

REVISIONAL CIVIL

Before Harbans Singh, J.

THE DAY LIGHT FINANCIERS (P) LTD.—Petitioner

versus

GURBAKHSI SINGH AND OTHERS,—Respondents.

Civil Revision No. 420 of 1969

December 12, 1969

Arbitration Act (X of 1940)—Sections 14(2) and 16(1)(c)—Unsigned award filed in Court—Such an award—Whether legally valid—Notice for filing an award—Whether has to be in writing—Information to the lawyers of the parties—Whether sufficient notice—Unsigned award—Whether can be remitted to the arbitrator for signatures only.

Held, that when an unsigned award is filed in Court under section 14(2) of Arbitration Act, 1940, such an award is not an award in the eyes of law within the meaning of sub-section (1) of section 14 of the Act. When such a document is filed by the arbitrator, it cannot be treated as equivalent to the filing of the award by the arbitrator. There is, therefore, no award before the Court filed by the arbitrator of which notice to the parties has to be given. (Para 4)

Held, that a notice to the parties under section 14(2) of the Act need not be in writing but it can be oral and the service of which would include constructive or informal notice. The communication of the information to the lawyers of the parties that an award has been filed is sufficient compliance with the requirements of sub-section (2) of section 14 of the Act with respect to the giving of the notice to the parties. (Para 3)

Held, that under section 16 of the Act an award can be remitted to the arbitrator only for reconsideration. Reconsideration by the arbitrator necessarily imports fresh consideration of matters already considered by him. It follows that the reconsideration can only be as to the merits of the award. When the award is remitted to the arbitrator for signing the same and then re-filing it, he considers nothing. Hence an unsigned award cannot be remitted to the arbitrator for his signatures only. (Para 5).

Petition under Section 115 of Civil Procedure Code for revision of the order of the Court of Shri Pritam Singh Pattar, District Judge, Amritsar, dated 22nd February, 1969 reversing that of Shri R. S. Gupta, Senior Sub-Judge, Amritsar, dated 31st August, 1967.

U. S. SAHNI, ADVOCATE, for the petitioner.

K. L. KAPUR, ADVOCATE, for the respondents.

JUDGMENT

HARBANS SINGH, J.—This is a revision filed against the appellate order, dated the 22nd February, 1969, of the learned District Judge, Amritsar, by which he set aside the order of the trial Court making the award of the Arbitrator the rule of the Court and remanded the case under Order 41 rule 23-A of the Code of Civil Procedure to the trial Court to decide the question in accordance with law.

(2) An application was made by the Daylight Financiers (P) Ltd., for issuance of a direction by the Court to the Arbitrator to file the award. The award was filed but no formal notice of the same was given to the party though the presence of both the respondents Nos. 2 and 4 was recorded on a number of hearings when the case was adjourned for the service of the unserved respondents. The award was actually filed on November 23, 1966. On June 19, 1967, the counsel for Ram Singh, defendant No. 2, made a statement which is as follows:—

“My client Ram Singh has not to file any objections to the award.”

However, on 24th June, 1967, defendant No. 2, filed certain objections against the award. A preliminary issue was framed—

“Have the objections against the award been filed within limitation, and if not, to what effect?”

It was held that the objections having been filed after more than 30 days were not taken into consideration and the award was made the rule of Court and a decree for Rs. 4,035, was granted against the two defendants including defendant No. 2 (Ram Singh). Ram Singh, defendant No. 2, alone filed an appeal under section 39 of the Indian Arbitration Act before the learned District Judge, Amritsar. Relying on *Hari Chand v. Lachhman Das and others* (1), it was held by the lower Appellate Court that the mere fact that the presence of the parties is mentioned on the date when the award was filed under section 14(2) of the Arbitration Act did not dispense with the giving of the notice. As regards the statement of the counsel, it was observed by the learned Appellate Court that it was made without getting instructions from the defendant that the award not having

(1) A.I.R. 1948 E.P. 11.

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been duly signed by the Arbitrator was a waste paper and no decision was given on the point in view of the fact that it was not decided by the trial Court. An objection, was taken on behalf of the Daylight Financiers before the learned District Judge that no appeal lay. However, the learned District Judge considered the order of the trial Court as refusal by it to set aside the award and, therefore, held that the appeal did lie. Consequently, he set aside the decree passed by the trial Court and remanded the case for decision of the objections in accordance with the law. Hence this revision by the Daylight Financiers (P) Ltd.

