Article 122 and 137 of the Limitation Act, 1963. I am in respectful agreement with the above observations. The observations in *Vishwanath Nagnath Andage's case* (supra) are, however, not of much assistance.

(6) In the present revision, as already stated, the case was fixed for August 28, 1972 for hearing and, therefore, the Court could not dismiss it on July 19, 1972. Consequently, the petitioner could make an application for restoration within three years of the dismissal of the suit. The application for restoration is admittedly within a period of three years and, therefore, within limitation.

(7) For the aforesaid reasons, I accept the revision petition, set aside the orders of the Courts below and restore the suit. The parties are directed to appear before the trial Court on March 3, 1980.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia C.J., B. S. Dhillon and G. C. Mital, JJ.

FLORABEL SKINNER and others,—*Petitioners.*

versus

JAI BAJRANG KALA MANDIR RAM LILA MANDAL,—*Respondent.*

Civil Revision No. 58 *of* 1978.

November 5, 1979.

Contract Act (IX of 1872)—Sections 2(a) and 5—Code of Civil Procedure (V of 1908)—Order 23 Rule 3—Evidence Act (I of 1872)—Section 20—Offer by a party to a suit to be bound by the statement of the opposite party—Opposite party accepting the offer and agreeing to make a statement—Such offer—Whether an agreement enforceable at law—Party making the offer—Whether could withdraw the same before the statement is recorded—The agreement—Whether an adjustment of the suit within the meaning of Order 23 Rule 3—Such agreement—Whether covered by section 20 of the Evidence Act.

Held, (per S. S. Sandhawalia C. J., and G. C. Mittal J.) that an offer made by a party to a suit to be bound by the statement of the

opposite party is an agreement under the law of Contract but such an agreement would not fall under Order 23 Rule 3 of the Code because by this agreement alone there is no adjustment of the suit, wholly or in part. What Order 23 Rule 3 envisages is the agreement of the parties from a reading of which the dispute in the suit can be decided between the parties wholly or in part. But such an agreement cannot by itself decide the controversy in the suit, either wholly or in part because in pursuance of the agreement one party has to make a statement which statement alone would be considered by the court to see whether the suit can be decided wholly or in part on the basis of that statement. Therefore, Order 23 Rule 3 of the Code would not apply in such a case.

(Para 16).

Held, (per S. S. Sandhawalia C. J. and G. C. Mittal J.) that even the Arbitration Act would not apply to such an agreement for it is not an agreement to refer the dispute in a suit to an arbitrator. What the arbitrator is to decide is to hear the dispute of the parties on consideration of the material produced before him, to give a final decision on the dispute. Moreover, under the Arbitration Act, after a valid arbitration agreement is arrived at, the arbitrator takes proceedings in accordance with the Arbitration Act which have to be filed in Court and against which objections can be filed by the parties, on the decision of which either the award is made the Rule of the Court or the award is set aside, modified or again remitted to the arbitrator for certain matters. That again, is not applicable to such an agreement and the Arbitration Act will not, therefore, apply. (Para 17).

Held, (per S. S. Sandhawalia, C.J. and G. C. Mittal, J.) that a reading of section 20 of the Evidence Act 1872 along with the illustration would show that the statement envisaged thereunder which is relevant on certain matters for the decision of the suit, is treated as an admission in the suit and the court would be entitled to take the admission along with other material on record in taking a final decision of the suit but the statement made by the person in pursuance of an agreement of the parties is neither in pursuance of an agreement of the parties nor it amounts to the final decision of the suit. Section 20 of the Evidence Act does not envisage any agreement between the parties to the litigation but any one of the parties can make a statement to be bound by the statement of his nominee (who is sometimes termed as a referee) and such a statement of the nominee is treated as an admission of the party from which that party cannot resile later on. The statement of nominee by virtue of section 20 would be treated as an admission of the parties and not of the opposite party, nor would it amount to the decision of the suit. While the party, at whose instance the nominee made the statement would be bound by the statement of the nominee and cannot resile therefrom, the same would not be binding on the opposite party and the opposite party would be entitled to show that the statement of

the nominee is wholly wrong. Therefore, statement under section 20 of the Evidence Act is made neither on the agreement of the parties nor amounts to an adjustment of the suit. Thus, section 20 of the Evidence Act also has no relevance for determining as to whether a party who offers to be bound by any of the statements of the opposite party cannot resile from such an offer if the other party has agreed to make such a statement. (Para 18).

