passages from the *Union of India and others* vs. *Raj Kumar Gujral* (supra) and *Ram Gopal* vs. *The Union of India and others* (supra). he made no effort to apply them to the case in hand, the claim of privilege raised to which he rejected on the sole ground that the character rolls and confidential reports were relevant to the determination of the plaintiff's contention and "indeed constitute a piece of best evidence relied upon by him". His approach to the problem was wholly misconceived inasmuch as he failed to grasp the principle underlying section 123 of the Indian Evidence Act which makes subservient the need of the individual to the need of the State and provides a complete bar to the production of evidence if the same is derived from unpublished official records relating to "affairs of State".

12. For the reasons stated I hold that the documents of which the plaintiff seeks production at the trial contain evidence of the type just above mentioned and as the head of the department concerned has claimed privilege in respect thereof, evidence derived therefrom cannot be given. Accordingly I accept the petition, set aside the impugned order and all allow the claim of privilege made behalf of the State. There will be no order as to costs.

Announced in open Court. Inform counsel for the parties.

B. S. G.

Before D. S. Tewatia, J.

M/S FRICK INDIA LIMITED, JEEWAN VIHAR, PARLIAMENT STREET, NEW DELHI,—*Appellant.*

versus

THE EXECUTIVE ENGINEER AND ANOTHER,—*Respondents.*

F.A.O. 262 of 1972

16th July, 1974.

Arbitration Act (X of 1940)—Sections 14 and 38—Award given by an arbitrator, in possession of a party to arbitration—Such party—Whether competent to have the award made a rule of the Court without getting it filed in Court—Receipt of award by registered post from the arbitrator—Whether notice under section 14(1) of the Act.

Held, that section 14(2) of the Arbitration Act, 1940 clearly implies that even where the award or a signed copy thereof is delivered to the parties to the arbitration by the Arbitrator, they cannot file it into the Court wihout the prior authority of the Arbitrator for doing so. It cannot be assumed that the mere handing over of the award necessarily imples the authority of the Arbitrator to file the same into the Court on his behalf. Such an authority of the Arbitrator has to be specifically proved. Filing of an award by the parties to the arbitration on their own is clearly ruled out. The award can legally be filed in the Court only by the Arbitrator either *suo moto* or through any of the parties to the arbitration with his prior authority or in response to the summons of the Court when moved to do so by any of the parties to the arbitration where he is reluctant to file the same in the Court. Section 38 of the Act cannot be interpretted to mean that if any of the parties to the arbitration gets into possession of the award, either from the arbitrator himself or through the instrumentality of the Court by virtue of the provisions of this section, it acquires the right to file the same in the Court without the authority of the Arbitrator and then straightaway seek judgment and decree of the Court in terms thereof. Hence without first getting the award legally filed in the Court, it is not competent for any of the parties to the arbitration to seek to have it made rule of the Court and obtain a judgment and decree in terms thereof.

Held, that the receipt of a copy of the award by a party to the arbitration from the arbitrator through registered post is a due notice within the meaning of the provisions of secton 14(1) of the Act.

First Appeal from the order of Shri Harnam Singh, Sub-Judge 1st Class, Chandigarh, dated March 21, 1972 *dismissing the application with costs.*

D. N. Awasthy, Advocate, for the Appellant.

Anand Sarup, Advocate with Shri I. S. Balhara, Advocate, *for the Respondents.*

JUDGMENT

TEWATIA, J.—F.A.O. No. 262 and Civil Revision No. 1105 of 1972 both arise out of an application filed by M/s. Frick India, Limited, Jeevan Vihar, 3-Parliament Street, New Delhi, under section 14 read with section 17 of the Indian Arbitration Act, 1940 (hereinafter referred to as the Act) for making award, dated 29th July,

1970, the rule of Court and seeking a judgment and decree in terms thereof.

(2) The respondent described as Executive Engineer; Project Public Health Division No. 4, Chandigarh (Government) contested the abovesaid application, *inter alia*, on two grounds (i) that the said application was barred by limitation; and (ii) that it was not maintainable against the respondent.

(3) The trial Court framed the following two issues which it decided against the applicant (now petitioner in this Court):—

(1) Whether the application under section 14/17 of the Indian Arbitration Act is within time?

(2) Whether the application against the office of the respondent is maintainable?

(4) The question that primarily falls for determination is as to whether without first legally getting the award filed in the Court it is competent for any of the parties to the arbitration to seek to have it made the rule of the Court and, obtain a judgment and decree in terms thereof?

(5) In order to appreciate the question posed above a few relevant facts must be noticed.

