

Bakhshi and
another
v.
Dasaundha
Singh and
nine others
—
Kapur, J.

The question of limitation does not seem to have been raised in the Court of the District Judge and he seems to have been under an erroneous impression that the plaintiffs were claiming the same property which they had claimed as heirs of Bholi and it is for that reason that the learned Judge fell into an error. As the claim of the plaintiffs is in regard to a different piece of property which they claimed as heirs of somebody else and they were in possession within twelve years they are entitled to succeed to that portion which they inherited from their greatgrandfather.

I would, therefore, allow the appeal, set aside the decree of the appellate Court and restore that of the trial Court. As the case was not free from doubt, I leave the parties to bear their own costs throughout.

APPELLATE CIVIL

Before Harnam Singh and Kapur, JJ.

GANGA RAM,—Appellant.

versus

RADHA KISHAN,—Respondent.

First Appeal from Order No. 2 of 1952.

1954
June, 23rd

Arbitration Act (X of 1940), Section 38 and rule 10 framed under section 44 by the High Court—Rule 10 whether ultra vires—Indian Limitation Act (IX of 1908), Article 178—Whether governs applications under section 17 of the Indian Arbitration Act for the enforcement of the award—Limitation for such applications whether prescribed.

On 20th January 1943, G.R. and R.K. referred their dispute to the arbitration of G.L. by a written agreement. On 21st January, 1943, G.L. gave his award which was signed both by G.R. and R.K. and was presented for registration. R.K. paid Rs 250 to G.R. in the office of the Sub-Registrar as directed by the award. On 23rd June, 1944, R.K. instituted a suit for declaration that under the award he had become owner of the property subject to

G.R.'s charge to the extent of Rs 3,000 and on 19th January, 1947, this suit was decreed. On appeal this decision was set aside and suit dismissed and the same was upheld by the High Court in Second Appeal. During the pendency of the second appeal R.K. made an application under section 17 of the Arbitration Act for decree in terms of the award. G.R. resisted the application. The trial court made the award the rule of the Court. G.R. appealed to the High Court.

Held, (per Harnam Singh, J.) that section 38 of the Act gives right to any of the parties to the arbitration to obtain possession of the award through the assistance of the Court. Therefore the party must have the right to file the award in Court. Thus Rule 10 made under section 44 of the Act is not inconsistent with the Act and is, therefore, not *ultra vires*.

Held, that Article 178 of the Indian Limitation Act has no application to applications for the enforcement of the award made by the parties to the arbitration agreement and there being no period of Limitation prescribed for such an application the application was within time.

Held, (per Kapur, J.) that applications for the enforcement of the awards are not confined to section 14 alone but such applications are possible even outside that section, because section 14 deals with the filing of the awards by an arbitrator or an umpire and this section does not cover an application made by a party for the enforcement of the award. Thus when an award is to be filed by an arbitrator at the instance of the party or on the direction of the Court, section 14(2) will be applicable; and when an award is sought to be enforced by a party, section 14 (2) is not applicable and that this section is not exhaustive and the Act does contemplate applications outside section 14 (2).

John B. Paes v. Soomar (1), *Jai Kishan v. Ram Lal Gupta* (2), *Radha Kishen v. Madho Krishan and another* (3), *M. Gulamali Abdulhussain & Co. v. Vishwambharlal Ruyya* (4), relied upon.

(1) A.I.R. 1943 Sind 33.
(2) A.I.R. 1944 Lah. 398.
(3) A.I.R. 1952 All. 855.
(4) A.I.R. 1949 Bom. 158.

First Appeal from the order of Shri K. S. Gambhir, Sub-Judge, 1st Class, Amritsar, dated the 3rd October, 1951, making the award the rule of the Court and directing the respondent to pay the costs to the applicant.

Petition under Section 17 of Act 10 of 1940 (The Indian Arbitration Act).

N. L. SALOOJA, for Appellant.

D. R. MANCHANDA, for Respondent.

JUDGMENT

Harnam Singh,
J.

HARNAM SINGH, J. In order to appreciate the points that arise for decision in First Appeal from Order No. 2 of 1952, the facts of the case may be set out in some detail.