Held, (per S. S. Sandhawalia, C.J. and G. C. Mital, J.) that an offer made by one person on acceptance by the person to whom such offer is made, becomes an agreement under the Law of Contract and none of the parties can resile therefrom. However, there is an exception that if, in a given case, sufficient cause is shown to the satisfaction of the Court and the Court is satisfied, it may permit a party to resile from the same. (Paras 19 and 25).

Moni Ram vs. *Hari Chand and another,* 1955, P.L.R. 327,

Gian Chand Sharma vs. *Bansi Lal and others,* A.I.R. 1961 Punjab 31.

Joginder Singh and others vs. *Bahadur Singh and others* 1978(2) Rent Law Reporter 708.

Thakur Singh and others vs. *Inder Singh,* A.I.R. 1976, Pb. & Hy. 287 OVERRULED.

Held, (per B. S. Dhillon J.) that on first principle it appears that where an agreement is made between the parties to abide by the statement of a person, it cannot be said that it is not a valid agreement enforceable by the Court but when there are sufficient reasons for resiling from it the court may allow one of the parties to resile from the agreement. The agreement of the parties to the appointment of a referee cannot be called an adjustment of the suit within the meaning of Order 23 Rule 3 of the Code of Civil Procedure 1908, but the party making an offer cannot resile from the same except with the permission of the court if sufficient cause is shown to the satisfaction of the court for allowing the offer to be withdrawn. If on the basis of an agreement which is of a binding nature, except of course when adequate reasons are given for resiling from the same with the permission of the court a referee makes a statement, that statement becomes the basis for the decision of the suit. However, it will depend on the contents and the shape of the agreement whether the true basis of the power of the Court to decide a case in accordance with the agreement between the parties is the agreement of the parties or the principle as enshrined in section 20 of the Evidence Act. In a given case, the agreement between the parties may be true basis of the power of the Court to decide the case and

in another given case, the statement made in pursuance of the agreement between the parties may become the basis of the evidence admissible under section 20 of the Evidence Act. Whatever the case may that relates to the sphere of the decision of the suit itself but as regards the agreement made between the parties to abide by the statement of a person, the said agreement becomes complete once an offer is made by one party and the same is accepted by the other. A person who himself offered to abide by the statement of the other party or by a third person cannot subsequently be allowed to go back from the said agreement so as to suit his convenience, except of course, if there are sufficient reasons shown to the court and in that case the Court may permit him to withdraw from the offer of agreement. This principle is based on good public policy. (Paras 4, 7 and 8).

Case referred by Hon'ble Mr. Justice S. P. Goyal, on 14th September, 1978, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice I. S. Tiwana, again referred the case to a larger Bench on September, 27, 1979. The larger Bench consisting of the Hon'ble the Chief Justice S. S. Sandhawalia, Hon'ble Mr. Justice B. S. Dhillon and Hon'ble Mr. Justice G. C. Mittal finally decided the case on merits on 5th November, 1979.

Petition under Section 115 C. P. C. for revision of the Order of Shri K. C. Gupta, Sub Judge Ist Class, Hansi, dated 7th October, 1977, holding that the plaintiff had withdrawn the offer before recording the statement of defendant No. 1 in the Court, so the plaintiff is entitled to have the suit decided on merits and making it clear that the suit will continue.

G. C. Garg, Advocate, *for the Petitioner.*

H. L. Sarin, Sr. Advocate, M. L. Sarin, Advocate, & R. L. Sarin, Advocates, *for the Respondents.*

JUDGMENT

B. S. Dhillon, J.

(1) The brief facts giving rise to this case are that the land in dispute was taken on lease by the plaintiff to hold Ramlila on a yearly rent of Rs. 500. It was averred that the defendants and their Karindas wanted to dispossess the plaintiff forcibly from the suit land and thus relief by way of issuance of permanent injunction was sought. During the pendency of the suit, on September 22,

