing Court after declaring the award a nullity could not send it back for giving a fresh award and, thus, the decree-holder was debarred for ever to realise the amount. In case the award does not conform to the provisions of the statute, then it could not be successfully argued that it was a nullity and *void ab initio* because such a defect, if any, was a curable one and could be cured on remand. The executing Court could only declare it a nullity if it was passed without jurisdiction and/or the defect, if any, was not curable. It is in this context that it has been laid down that the executing Court cannot go behind the decree or the award. It could only do so if it was made by the Arbitrator who had no jurisdiction to pass the same, which is not the case of either party. In the present case, the Arbitrator had the jurisdiction to give the award. Notice of the proceedings was given to the judgment-debtor and in case the Arbitrator did not give reasons for the award that itself will not render the award a nullity as to hold that the Arbitrator had no jurisdiction to give the award. It was observed by the Privy Council in *Amir Hassan Khan's case* (supra), as follows,—

“The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.”

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(8) The result of the above discussion is that the revision petition succeeds and is allowed with costs. The order of the executing Court dated September 20, 1979 is set aside and the case is sent back to it for proceedings further in accordance with law. The parties have been directed to appeal before it on 9th January, 1989.

S.C.K.

Before S. S. Kang and D. V. Sengal, JJ.

ORIENTAL FIRE AND GENERAL INSURANCE COMPANY LIMITED,—Appellant.

versus

SMT. CHANDRAWALI AND OTHERS,—Respondents.

First Appeal from Order No. 272 of 1984

December 5, 1988.

Code of Civil Procedure (V of 1908)—O. XII, Rls. 2 and 3 A—Evidence Act (I of 1872)—Ss. 64, 65 and 66—Admission and denial of documents—Prior notice for said purpose—Necessity of—Court requiring party to admit documents—No prior notice needed—Copy of insurance policy admitted in evidence and exhibited—Original in possession of owner—Conditions for leading additional evidence not fulfilled—Insurance policy—Whether admissible in evidence.

Held, that O. XII, Rl. 2 of the Code of Civil Procedure, 1908 provides that either party may call upon the other party to admit any document and if the latter neglects to do so certain consequences follow. A vital consequence laid down by Rule 2 A is that the Court shall, in the given circumstances, deem the document to be admitted. Under Rl. 3A even without prior notice, the Court may call upon any party to admit any document. Where a document is admitted by a party against which it is sought to be adduced in evidence, its formal proof is not necessary before it is so admitted in evidence. In all other cases a document can be admitted in evidence on its proof in accordance with the provisions of Chapter V of the Act. Whatever the document, it cannot be used in evidence unless its genuineness has been either admitted or established by proof which shall be given before the document is exhibited by the