(6) The arbitrator had announced and signed the award in question on 29th of July, 1970. He forwarded a copy thereof to the parties by registered post the next day, i.e., on 30th July, 1970. The applicant M/s. Frick India Limited, presented the application in question on 1st of October, 1971, i.e., almost after an year and two months from the date on which the copy of the award had been forwarded to it by the arbitrator. Prior to the filing of the said application, the applicant had sent 3/4 reminders to the respondent Executive Engineer from making payment of the amount envisaged in the award. Having received no reply from the respondent, the applicant's counsel, Mr. K. R. Kalia, wrote to the arbitrator to file the award in the Court, who, in turn, directed him,—*vide* his letter dated 12th August, 1971, Exhibit P. 1; to apply to the Court and it was thereafter that the application in question was presented to the Court at Chandigarh on the date noticed above.

(7) It appears that, after the reply of the respondent to the application in order to get the delay condoned filed an application under section 5 of the Limitation Act as well.

(8) The learned counsel for M/s. Frick India Limited, has prayed that F.A.O. No. 262 of 1972 may also be treated as Civil revision as no F.A.O. from the order under challenge in this Court is competent. This has not been objected to by the learned counsel for the respondent. There being string of authorities to the effect that an appeal can be treated as a revision, I order that the F.A.O. No. 262 of 1972 be treated as civil revision petition.

Before dealing with the contention advanced on behalf of either side the relevant provisions of the Arbitration Act and the Limitation Act that are to figure in the judgment be noticed. Sections 14 (1) (2), 15, 16, 17 and 38 of the Arbitration Act, 1940 are as under:—

"Section 14. (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment, of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) * * * * * *.

Section 15. The Court may by order modify or correct an award—

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Section 16. (1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit—

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

Section 17. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie

from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award.

Section 38. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them."

Article 119 of the limitation Act, 1963. is as under:—

Description of application.	*Period of limitation*	*Time from which period begins to run.*
"119. Under the Arbitration Act, 1940—		
(a) for the filing in court of an award.	Thirty days.	The date of service of the notice of the making of the award.
(b) for setting aside an award or getting an award remitted for reconsideration.	Thirty days.	The date of service of the notice of the filing of the award.

(9) Mr. Awsthy, learned counsel for the petitioner has urged that the provisions of article 119 of the Limitation Act, 1963 are not attracted to the facts of the present case so as to bar the present application it being one under section 17, Arbitration Act was merely intended to have the award in question enforced, while the said provisions of Limitation Act deal with the applications for the filing of the award in the Court in terms of section 14 of the Arbitration Act only.

(10) In support of his submission, he has placed reliance on *Jai Kishen* v. *Ram Lal Gupta*, (1) *L. Ganga Ram* v. *L. Radha Kishan*, (2) *Radha Kishen* v. *Madho Krishna*, (3) *Hazi Rahmetulla* v. *Chaudhari Vidhya Bhushan* (4).

(11) In Jai Kishen's case (supra), Abdur Rahman, J., held that section 14 of the Arbitration Act was not exhaustive and that an application by a party for the enforcement of the award could be made in the absence of a clear provision in the Act to the countrary, and treating the application in that case to be one under section 17, held that an application of the kind was not covered by the provisions of article 178 of the Limitation Act (which is equivalent to article 119 of the Limitation Act of 1963).

(12) The Allahabad High Court in *Radha Kishen's case* (supra) followed the ratio of *Jai Kishen's case* (supra), Bind Bansi Prasad, J., who delivered the judgment for the Court, made the following observations:—

> "That is an Article which applies to applications made under section 14 of the Act and not to those under section 17. The distinction between these two sections is that under section 14 the arbitrator is called upon to file the award while under section 17 the prayer is that the award may be made a rule of the Court and a judgment and decree may be pronounced accordingly. In the present case there is evidence to show that a copy of the award was given by the arbitrator to Madho Kishan. Indeed it was

(1) A.I.R. (31) 1944 Lahore 398.
(2) A.I.R. 1955 Punjab 145.
(3) A.I.R. 1952 Allahabad 856.
(4) A.I.R. 1963 Allahabad 602.

filed by Madho Kishan along with his application under section 17 read with section 28 of the Act. The case reported in *Jai Kishen* v. *Ramlal Gupta* (5), is on all fours with the present case. Article 178 is not applicable to the present case."

In *Hazi Rahmetulla's case* (supra) the Allahabad High Court endorsing its earlier view in *Radha Kishen's* case and almost following the view of Abdur Rahman, J., that to an application under section 17, the Arbitration Act provisions of Article 178 of the Limitation Act are not attracted, added that even if that application is described as an application under section 14(2) that would be a mere surplusage if in reality it is not an application under that section.