1977, Bahadur Chand, Managing Director, Jai Bajrang Kala Mandir, Hansi, Plaintiff, along with his counsel Shri I. D. Hans made a statement that if defendent No. 1 makes a statement in the Court that receipts dated October 26, 1974, and October 9, 1975, were not issued by her, the suit of the plaintiff may be dismissed and, otherwise, it be decreed. Shri D. C. Sharma, counsel for the defendants, on the same date accepted this offer and the case was adjourned to September 24, 1977, for the statement of defendant No. 1. On that date, defendant No. 1 appeared but before her statement could be recorded, the plaintiff made an application withdrawing the offer. However, the statement of defendant No. 1 was recorded, but the trial Court ultimately held that the offer having been withdrawn before the recording of the statement, the plaintiff was entitled to have the suit decided on merits. Consequently, the defendants came up in revision against this order.

(2) The revision petition came up for hearing before S. P. Goyal, J. on September 14, 1978, who referred the case to a larger Bench to resolve the conflict in the cases decided by this Court referred to in the reference order. The case was then listed for hearing before a Division Bench consisting of S. S. Sandhawalia, Chief Justice and I. S. Tiwana, J., on September 27, 1979, when their Lordships referred this case to a larger Bench, as it was argued that a Division Bench in *Thakur Singh and others* v. *Inder Singh*, (1), did not lay down the correct law. This is how this case has been placed before the Full Bench.

(3) As will be apparent from the facts of the case the important question of law which needs determination in this revision petition is whether a party who offers to be bound by the statement of any of the opposite parties, cannot resile from such an offer after the other party has agreed to make such statement unless there be sufficient cause shown to the satisfaction of the Court for allowing the offer to be withdrawn.

(4) On first principle, it appears that where an agreement is made between the parties to abide by the statement of a person, it cannot be said that it is not a valid agreement enforceable by the

(1) A.I.R. 1976 Pb. & Haryana 287.

Court except when there are sufficient reasons for resiling from it, in which case the Court may allow one of the parties to resile from the agreement.

(5) The matter is not *res integra*. As far back as in 1926, Shadi Lal C.J. of the Lahore High Court in *Ram Bhai* v. *Duni Chand* (2), held that there is nothing in sections 9, 10 and 11 of the Indian Oaths Act, 1873, which allows a party, who has agreed to the administration of an oath by his opponent, to revoke his offer after it has been accepted by the latter, but the Court has discretion to allow retraction if good grounds are shown therefor. A similar view was taken by Bhide, J. in *Allah Rakha* v. *Punnun*, (3). A Division Bench of this Court in *Manohar Lal* v. *Onkar Dass alias Omkar Dass and others*, (4), held as follows :—

> "There is no provision in the Indian Oaths Act under which a suit can be decided against a party merely because the said party has refused to take the oath which he at one stage accepted to take. It is true that the person offering to take oath cannot withdraw the offer after the same has been accepted, unless, of course, he gives adequate reasons for the same and the Court permits him to do so. The person accepting to take the oath is, however, not bound to take the oath and the suit cannot be deemed to have been adjusted merely by the statement that if he took the oath, one result will follow, and if he refused to take the oath, another result will follow."

(6) In *Kundan* v. *Kartara*, (5), a Single Bench of this Court following the Division Bench decision *in Manohar Lal's case* (supra) held that a party cannot be allowed to withdraw the offer after it has been accepted unless it gives adequate reasons and the Court permits it to do so.

(7) However, in *Moni Ram* v. *Hari Chand and another* (6), a learned Single Judge of this Court took the view that a party agreeing to the appointment of a referee and consenting to the case being

(2) A.I.R. 1926 Lahore 240(1).
(3) A.I.R. 1941 Lahore 173.
(4) 1959 P.L.R. 264.
(5) 1967 P.L.R. 651.
(6) 1955, P.L.R. 327.

