APPELLATE CIVIL

Before Bishan Narain and Grover, JJ.

MESSRS LACHHMAN DAS-SAT PAL AND OTHERS,—*Appellants.*

versus

PARMESHRI DASS AND OTHERS,—*Respondents.*

First Appeal from Order No. 165 of 1953.

1958

Feb., 12th

Indian Arbitration Act (X of 1940)—Section 14 and 17—Foreign awards—Whether can be enforced in India—Application under Indian Arbitration Act or by suit—The Arbitration (Protocol and Convention) Act (VI of 1937)—Whether applies to awards obtained in Pakistan by Indian nationals—Such award—Whether can be enforced in India under this Act.

Held, that a foreign award cannot be enforced in India by means of an application under the Indian Arbitration Act when the provisions of the Arbitration (Protocol and Convention) Act, 1937, do not apply to it. There is no doubt that a valid award creates an obligation on the part of one party towards the other to do what the award orders or directs him to do. The party in whose favour the award is given can bring an action on the award without going back to the original cause of action and this principle is equally applicable to foreign awards. So a foreign award to which the 1937 Act does not apply, can be enforced in India only by a separate suit.

Held also, that the Arbitration (Protocol and Convention) Act (VI of 1937 is not applicable to awards obtained in Pakistan by Indian nationals. This Act was enacted to implement the Protocol on Arbitration clauses and the Geneva Convention to which India was one of the signatories. In view of the fact that Pakistan at that time formed part of India, it may be said that Pakistan is also a signatory to this Protocol and Convention *qua* other countries who are signatories to this Convention. It cannot, however, be said *qua* each other that India and Pakistan are signatories to this Protocol and Convention to make it possible for a Pakistani award to be considered to be an award within the 1937 Act in India.

Parmeshri Das Mehra and Son v. *Firm Ram Chand Om Parkash and another* (1), *Norske Atlas Insurance Company Limited* v. *London General Insurance, Limited* (2), *Ophenhemi and Co.* v. *Mahmad Haneef* (3), and *John Batt and Co.* v. *Kanoolal and Co.* (4), referred to

Case referred by the Hon'ble Mr. Justice J. L. Kapur on 23rd March, 1955, to the Division Bench for the decision of an important legal question involved in this case.

First Appeal from the order of Shri Radha Kishan Baweja, Subordinate Judge Ist Class, Amritsar dated 30th October, 1953 dismissing the objections and granting a decree in terms of the award for Rs. 9,203-1-6 with interest at 3½% from 16th June 1948 together with arbitrator's fee Rs. 250 (Pakistan rupees) in favour of the applicant against the respondents No. 1 and 2 with costs of the proceedings.

D. D. KHANNA AND N. N. GOSWAMI, for appellants.

F. C. MITAL AND BHAGIRATH DAS, for Respondents.

JUDGMENT

Bishan Narain, J.

BISHAN NARAIN, J.—This first appeal from order is directed against the order of Subordinate Judge, 1st Class, Amritsar, refusing to set aside the award made by Shri Gurgess on 27th May, 1952, whereby it was held that the respondent firm was entitled to realize Rs. 9,203-1-6 with interest, etc., from the appellant firm. The appeal originally came up for hearing before Kapur, J., who referred the same to a Division Bench on

(1) A.I.R. 1952 Punjab 34 F.B.
(2) (1927) (43) T.L.R. 541
(3) A.I.R. 1922 P.C. 120
(4) A.I.R. 1926 Cal. 938

the ground that it involved important questions. The appeal has been fixed before us for decision.

The facts leading to this appeal are these. The Firm Parmeshri Das Mehra and Sons (now respondents) and the Firm Lachhman Das-Sat Pal (appellants) carry on business at Amritsar. On 2nd December, 1946, the appellant firm agreed to purchase ten bales of American cloth from the respondent firm on certain terms. The contract included an arbitration agreement reading:—

> "Any dispute or claim of whatsoever nature relating to or arising out of this contract shall be referred to arbitration of two European Merchants engaged in the piece-goods trade at Karachi, one to be appointed by each party and in accordance with the provisions of the Indian Arbitration Act No. X of 1940."

