

## APPELLATE CIVIL

Before Harnam Singh, J.

THE FIRST NATIONAL BANK, LTD.,—Appellant.

v.

BERI BROTHERS AND OTHERS,—Respondents.

First Appeal from Order No. 8 of 1955

1956

Jan., 9th

Arbitrator—Judicial mis-conduct—Accepting fees from one party without reference to the other party, whether amounts to judicial misconduct—Indian Arbitration Act (X of 1940)—Sections 14(2) and 38.

Held, that the conduct of the arbitrator in accepting the fees from one party without reference to the other before he gave the award amounted to judicial misconduct and the award had been rightly set aside.

First Appeal from the order of Shri Raj Inder Singh, Senior Sub-Judge, Ludhiana, dated the 15th November, 1954, dismissing the application of the appellant.

BALRAJ TULI, for Appellant.

TEK CHAND and N. L. WADEHRA, for Respondents.

## JUDGMENT

Harnam Singh, J. HARNAM SINGH, J. By agreement, Exhibit A. 4, made on the 21st day of May, 1953, the First National Bank Limited, Ambala Cantonment, hereinafter called the Bank, Messrs. Bery Brothers, Hosiery Manufacturers and Suppliers of Ludhiana, Shri Parshant Rai and Shri Tulsi Ram referred the dispute between them to the arbitration of Diwan Ram Kishan Khosla, Advocate, Ludhiana. That agreement provided *inter alia* that expenses of the arbitration such as stamp for award and its filing charges and other expenses

including the arbitrator's fee shall be borne by the Bank and Messrs. Bery Brothers. In the agreement of reference neither the amount of fee of the arbitrator nor the amount to be paid by each party was fixed.

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On the 7th of December, 1953 the arbitrator gave the award. In para. 11 of the award the arbitrator said—

“Bank has spent Rs. 220 towards the stamp, registration and other expenses of the award and paid Rs. 500 as my fee. According to the arbitration agreement, the expenses of the arbitration are to be borne by the Bank and Messrs. Bery Brothers. Since the Bank has incurred all the expenses itself, half the expenses, i.e., Rs. 360 will be paid by Bery Brothers to the Bank. In case the said Bery Brothers do not pay the amount, the Bank will be entitled to add this amount to the decretal amount and realise the same in the manner stated above.”

On the 30th of December, 1953, the Bank applied under section 14 of the Indian Arbitration Act, 1940, hereinafter called the Act, that the arbitrator may be ordered to file in Court the award or a signed copy thereof together with all depositions and documents which may have been taken and proved before him. In the proceedings that were taken on the application of the Bank under section 14 of the Act respondents filed objections under section 30 of the Act. On the objections of the respondents a number of issues arose but in these proceedings we are concerned with issue No. 5 reading—

“Is the award liable to be set aside for the reasons given in the objections, and

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if so, to what extent and against whom?

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Finding that the arbitrator was guilty of judicial misconduct in accepting rupees 500, on account of his fee, from the Bank before he gave the award the Court has set aside the award leaving the parties to bear their own costs.

In these proceedings the question that arises for decision is whether the arbitrator by accepting rupees 500, on account of his fee, from the Bank without reference to Messrs. Bery Brothers was guilty of judicial misconduct.

In giving evidence the arbitrator stated in examination-in-chief—

“I had told that I will charge Rs. 500 as my fee. My fee was never fixed at Rs. 50, half to be paid by Basant Ram and half by the Bank. \* \* \* \* \* I have not shown any favour to the Bank on account of its paying me Rs. 500 as fee.”

In cross examination the arbitrator stated—

“It was probably in October, 1953 that the agreement was handed over to me, that I had told the parties that I would not accept less than Rs. 500 as fee. I think that no one objected to that. I did not ask the parties to add a term about my fee at Rs. 500 to the agreement”

From the agreement, Exhibit A/4, it is plain that the parties to the agreement signed that agreement on different dates. Shri Kulwant Rai, guardian of Parshant Rai and Shri Tulsi Ram signed the agreement on

the 21st of May, 1953, while the Bank and Messrs. Bery Brothers and *Shri Rajinder Kumar* signed the agreement on the 9th of October, 1953.

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*Shri Basant Ram R. W. 5* gave evidence that the fee of the arbitrator was fixed at rupees 50.

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In giving evidence *Diwan Ram Kishan Khosla* maintained that the fee was paid to him after he had given the award. That position is hardly tenable, for in para 11 of the award the recovery of fee from the Bank is specifically mentioned. Indeed, in the closing part of the cross examination *Diwan Ram Kishan Khosla* stated that his fee was paid to him before the award was given by him though he could not give the date on which the fee was paid.

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On the facts summarised above the Court has found that *Diwan Ram Kishan Khosla* was guilty of misconduct vitiating the award.

In English Reports Volume 94, Kings Bench, the judgment given in *Shepherd and Brand* (1), is stated in these words at page 620—

“*Shepherd and Brand*.

How far an award shall be set aside or not by reason of the arbitrators receiving money for making their award.

On rule to show cause why an award should not be set aside, several exceptions were taken to it, but the Court overruled them all, excepting one, which was that before making the award the arbitrators insisted upon three guineas apiece to be paid them by each of the

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parties for their trouble and expenses. The defendant refused doing it on his part; upon which the plaintiff paid the whole money. The Court said that they thought it might be something dangerous to suffer one side only to give money to arbitrators; accordingly for that reason the rule was made absolute."

In the Act section 14 (2) and section 38 prescribe remedies for the recovery of fees by the arbitrator.

Section 14 (2) provides *inter alia* that the arbitrator, at the request of any party or if so directed by the Court, and upon payment of the fee in respect of the arbitration and award shall cause the award or copy of it to be filed.

Section 38 lays down that if in any case an arbitrator refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in that behalf, order that the arbitrator 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 by way of fees such sum as the Court may consider reasonable.

From the scheme of the Act it appears that the Act provides for two remedies and two remedies only for the recovery by the arbitrator of his fee.

In the present case neither the amount of fee of the arbitrator nor the amount to be paid by each party was fixed by the agreement, Exhibit A. 4. No resolution of the Board of Directors

agreeing to the payment of rupees 500 to the arbitrator was placed on the record. On these facts I find that it was not proper for the arbitrator to realise rupees 500 from the bank before he gave the award.

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In *Akshoy Kumar Nandi versus S. C. Dass and Co.* (1), an identical point arose for decision. In deciding the point Costello J. said at page 365—

“\* \* \* \*, in my judgment, the principles underlying the decision in 2 Barnard 463 still hold good and it is imperative that arbitrators should always scrupulously avoid any course of action which even remotely bears the complexion of their having put themselves into a position where it might be said against them that they had received a pecuniary inducement which might have had some effect on their determination of the matters submitted to their adjudication.”

In 2 Barnard 463 the judgment given in *Shepherd and Brand* (2) is reported.

For the reasons given above, I dismiss First Appeal from Order No. 8 of 1955.

Parties are left to bear their own costs in this Court.

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(1) A.I.R. 1935 Cal 359

(2) 2 Barnard 463