decided on the statement made by the referee, is not debarred from resiling from the agreement before the referee makes the statement It was observed by the learned Judge that a compromise could not so far be completed till the terms of the offer were not complied with and if before that one of the parties wanted to resile, that was permissible in law. This view does not appear to be correct. The moment an offer is made by a party and the same is accepted by the other party, the agreement is complete. The subsequent part of making a statement or complying with the terms of the offer, is a question which will determine the merits of the controversy in issue. As far as the agreement is concerned, it is completed when the offer made by one party is accepted by the other party. I am, therefore, inclined to hold that the view taken by the learned Judge in *Moni Ram's case* (supra) is not sustainable in law. In a subsequent Single Bench judgment of this Court in *Gian Chand Sharma* v. *Bansi Lal and others,* (7), the learned Judge took the view that a party making an offer for the appointment of a referee can resile from the same before the statement is actually made by the referee. I have very carefully gone through this judgment and I find that the view expressed by the learned Judge is not sustainable in law. The agreement of the parties to the appointment of a referee cannot be called an adjustment of the suit within the meaning of Order 23, Rule 3 of the Code of Civil Procedure, but the party making an offer that it would be bound by the statement of the other party, cannot resile from the same except with the permission of the Court if sufficient cause is shown to the satisfaction of the Court for allowing the offer to be withdrawn. The view of the learned Judge in this case that such an agreement cannot be enforced in the same suit, is not tenable. If on the basis of an agreement, which in my opinion, is of binding nature, except of course, when adequate reasons are given for resiling from the same with the permission of the Court, a referee makes a statement, that statement becomes the basis for the decision of the suit. However, it will depend on the contents and the shape of the agreement whether the true basis of the power of the Court to decide a case in accordance with the agreement between the parties is the agreement of the parties or the principle as enshrined in section 20 of the Evidence Act. In a given case, the agreement between the parties

(7) A.I.R. 1961 Pb. 31.

may be the true basis of the power of the Court to decide the case and in another given case the statement made in pursuance of the agreement between the parties may become the basis of evidence admissible under section 20 of the Evidence Act. Whatever the case may be, that relates to the sphere of the decision of the suit itself but as regards the agreement made between the parties to abide by the statement of a person, the said agreement becomes complete once an offer is made by one party and the same is accepted by the other party. A person who himself offered to abide by the statement of the other party or by a third person, cannot subsequently be allowed to go back from the said agreement so as to suit his convenience, except, of course, if there are sufficient reasons shown to the Court and in that case the Court may permit him to withdraw from the offer of agreement. This principle is based on good public policy. I am, therefore, of the opinion that the two Single Bench decisions of this Court in *Moni Ram's case* (supra) and *Gian Chand Sharma's* (supra), have not correctly laid down the law on the subject.

(8) It may also be observed that the Full Bench decisions of the Allahabad High Court in *Saheb Ram* v. *Ram Newaz and others,* (8) *Munshi Singh and another* v. *Ewaz Singh and others,* (9), the decision of the Madras High Court in *S. E. Makudem Mohammad* v. *T. V. Mahommad Sheik Abdul and another,* (10) and so also the decision of the Orissa High Court in *Gudla Venkatrartnamma and others* v. *Sindhiri Satyanarayana and others* (11), have taken the same view as I am inclined to take in this case. The observations made by their Lordships of the Allahabad High Court in *Saheb Ram's case* (supra) that the true basis of the power of the Court to decide a case in accordance with the agreement between the parties is neither section 20 of the Evidence Act, nor Order 23, Rule 3 of the Code of Civil Procedure, nor the Arbitration Act but the agreement of the parties themselves have been made in different context. The said statement of law may be correct on the facts and circumstances of a case but there may be cases where keeping in view the terms and the nature of the agreement, the statement

(8) A.I.R. 1952 All 882.
(9) A.I.R. 1952 All 890.
(10) A.I.R. 1936 Madras 856.
(11) A.I.R. 1957 Orissa 226.

so made by the person on whose statement the parties agreed to be bound by, may be a piece of evidence as postulated under section 20 of the Evidence Act. In the present case I am not concerned as to the ultimate decision as regards the merits of the case but I am concerned with a limited question of law whether a party who offers to be bound by the statement of any of the opposite parties or by the statement of a third person, is permitted to resile from such an offer if the other party has accepted the same unless there is sufficient cause shown to the satisfaction of the Court for allowing the offer to be withdrawn. It would thus be seen that on first principle and also in view of the authoritative pronouncements, reference to which has already been made in the earlier part of the judgment, I am inclined to hold that where a party offers to be bound by the statement of any of the opposite parties or by the statement of a third person, it cannot resile from such an offer if the other party has agreed to make such a statement unless there is sufficient cause shown to the satisfaction of the Court for allowing the offer to be withdrawn.