The respondents informed the appellant-firm in April, 1947, that the goods had been shipped and on the 12th of July, 1947 sent the delivery order with a bill for Rs. 26,897-4-0 as price of the goods. The purchasers refused to take delivery of the goods alleging that they were shipped late and were not in accordance with the terms of the contract as regards quality and quantity. Thus disputes arose between the parties. The sellers appointed Shri F. Godberd, a merchant of Karachi, to act as their arbitrator and called upon the purchasers also to appoint their arbitrator. The purchasers failed to do so and Shri F. Godberd was appointed the sole arbitrator. Thereupon on 20th January, 1948, the appellant-firm made an application under section 33 of the Arbitration Act in the Amritsar Court challenging the validity and enforceability of the arbitration agreement

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on various grounds. This contention prevailed in the trial Court but this Court rejected it and dismissed the petition (*Parmeshri Das Mehra and Son* v. *Firm Ram Chand Om Prakash and another*) (1). It appears that by the time the Full Bench decision was given Shri F. Godberd left Karachi and the respondent-firm, therefore, took fresh proceedings for appointment of the arbitrators. They appointed Shri N. C. Burgess this time and informed the appellants by letter, dated 21st February, 1952. The appellants did not nominate their arbitrator and the respondent-firm appointed Shri Burgess by a document executed on 24th March, 1952, as the sole arbitrator to decide the dispute. The sole arbitrator held arbitration proceedings in Karachi and gave various notices to the appellants for appearance on various dates. The appellants, however, did not appear before him, nor did they file any reply to the respondents' claim nor produced any evidence before the arbitrator. The arbitrator on 27th May, 1952, made the award mentioned above in favour of the respondent-firm in Karachi and signed it there. On 25th September, 1952, Mehra and Sons (respondents) applied under sections 14 and 17 of the Indian Arbitration Act to get a decree passed in accordance with the terms of the award. The appellants filed objections to this application alleging (1) that the Amristar Courts had no jurisdiction to entertain the application, (2) that the arbitration agreement is void on various grounds mentioned in the objections, (3) that the sole arbitrator was not properly appointed and lastly (4) that, in any case, the arbitrator was guilty of misconduct and the award was also otherwise invalid. In reply to these objections the respondent-firm *inter alia* pleaded that the objections were barred by time and that they

(1) A.I.R. 1952 Punj. 34 F.B.

were also barred by the principle of *res judicata*. The trial Court held the objections to be within time and not barred by the principles of *res judicata*. The trial Court, however, dismissed the objections of the appellant-firm on merits and refused to set aside the award. Hence this appeal.

The learned counsel argued the appeal on merits at great length and then submitted that the award in question was a foreign award and could not be made a rule of the Court under Indian Arbitration Act. The learned counsel for the respondents conceded before us that the appellant firm had raised this objection to the award within limitation although the learned Subordinate Judge has not discussed the matter in this form in his judgment. This objection was also raised in the grounds of appeal filed in this Court. As this objection involved a question of jurisdiction, we allowed the appellants to raise the point and adjourned the case, so that the respondents may not be taken by surprise.

The arbitration agreement does not specify the place where arbitration proceedings are to take place. As by this agreement two European arbitrators engaged in the piece-goods trade at Karachi were to be appointed, it would be a fair inference that the parties intended the arbitration proceedings to take place there. The European merchants of Karachi in 1946 were not likely to travel to Amritsar to settle the dispute there under the arbitration agreement. It is well settled that it is open to parties to agree that any dispute arising between them shall be submitted to an arbitration at any place and in any particular country in any part of the world provided the dispute does not relate to matters affecting status of any of the parties. When the arbitration agreement now under consideration was agreed

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upon, Karachi as well as Amritsar were parts of India. Both parties carried on their business at Amritsar and it appears that they had no objection to the arbitration proceedings taking place at Karachi probably because the goods were to land there. In August, 1947, there was partition of this country. It was extremely difficult for the Hindu residents of Amritsar at that time to go to Karachi. Karachi ceased to be part of India and came under the sovereignty of Pakistan, while Amritsar remained part of India. The arbitration agreement, however, on that ground did not cease to remain effective,—*vide Parmeshri Das Mehra and Sons* v. *Firm Ram Chand Om Prakash and another* (1). In pursuance of this arbitration agreement the sole arbitrator (assuming that he was validly appointed) took arbitration proceedings in Karachi although it was open to him to have taken these proceedings in Amritsar He, however, did not choose to come to Amritsar. The arbitrator then gave his award at Karachi and signed it there. In these circumstances, it must be held that the award in question is a foreign award and it is sought to be enforced within the territories which form part of India.