(13) In *Ganga Ram's case* (supra), the facts were that the award dated 21st January, 1943 was signed by both the parties to the arbitration and was got registered. Neither of the parties took any action thereafter on the award till 23rd of June, 1944, when Radha Kishan instituted Civil Suit No. 313 of 1944 for declaration that by the award in question he had become owner of the property subject to a charge of the defendant to the extent of Rs. 3,000. Second appeal arising out of the said suit was pending in the High Court when Radha Kishan made an application under section 17 of the Arbitration Act, 1940 seeking decree in accordance with the award. That application was resisted primarily on two grounds. (1) that no application under section 17 of the Act was competent, and (2) that the application was barred by time. The matter was eventually placed before a Division Bench consisting of Harnam Singh and Kapur, JJ. Both the learned Judges, who wrote separate opinions, found as a fact that notice as envisaged by section 14(1) of the Act was not given to the parties and that their signing of the award would not tantamount to a notice under section 14(1). Both the learned Judges then held that the application being under section 17 and not under section 14 the provisions of Article 178, Limitation Act, which cover application under section 14 of the Act only, were not attracted to the application from which the proceedings had arisen. The learned Judges besides referring to the judgment

(5) A.I.R. 1944 Lahore 398.

of Abdur Rahman, J., in *Jai Kishan's case* also took note of the following observations of Lobo, J., appearing in *John B. Paes* v. *Soomar* (6):—

> "Now it follows that a person who has obtained possession of an award through the assistance of the Court under section 38 must have the right to file it in Court. Otherwise, he will have sought the assistance of the Court to no practical purpose whatever and the Court will have made an order which affords the applicant no material relief."

(14) Mr. Anand Swaroop, learned counsel for the respondent on the contrary urged that the condition precedent for the action evisaged in sections 15, 16 and 17 of the Arbitration Act is first to legally have the award filed in the Court and if the award has not been got so filed in the Court in terms of section 14, then the other steps would not legally follow. To hold otherwise, argued the learned counsel, would tantamount to the bypassing of the provisions of section 14 of the Act and rendering them redundant. He sought to draw sustenance for his submission from the following observations of a Division Bench of Rajasthan High Court in *Seth Ramrichhpal Sirya* v. *Ajmer Traders*, (7):—

> "The necessary implication of the position stated above is that a judgment and decree on the basis of an award is not permissible without the proper filing of the award under section 14 of the Act. In fact, the idea of an application accompanied by an award containing a mere prayer for judgment and decree on the basis of an award without causing the award (to be?) filed under section 14 is foreign and repugnant to the language of section 17 because such an application does not contemplate the filing of an award and giving notice thereof to the parties. In such a case, there can be no commencement of the period of limitation for an application under Article 158 of the Limitation Act to get the award set aside or remitted. It follows that a period of limitation, therefore, would never expire with the result that on giving proper

(6) A.I.R. 1943 Sind 33.

(7) 1963 Rajasthan 87.

effect to the language of section 17 a judgment and decree can never be passed on such an application.

On a consideration of the various provisions in conjunction we have no hesitation in coming to the conclusion that an application for judgment and decree in terms of the award without causing the filing of the award is not contemplated by section 17 and is unmaintainable ..... we feel inclined to come to the conclusion that the proper procedure for the enforcement of the award is to commence appropriate proceedings for causing the award filed in Court and then to take further steps and that a mere application for enforcement of the award without getting it filed is not maintainable."

(15) After giving the matter my careful consideration, I am of the view that the application of the petitioner under section 14 read with section 17 of the Arbitration Act was both incompetent and barred by limitation.

(16) Mr. Awasthy, learned counsel for the petitioner argued that the position, where the parties had been in possession of the original award or copy thereof, be distinguished from the one where the parties to the arbitration though had been served with a notice in terms of sub-section (1) of section 14 but had not ben supplied by the arbitrator either the original award or a copy thereof in that while in the latter contingency if the arbitrator fails to cause the award to be filed in the Court on his own the parties to the arbitration shall have to seek the assistance of the Court for getting the award filed and thus attracting the provisions of Article 119 of the Limitation Act; in the former contingency; the parties need not do any such thing as they could merely move on to the next stage by applying to the Court to have hte award made a rule of the Court.

(17) I am afraid this short circuiting is not permitted by law.

(18) In *Kumbha Mawji* v. *Dominion of India (Now the Union of India)*, (8); their Lordships of the Supreme Court have held that

(8) A.I.R. 1953 S.C. 313.

section 14(2) clearly implied that even where the award or a signed copy thereof was in fact delivered to the parties by the arbitrator, they could not file it into Court without the prior authority of the umpire (or the arbitrator as the case may be) for doing so. Further where the awards were handed over by the umpire to the party, it could not be assumed that the mere handing over of the awards necessarily implied the authority of the umpire to file the same into Court on his behalf. That authority had to be specifically alleged and proved. In the absence of such authority, the filing of the awards by the party could not be the filing thereof by the umpire.