(9) Before parting with the judgment, a reference may be made to a decision of this Court in *Thakur Singh's case* (*supra*) which finds mention in the reference order made by the Division Bench. It may be observed that this decision has no bearing on the question which is proposed to be decided in this case.

(10) In that case, a Division Bench of this Court held that a compromise containing the offer of special oath could be covered by the provisions of section 20 of the Evidence Act if the statement is made strictly in accordance therewith. The said decision nowhere examines the question whether a person, who makes the offer, can, as a matter of right, withdraw the offer after his offer to be bound down by the statement of the the other party, is accepted.

For the reasons recorded above, I accept the revision petition; set aside the order of the trial Judge and direct him to proceed further with the disposal of the suit in accordance with law. However, there will be no order as to costs.

Gokal Chand Mital, J.

(11) I have persued the judgment prepared by B. S. Dhillon, J. Although I agree that the order of the trial Judge deserves to be

set aside, but do not agree with all the reasons recorded by my learned brother and, therefore, wish to record my own reasons.

(12) The substantial question of law which arises for consideration in this case is that if a party makes an offer that he would be bound by the statement of the opposite party for the dismissal or decree of the suit and if that offer is accepted by the opposite party, whether the party who made the offer can resile therefrom before the statement of the opposite party is recorded.

(13) The respondent-plaintiff brought a suit for permanent injunction against the petitioners-defendants on the ground that the plaintiff was a lessee of the land in dispute on a yearly rent of Rs. 500 and the defendants and their *karindas* wanted to dispossess the plaintiff forcibly. During the pendency of the suit, the Managing Director of the plaintiff along with its counsel made a statement that if defendant No. 1 makes a statement in Court that receipts dated 26th October, 1974, and 9th October, 1975, were not issued by her, the suit of the plaintiff may be dismissed, otherwise it be decreed. This offer was accepted by counsel for the defendants on the same day and the case was adjourned to 24th September, 1977, for recording the statement of defendant No. 1. On 24th September, 1977, defendant No. 1 appeared to make a statement but before the statement could be recorded, the plaintiff made an application to the Court withdrawing the offer to be bound by the statement of defendant No. 1. Before the application could be decided, the statement of defendant No. 1 was recorded, but ultimately by order dated 7th October, 1977, the trial Court allowed the application of the plaintiff on the sole ground that the plaintiff had withdrawn the offer before the statement was made by defendant No. 1 and ordered the suit to proceed on merits. On coming to the aforesaid conclusion that such an offer could be withdrawn before the statement is actually made, the trial Judge followed a Single Bench decision of this Court in *Moni Ram* vs. *Hari Chand and another*, (6 supra). The defendants came to this Court in the present revision and S. C. Mital, J. admitted the revision on the basis of *Allah Rakha* vs. *Punnun*, (3 supra) and a Full Bench judgment of the Allahabad High Court in *Saheb Ram* vs. *Ram Newaz and others* (8 supra). When the revision came up for final disposal before S. P. Goyal, J., he noticed the conflict in various decisions of this Court and, therefore, referred the matter to be decided by a larger Bench. When the matter came up before the

Division Bench, the Chief Justice and I. S. Tiwana, J. doubted the correctness of the Division Bench decision of this Court in *Thakur Singh and others* vs. *Inder Singh* (1 supra), in view of the Full Bench judgment of Allahabad High Court in *Saheb Ram's case* (supra), and, therefore, referred the matter to be decided by a still larger Bench and that is how, the case has been laid before us.

(14)Under the law of contract, an offer made by a party to another merely remains an offer and can be withdrawn at any time before it is accepted by the other party. But it is settled principle of law that once offer is accepted, an agreement comes into being and the party making the offer cannot resile from the offer and inspite of resiling from the same, would remain bound by the contract which has come into being by the acceptance of the offer by the other party.