On the 20th of January, 1943, Ganga Ram, appellant and Radha Kishan, respondent, referred the dispute between them to the arbitration of *Shri Girdhari Lal* by agreement, Exhibit P. 1. On the following day *Shri Girdhari Lal* made the award, Exhibit P. 2, which was signed by both parties and presented for registration. In the office of the Sub-Registrar, Radha Kishan paid rupees 250 to Ganga Ram in accordance with the conditions of the award, Exhibit P. 2. No further action seems to have been taken by the parties till the 23rd of June, 1944, when Radha Kishan instituted Civil Suit No. 313 of 1944 for declaration that by the award, Exhibit P. 2, he had become owner of the property subject to a charge of the defendant to the extent of Rs. 3,000. That suit was decreed by the Sub-Judge on the 18th of January, 1947. On appeal from the decree passed in Civil Suit No. 313 of 1944, the Senior Sub-Judge dismissed the suit leaving the parties to bear their own costs. In Regular Second Appeal No. 122 of 1948, the decision given by the Senior Sub-Judge was upheld on the 30th of May 1951.

During the pendency of Regular Second Appeal No. 122 of 1948, Radha Kishan made application under section 17 of the Indian Arbitration Act, 1940, hereinafter referred to as the Act, for decree in accordance with the award, Exhibit P. 2. In resisting that application Ganga Ram pleaded *inter alia*—

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- (1) that no application under section 17 of the Act was competent;
- (2) that the application was barred by time;
- (3) that the application was barred by section 11 of the Code of Civil Procedure; and
- (4) that the agreement, Exhibit P. 1, was against public policy and unenforceable.

On the pleadings of the parties the Court fixed the following issues—

- (1) Whether the application for filing the award as framed is incompetent ?
- (2) Whether the agreement of reference is void and illegal on the basis of the objections taken by the respondent in the written statement ?
- (3) Whether the award, Exhibit P. 2, is unenforceable in view of the grounds mentioned in the written statement ?
- (4) How does the decision of the appellate Court, Exhibit P. 3, affect the present suit, the previous proceedings having taken place between the parties to this litigation ?
- (5) Whether the application in question is time-barred ?
- (6) Relief.
- (7) Whether the objections against the award filed by the respondent were time-barred ; if so, how does it affect the present petition ?

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On issues Nos. (1) and (5) the Court has found the application under section 17 of the Act to be competent and within time. On issues Nos. (2) and (3) the Court has found the agreement of reference, Exhibit P. 1, to be legal and the award, Exhibit P. 2, to be enforceable. In deciding the case the Court has found that the judgment, Exhibit P. 3, does not in any way affect the application under section 17 of the Act and that the objections to the validity of the award were within time. In the result, the Sub-Judge has made the award the rule of the Court ordering Ganga Ram, respondent, to pay the costs of the proceedings.

From the order passed by the Sub-Judge Ganga Ram has appealed under section 39(i)(vi) of the Act.

In the memorandum of appeal it is said that in case it is held that from the order passed by the Sub-Judge an appeal is not competent the memorandum of appeal may be treated as a petition for revision. In these proceedings it is common ground that the order under appeal is an order refusing to set aside the award falling within section 39(i)(vi) of the Act.

On the 10th of December, 1953, First Appeal from Order No. 2 of 1952, was placed before me for disposal, when counsel for the parties suggested that inasmuch as from a judgment that might be given by one Judge of the Court in F.A.O. No. 2 of 1952, Letters Patent Appeal would be permitted as a matter of right the case should be put up before a Division Bench of the Court to avoid delay in the final disposal of the matter. Identical questions arose for decision in F.A.O. Nos. 33 and 38 of 1953.

In these proceedings the correctness of the findings given by the Court of first instance on issues Nos. (2), (3) and (7) cannot be seriously challenged. Neither particulars of undue influence and fraud were given in the written statement nor was evidence given to support the plea of undue influence and fraud. Ganga Ram accepted the award, Exhibit P. 2, on the 21st of January, 1943 and pursuant to that award Ganga Ram was paid Rs. 250 on the last-mentioned date. In these circumstances, I confirm the order under appeal so far as that order deals with issues Nos. (2), (3), (4) and (7).

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In arguments it was said that the Act does not empower a party to the arbitration to file the award, Rule 10 made under section 44 of the Act being *ultra vires*, and that the application was, in any case, barred by time.

In referring the case to a Division Bench of the Court I indicated the questions specified hereunder to be the questions that arose in the case:—

- (1) Whether Rules framed by the High Court under section 44 of the Act are inconsistent with the provisions of the Act ?
- (2) Whether Article 178 of the Indian Limitation Act, 1908, provides periods of limitation for applications made by parties to the reference ?