(3) In the grounds of revision, no ground has been taken challenging the jurisdiction of the lower appellate Court to entertain and hear the appeal. Therefore, it is not necessary to go into this point. The sole point for decision is whether in view of *Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti and others* (2), even constructive notice is not enough and whether this notice was there in the present case because (a) the party was present on the date of hearing and (b) the counsel made a statement and, therefore, must be deemed to be a notice. The proceedings on the 23rd November, 1966, are recorded as follows:—

“Respondents Nos. 2, 4 and 5 in person. Respondents 1 and 3 have not been served. Issue fresh notices on payment of fresh process-fee and depositing covers, for 6th January, 1967. Respondent No. 5, who is the Arbitrator, has filed the award.”

In *Hari Chand v. Lachhman Das and others* (1), it was held that—

“But where the order merely records the presence of the parties when the award was filed by the arbitrators but does not say that any notice of the filing of the award was given to them, no notice can be implied from this order. Nor can the notice be implied from the mere mention of the fact that the award has been filed, specially when the orders passed by the Court on subsequent date make it clear that it was only on that subsequent date that the Court thought of giving notice of the filing of the award.”

In *Nilkantha Sidramappa Nigashetti v. Kashinath Somanna Nigashetti* (2), wherein it was observed that notice need not be in writing but could be oral and that the service of the notice would include constructive or informal notice and that the communication of

(2) A.I.R. 1962 S.C. 666.

the information to the pleader of the party, that an award has been filed, is sufficient compliance with the requirements of sub-section (2) of section 14 with respect to the giving of the notice to the parties. The observations of the Supreme Court do appear to run counter to those in *Hari Chand's case* (1) (*supra*). However, I find that so far as the objection as to the award being unsigned is concerned, the same goes to the root of the matter whether there was objection or not. It was the duty of the Court to scrutinise the award and to see whether it conforms to the requirements of law. This matter has not been gone into.

(4) This case was adjourned to enable the learned counsel for the petitioner to go through the records of the case and make sure whether the objection taken is well founded or not. He has frankly conceded that the document filed by the Arbitrator does not bear his signature. The contention of the learned counsel for the respondent that sub-section (1) of section 14 of the Act requires that when the arbitrators make their award, they shall sign it and give notice in writing to the parties concerned of having made and signed the award. Sub-section (2) requires the arbitrators to file such an award when called upon and the Court shall thereupon give notice to the parties of the filing of the award. The contention of the learned counsel for the respondent is that the award not being signed by the Arbitrator is not an award in the eye of law within the meaning of sub-section (1) of section 14, and, therefore, when such a document is filed by the arbitrator, it cannot be treated as equivalent to the filing of the award by the arbitrator. There is, therefore, no award before the Court filed by the Arbitrator of which notice to the parties had to be given. In view of this situation, the trial Court had no jurisdiction to make the so-called award the rule of the Court. The document filed by the Arbitrator being nothing more than a waste paper, the Court could not treat that document as an award under sub-section (1) of section 14 and, therefore, could not under section 17 pass a judgment in terms of the award.

(5) On behalf of the counsel for the petitioner, it was suggested that the award may be remitted under section 16(1) (c) of the Act to the Arbitrator to sign the same and refile. In view of the observations of the Supreme Court in *Rikhabdass v. Ballabhdas and others* (3), this course cannot be adopted in this case. The award in that case which had been signed and filed was not on the proper stamped

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paper and had not been got registered. The High Court of Madhya Pradesh directed that the award be remitted under section 16(1) (c) for the same being rewritten on a stamped paper and being registered. Head-note containing the observations of their Lordships of the Supreme Court is to the following effect:—

“Under section 16 an award can be remitted to the arbitrators only for reconsideration. When it is remitted for re-writing it on a stamped paper, it is not remitted for reconsideration. Reconsideration by the arbitrators necessarily imports fresh consideration of matters already considered by them. It follows that the reconsideration can only be as to the merits of the award. They reconsider nothing when they re-write the award on a stamped paper.*

* * * * *

An order of the Court remitting an award to the Arbitrator for resubmission after duly stamping it and registering it cannot, therefore, be based on section 16(1)(c).”

In the present case also, if the award is remitted to the Arbitrator for signing the same and then re-filing it, there would be nothing to reconsider on merits by the Arbitrator. The observations of the Supreme Court, therefore, fully apply to this case although this is not a case where the defect is due to the award not being on stamped paper.

(6) For the reasons given above, therefore, the order of the lower appellate Court is set aside and so also the order of the trial Court and application filed for making the award the rule of the Court is dismissed on the ground that there is no award in the eye of law as none has been filed by the Arbitrator. Nothing said in this revision will in any way adversely affect the rights of either party or the arbitrator to take such further steps as may be open to them.

In the peculiar circumstances of this case, the parties will bear their own costs in this Court as well as of the Courts below.