(15) The question which arises in the present case is, whether the offer made by the plaintiff and accepted by the defendants would be an agreement under the law of contract or can have some different connotation. The other possibilities of considering such an agreement can be under the Oaths Act, 1873, but that Act has been repealed in 1969 and, therefore, this point can no longer be under consideration. However, even under the Oaths Act, 1873, the Full Bench of the Allahabad High Court in *Sehab Ram's case* (supra) *and Munshi Singh and another* vs. *Ewaz Singh and others,* (9 supra) had held that on an agreement to abide by the statement of a person, whether on oath or without it, none of the parties can resile from the same. Under the 1969—Oaths Act which repealed the 1873-Act, there are no corresponding provisions like sections 9 to 12 of the earlier Act and, therefore, no point for consideration arises under the 1969—Oaths Act.

(16) The other possibilities are to treat such an agreement, under Order 23 Rule 3, Code of Civil Procedure, Arbitration Act or under Section 20 of the Evidence Act. After considering the entire matter, I do not find that such an agreement would fall under Order 23 Rule 3 of the Code of Civil Procedure, because by agreement alone there is no adjustment of the suit, wholly or in part. What Order 23 Rule 3 envisages is the agreement of the parties from a reading of which the dispute in the suit can be decided between the parties, wholly or in part. But the agreement in the present case by itself, cannot decide

the controversy in the suit, either wholly or in part, because in pursuance of the agreement, defendant No. 1 has to make a statement which statement alone would be considered by the Court to see whether the suit can be decided wholly or in part on the basis of that Statement. Therefore, Order 23, Rule 3 of the Code of Civil Procedure would not apply in this case.

(17) Even the Arbitration Act would not apply, as the agreement in hand is not an agreement to refer the dispute in the suit to an arbitrator. What the arbitrator has to do is to hear the dispute of the parties and, on consideration of the material produced before him, to give a final decision on the dispute. Moreover, under the Arbitration Act, after a valid arbitration agreement is arrived at, the arbitrator takes proceedings in accordance with the Arbitration Act which have to be filed in Court and against which objections can be filed by the parties, on the decision of which either the award is made the Rule of the Court or the award is set aside, modified or again remitted to the arbitrator for certain matters. That, again, is not applicable to the present agreement and, therefore, the Arbitration Act will not apply.

(18) Then we are left with Section 20 of the Evidence Act, which deserves to be reproduced along with its illustration:—

> "20. Admissions by persons expressly referred to by party to suit——Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.
>
> Illustration.
>
> The question is, whether a horse sold by A to B is sound. A says to B—"Go and ask C, C knows all about it." C's statement is an admission."

A reading of the aforesaid provision along with the illustration would show that the statement envisaged thereunder, which is relevant on certain matters for the decision of the suit, is treated as an admission in the suit and the Court would be entitled to take the admission along with other material on record in taking a final decision of the suit. But the statement made by the person is neither in pursuance of an agreement of the parties nor it amounts

to the final decision of the suit. Section 20 of the Evidence Act does not envisage any agreement between the parties to the litigation, but any one of the parties can make a statement to be bound by the statement of his nominee (who is sometimes termed as a referee) and such a statement of the nominee is treated as an admission of the party from which that party cannot resile later on. But the statement of nominee by virtue of section 20 would be treated as an admission of the party and not of the opposite party, nor would amount to the decision of the suit. While the party, at whose instance the nominee made the statement, would be bound by the statement of the nominee and cannot resile therefrom, the same would not be binding on the opposite party and the opposite party would be entitled to show that the statement of the nominee is wholly wrong. Therefore, statement under section 20 of the Evidence Act is made neither on the agreement of the parties nor amounts to an adjustment of the suit. Thus, section 20 of the Evidence Act also has no relevance for the purpose of decision of the point which we are called upon to answer.

(19) We are now left with the Contract Act. As already observed, an offer made by one person on acceptance by the person to whom such offer is made, becomes an agreement under the Law of Contract and none of the parties can resile therefrom. On this principle, we hold that the statement made by the plaintiff, that the suit be decided on the basis of statement made by defendant No. 1, on acceptance by the defendants, became a binding contract between the parties and none of the parties could resile therefrom at any time after the contract was complete. Therefore, the plaintiff, on the facts of this case, could not withdraw the offer even before the statement of defendant No. 1 was recorded. However, it will be entirely different if defendant No. 1 refuses to make a statement. Since the agreement is to abide by the statement of defendant No. 1 and if defendant No. 1 refuses to make the statement, there will be no option with the Court except to proceed with the suit in accordance with law. The above view finds full support from the two Full Bench judgments of the Allahabad High Court in *Saheb Ram's case* (supra) and *Munshi Singh and another's case* (supra); and I entirely agree with the reasons recorded therein.