The question, therefore, arises whether this foreign award can be enforced in our country by an application under the Indian Arbitration Act or by following some other procedure. The Indian Arbitration Act is completely silent on this matter. Foreign awards are dealt with in the Arbitration (Protocol and Convention) Act, Act VI of 1937. Under this Act foreign awards can be enforced by filing them in Indian Courts, and section 7 lays down conditions under which they can or cannot be enforced. This Act, however, has no application to the present case. This Act was enacted

(1) A.I.R. 1952 Punjab 34 (F.B.)

to implement the Protocol on Arbitration Clauses and the Geneva Convention to which India was one of the signatories. It is not the respondents' case that Pakistan as such is a signatory to this Protocol or Convention. In view of the fact that Pakistan at that time formed part of India, it may be said that Pakistan is also a signatory to this Protocal and Convention *qua* other countries who are signatories to this Convention. It cannot be said *qua* each other that India and Pakistan are signatories to this Protocol and Convention to make it possible for a Pakistani award to be considered to be an award within the 1937 Act in India. I, however, need not discuss this matter at great length as admittedly this award in the present case was not filed in the Amritsar Court under the 1937 Act, and, therefore, the provisions of this Act are of no assistance in deciding the present appeal and must be ignored.

In the present case the award has been filed in the Amritsar Court under sections 14 and 17 of the Indian Arbitration Act, 1940, in view of the appellants' previous application under section 33 of the Act on the ground that only Amritsar Court by virtue of section 31(4) has jurisdiction to receive this award. Undoubtedly, this procedure was suggested by Weston, C. J., in the Full Bench case when the learned Judge was discussing whether the arbitration agreement had or had not become void on account of partition of the country. These passing observations, however, have no binding force on the parties, nor has such an effect been suggested by the learned counsel for the respondents. It has been argued on behalf of the respondents that the award can be filed in Amritsar Courts as part of the cause of action accrued there inasmuch as the contract for supply of goods and the arbitration agreement were agreed upon in

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Amritsar. To my mind these provisions, namely, sections 14 and 31(4) of the Arbitration Act, 1940, and section 20, Civil Procedure Code, have no application to foreign awards.

As I have already said, there is no statutory provision indicating how foreign awards are to be enforced in this country besides the 1937 Act which I have held has no application to the present case. In the absence of any statutory provision we must fall back upon general law. There can be no doubt that a valid award creates an obligation on the part of one party towards the other to do what the award orders and directs him to do. The party in whose favour the award is given can bring an action on the award without going back to the original cause of action, and this principle is equally applicable to foreign awards,—*vide Norske Atlas Insurance Company Limited* v. *London General Insurance Company, Limited* (1). This principle is recognised in Dicey's conflict of Laws wherein it is stated that if an award duly pronounced in a foreign country fulfils the conditions as to validity affecting foreign judgments, then such an award should be allowed to be enforced by an action,—*vide* Comments on Rule 95. The Privy Council in *Ophenhemi and Company* v. *Mahmad Haneef* (2), has held that a suit filed in Madras on the basis of an award obtained in England is in accordance wih law. It was also observed in this decision that the Indian Courts could not set aside an English award on the ground of irregularity. Following this decision it was held in *John Batt and Co.* v. *Kanoolal and Co.* (3), that an award obtained in England and made in accordance with English Law could be enforced by a suit in India and that such an award could

(1) (1927) 43 T.L.R. 541
(2) A.I.R. 1922 P.C. 120
(3) A.I.R. 1926 Cal. 938

not be set aside on any ground of misconduct or irregularity. The learned counsel for the respondent-firm was unable to bring any decision to our notice where a party had successfully enforced or even tried to enforce a foreign award by means of an application under the Indian Arbitration Act. I am, therefore, of the opinion that a foreign award cannot be enforced in this country by an application under the Indian Arbitration Act, 1940, when the provisions of the 1937 Act do not apply to it. I may point out that in the present case the Karachi award was never got made a rule of the Court in accordance with the provisions of the Arbitration Act in force in Pakistan and it is rather difficult to see how such an award could be enforced in India when it could not be enforced in Pakistan itself. It is, however, unnecessary to pursue this matter any further, as it is clear that the present award can be enforced in India only as a foreign award by a separate suit and this course has not been adopted in the present case. That being so, the trial Court had no jurisdiction to take this foreign award on the file and then after hearing objections proceed to make it a rule of the Court.

In this view of the matter, it is not necessary to discuss the other points raised by the appellants before us.

The result is that this appeal succeeds. It is accordingly accepted. The appellants' objections to the award are accepted on the grounds discussed above, and the respondents' application under sections 14 and 17 is dismissed. In the circumstances I leave the parties to bear their own costs throughout.

GROVER, J.—I agree. Grover, J.

K.S.K.