(19) The ratio of *Kumbha Mawji's case,* as I understand, rules out in clear terms the filing of the award by the parties to the arbitration on their own. The award, therefore, could legally be filed in the Court only by the arbitrator either *suo motu* or through any of the parties to the arbitration with his prior authority or in response to the summons of the Court when moved to do so by any of the parties to the arbitration in the contingency where he is reluctant to file the award in the Court. If that be so, i.e., if a party to the arbitration stands precluded even from filing the award in the Court, although it had the original award with it, without the authority of the arbitrator or umpire, then how such a party could get the award in its possession made a rule of the Court and secure a judgment and decree in terms thereof.

(20) Rule 12 of the Rules framed by the High Court under section 44 of the Arbitration Act, which is in the following terms, lends strength to the view that first the award has to be filed in the Court and it is thereafter that the authority of the Court under section 17 can be invoked to pass a judgment and decree in terms thereof:—

> "12. *Limitation for application for Judgment on Award.*—An application for judgment in terms of an award shall not be made until after the expiration of 30 days from the date of service of the notice of filing the award."

(21) Now coming to the consideration of the Division Bench decision of Lahore High Court, suffice it to mention that in that case notice envisaged under section 14(1) of the Arbitration Act had not been served on the parties to the arbitration. Article 119 of

the Limitation Act (which is equivalent to Article 178 of the old Act) envisages the date of such notice as the starting point of limitation. Since no notice was given, so the limitation did not start and the contention that the application was barred by limitation was clearly futile. So the observation that application was under section 17 to which provisions of Article 178 did not apply were clearly *obiter dicta.*

(22) It apperas that both Abdur Rahman, J., as also the Judges constituting the Division Bench in *Ganga Ram's case* (supra), were much swayed by the observations of Lobo, J., in *John B. Paes* v. *Soomar*, (6), in regard to the purpose that provisions of section 38 of the Arbitration Act are intended to serve.

(23) I am afraid the provisions of section 38 of the Arbitration Act cannot, in view of the clear pronouncement of their Lordships of the Supreme Court in *Kumbha Mawji's case* (supra), be interpreted to give sustenance to the view that if any of the parties to the arbitration gets into possession of the award, either from the arbitrator himself or through the instrumentality of the Court by virtue of the provisions of section 38 of the Arbitration Act, it acquires the right to file the same in the Court without the authority of the arbitrator and then straightaway seek a judgment and decree of the Court in terms thereof. I, therefore, find myself, with respect, unable to agree either with the view expressed by Abdur Rahman, J., or with that of the Allahabad High Court in *Radha Kishen's case* or the *obiter dicta* of Harnam Singh and Kapur, JJ., in *Ganga Ram's case* (supra).

(24) Mr. Awasthy, learned counsel for the petitioner then invited my attention to a decision of the Supreme Court in *Satish Kumar and others* v. *Surinder Kumar and others* (9), wherein their Lordships had held that an award even without being made a rule of the Court is a valuable document and not a scrap of paper. I do not understand how this observation of their Lordships advances the case of the learned counsel, if anything, it rather strengthens the view that the award even without its being made a rule of the Court is a valuable document in itself and the parties to the arbitration may

(9) A.I.R. 1970 S.C. 833.

need the same for a purpose other than the obtaining of a decree from the Court in terms thereof, and the provisions of section 38 of the Arbitration Act were intended to help such a party to secure the same from an unwilling arbitrator with the help of the Court.

(25) As for the maintainability of the application in question against the respondent. I am of the view that in fact the party imleaded was the Government though it had not been happily described. Instead of mentioning Government of India through the Executive Engineer, Project Punjab Health Division No. 4, Chandigarh, it (the applicant) had mentioned "Executive Engineer, Project Punjab Health Division No. 4, Chandigarh". That is a case of mere misdescription which the Court at any time can order to be corrected. I, therefore, hold that the application is not bad on account of non-joinder of the necessary party.

(26) Now coming to the condonation of delay, I may observe that the petitioner has been highly negligent and no case whatsoever has been made out for the condonation of delay.

(27) Before parting with the judgment yet another contention advanced somewhat half-heartedly by Mr. Awasthy be noticed. He has urged that the applicant-appellant (petitioner) did not have legal notice of the signing of the award, as envisaged under section 14(1) of the Arbitration Act and, therefore, the question of application in question being barred by limitation would not arise.

(28) That this never had been the case of the appellant (petitioner) at any stage, not even in the grounds of petition in this Court apart. it would be pertinent to observe that the applicant-appellant (petitioner) was sent a copy of the award through registered post and it cannot be imagined that this had not been done by way of notice to the parties to the arbitration in terms of section 14(1). In any case, the receipt of the copy of the award by the applicant from the arbitrator through registered post is, in my view, a due notice in the eye of law in terms of section 14(1). I, therefore, repel the contention advanced by the learned counsel as absolutely baseless.

(29) For the reasons stated, both the F.A.O., and the Civil Revision are dismissed with costs.

B.S.G.