(20) The aforesaid view further finds support from a decision of Chief Justice Shadi Lal in *Ram Bhai* vs. Duni Chand, (12), *Allah*

(12) A.I.R. 1926 Lahore 240.

Rakha's case (supra) by Bhide, J.; *Manohar Lal* vs. *Onkar Dass, alias Omkar Dass and others,* (4 supra), by Gosain and Harbans Singh, JJ., and *Kundan* vs. *Kartara,* (5 supra) by A. N. Grover, J. All the aforesaid decisions are approved.

(21) In *Moni Ram* vs. *Hari Chand and another,* (6 supra), by J. L. Kapur, J.; *Gian Chand Sharma* vs. *Bansi Lal and others,* (13), by P. C. Pandit, J.; and *Joginder Singh and others* vs. *Bahadur Singh and others,* (14), by S. P. Goyal, J., a contrary view has been taken and, therefore, they are over-ruled.

(22) This brings me to the consideration of the Division Bench judgment of this Court in *Thakur Singh's case* (supra). After going through the facts of the aforesaid case, I am of the opinion that the facts of that case and the present case are somewhat similar. Therein also, while the suit was pending, on behalf of the plaintiff, a statement was made that the suit of the plaintiff may be dismissed if Thakur Singh defendant takes oath in the Gurdwara that the suit land is not of the plaintiff and that he has not made any agreement of it in favour of the plaintiff. A further statement was also made that in case the defendant does not take oath, suit of the plaintiff may be decreed. The defendant accepted the offer of the plaintiff and agreed that the suit may be decided according to the offer made by the plaintiff. In pursuance of the agreement, Thakur Singh, defendant took oath in the Gurdwara and made the statement in his own favour. After the statement of Thakur Singh defendant was recorded, the plaintiff's counsel made a statement that Thakur Singh defendant had taken oath and on the basis of his statement, plaintiff's suit be dismissed and, ultimately, the suit was dismissed by the trial Court, in view of the statement of the counsel for the plaintiff coupled with the statement of Thakur Singh defendant. The plaintiff filed an appeal against the decree of the trial Court dismissing the suit on the basis of Thakur Singh's statement, which was allowed by the District Judge and the matter was remanded to the trial Court for re-decision on merits. The District Judge had allowed the appeal on the ground that the counsel for the plaintiff had no power to consent to the settlement of the case on the basis of oath being taken under section 9 of the Indian Oaths Act, 1873, nor did section 36, Code of Civil Procedure, 1882,

(13) A.I.R. 1961 Pb. 31.

(14) 1978(2) R.L.R. 708.

give him any such authority as no specific power to that effect had been given to him in the Vakalatnama executed in his favour by the plaintiff. Then the defendant came up in second appeal to this Court. The last portion of para 5 falls for our consideration, which may be reproduced here :—

> "The whole of the 1873 Act has been repealed by Section 9 of the 1969 Act. Whereas provisions corresponding to other Sections of the 1873 Act have been made in the new Act, no provisions have been made therein corresponding to Sections 9 to 12 of the old Act. The only effect of the exclusion of Sections 9 to 12 of the old Act is that if any party to any judicial proceeding offers to be bound by any special oath and the Court thinks it fit to administer such an oath to the other party consenting thereto and such oath is taken by the other party, the evidence given on such oath as against persons who offered to be bound as aforesaid would no more be conclusive proof of the matter stated in such deposition. In the instant case, it is significant to note that no special oath was prescribed. The counsel for the plaintiff in his statement did not prescribe any special oath nor any special form of oath but merely offered the defendant-appellant to take oath and make statement on the two crucial points in issue in a particular Gurdwara. He was not required to swear by the Gurdwara or by Guru Granth Sahib or in any other special manner. In these circumstances, it appears to us that the compromise arrived at between the counsel for the plaintiff on behalf of his client and the defendant-appellant would be covered by the defendant on the two crucial issues if the same is found to have been made strictly in accordance with the terms offered by him."

A reading of the aforesaid passage shows that the Bench deciding *Thakur Singh's case* (supra) proceeded on the considerations that in 1969 Oaths Act no corresponding provisions like sections 9 to 12 of the 1873 Act existed and, therefore, the statement made in the case was no more to be conclusive proof of such deposition. For the view I have already taken above, even if the 1873 Oaths Act was either not applicable in a given case or stood repealed or that there was no corresponding provision like sections 9 to 12 thereof, in the 1969 Oaths

Act, then in such a situation, the offer and acceptance of the parties to abide by the statement of a party would amount to a contract and the statement made by a party on the basis of the contract would be conclusive for the decision of the suit, and therefore, it is held that the Division Bench was in error in taking a contrary view.

(23) After coming to the conclusion that the statement would not be conclusive proof, the Bench in *Thakur Singh's case* (supra) further proceeded to examine the matter on the basis of Section 20 of the Evidence Act. No compromise or agreement can ever come within the ambit of section 20 of the Evidence Act, as already explained by me in the foregoing paragraphs and need not be discussed here again as that would amount to repetition. Howsoever the provisions of Section 20 of the Evidence Act may be stretched even while interpreting them liberally, the compromise arrived at between the parties can never fall within those provisions. The compromise on the facts of the case was a contract to abide by the statement of the defendant. What Section 20 envisages is that a statement made by the nominee of a party amounts to admission of that party and that party cannot resile from the admission and the Court can take that admission under consideration as a piece of evidence in deciding the suit. While that piece of evidence would be binding as an admission on a party at whose instance the statement was made, it will be open to the opposite party to show that the statement made by the nominee was wholly wrong or erroneous. However, if the opposite party also would like to rely on the admission, then it may be a different matter.

(24) For the reasons recorded above, the passage reproduced above from *Thakur Singh's case* (supra), does not lay down correct statement of law and is hereby over-ruled.

(25) However, there is an exception that if, in a given case, sufficient cause is shown to the satisfaction of the Court and the Court is satisfied, it may permit a party to resile from the same.

(26) In the result, it is held that there was a completed contract between the parties to abide by the statement of defendant No. 1 and since no plea of sufficient cause to resile from the same was taken by the plaintiff, except that he just wanted to resile from the same, we hold that on the facts of the case the trial Court was in error in permitting the plaintiff to resile from the contract. Accordingly, the order of the trial Court to proceed with the suit, deserves to be

set aside and the statement made by defendant No. 1 deserves to be given effect to, for the decision of the suit.

(27) For the reasons recorded above, the revision is allowed, the order of the trial Court dated 7th October, 1977, is set aside and the case is remanded to the trial Court to decide the suit in accordance with the statement made by defendant No. 1. Since there was conflict of authority in this Court, the parties are left to bear their own costs.

S. S. Sandhawalia, C.J.

(28) I have the privilege of perusing the lucid judgments recorded by my learned brothers B. S. Dhillon and G. C. Mital, JJ. I agree entirely with my learned brother G. C. Mital, J.

N.K.S.

FULL BENCH

Before P. C. Jain, Harbans Lal and M. M. Punchhi, JJ.

KRISHNA RICE MILLS,—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 1863 *of* 1979.

April 3, 1980.

Haryana Rice Procurement (Levy) Order, 1979—*Clause* 3—*Haryana General Sales Tax Act* (XX *of* 1973)—*Sections* 2(*l*) *and* 6—*Compulsory procurement of rice under the levy order—Whether a 'sale' under the Sales Tax Act—Such procurement—Whether taxable.*

Held, that compulsory sale of rice to the Government in pursuance of the Haryana Rice Procurement (Levy) Order, 1979 does not constitute a sale so as to be taxable under the provisions of the Haryana General Sales Tax Act, 1973.

(Para 10).

Note :—The Division Bench judgment reported in Food Corporation *of India and another* vs. *State of Punjab etc.* I. L. R. (1976)2 Punjab and Haryana 587 held to be good law even after the decision of the Supreme Court in *M/s Vishnu Agencies (P.) Ltd.* vs. *Commercial Tax Officer and others*, A. I. R. 1978, S. C. 449.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice, D. S. Tewatia and Hon'ble Mr. Justice M. M. Punchhi on 18*th December*, 1979, *to a larger bench for decision of an important*