In order to decide the question of the competency of the application reference may be made to Rule 10 of the Rules made by the High Court under section 44 of the Act.

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Rule 10 made by the High Court under section 44 of the Act proceeds:—

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“10. *Filing of award*—(a) The arbitrator or umpire or any of the parties to the arbitration may cause the award or a signed copy thereof to be filed in Court in the manner prescribed in Rule No. 3.

(b) When the award is filed by the arbitrator or umpire, he shall, together with the award, send to the Court any depositions and documents which have been taken and proved before him, and the opinion pronounced by the Court on the special case submitted by him, if any, in accordance with section 14 of the Act, by forwarding the same under a sealed cover addressed to the Court. He shall also send together with the award a copy of the notice given to the parties concerned and affidavit of service of such notice and of attestation of his signature on the award.

(c) When the award is filed by any of the parties to the arbitration under clause (a), the party may move the Court for directing the arbitrator to produce in Court such of the documents as were produced before him together with the record of the arbitration.”

Plainly, Rule 10(a) read with Rule 10(c) contemplates that in fit cases parties to the arbitration may file the award in Court.

But it is said that Rule 10 made by the High Court within section 44 of the Act is *ultra vires*.

Section 44 of the Act provides—

“44. The High Court may make rules consistent with this Act as to—

(a) the filing of awards and all proceedings consequent thereon or incidental thereto.

(b) * * * * *

(c) * * * * *

(d) * * * * *

(e) generally, all proceedings in Court under this Act.”

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From a perusal of section 38 of the Act it is plain that a party to the arbitration agreement has a right to obtain possession of the award through the assistance of the Court under that section. Plainly, a person who has obtained possession of the award through the assistance of the Court under section 38 must have the right to file it in Court for 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. In this connection *John B. Paes v. Soomar*, (1), may be seen.

In *Jai Kishan v. Ram Lal Gupta*, (2), Abdur Rahman, J., found that section 14 of the Indian 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 contrary.

In *Radha Kishan v. Madho Kishan and another*, (2), Madho Kishan, who was one of the parties to the agreement of reference, made an application under section 17 for judgment in accordance with the conditions of the award. In

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

(2) A.I.R. 1944 Lah. 398.

(3) A.I.R. 1952 All. 856.

Ganga Ram those proceedings the Civil Judge pronounced
 v. judgment in accordance with the award granting
 Radha Madho Kishan decree for Rs. 8,018-8-0. In appeal
 Kishan the objection raised was that the application
 made by Madho Kishan was barred by Article
 Harnam Singh, 178 of the Limitation Act. In dealing with the
 J. matter Bind Basni Prasad, J. (Sankar Saran, J.,
 concurring) said:—

“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 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. Ram Lal Gupta*, (1), is on all fours with the present case. Article 178 is not applicable to the present case.”

Finding as I do, that section 38 of the Act gives right to any of the parties to the arbitration to obtain possession of the award through the assistance of the Court, I have no doubt that party must have the right to file the award in

(1) A.I.R. 1944 Lah. 398.

Court. That being the position of matters, Rule 10 made under section 44 of the Act is not inconsistent with the provisions of the Act.

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Mr. Nand Lal *Salooja* basing himself upon Article 178 of the Indian Limitation Act, 1908, urges that the application by Radha Kishan was barred by time.

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Articles 158 and 178, Indian Limitation Act, 1908, provide periods of limitation for applications under the Act.

Article 158 provides limitation for an application under the Act to set aside an award or to get an award remitted for reconsideration. That Article does not govern an application for the filing in Court of an award.

Article 178 of the Indian Limitation Act, 1908, provides:—

<p>“178. Under the Arbitration Act, 1940, for the filing in Court of an award.</p>	<p>Ninety days.</p>	<p>The date of service of the notice of the making of an award.</p>
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Section 14(1) of the Act provides *inter alia* that when the arbitrators have made their award they shall sign it and give *notice in writing to the parties of the making of the award.*

Section 14(2) of the Act provides *inter alia* that the arbitrator shall at the request of any party to the arbitration agreement or if so directed by the Court cause the award to be filed in Court.

From an examination of Article 178 of the Indian Limitation Act, 1908, it is plain that that Article governs cases falling within section 14 (1) of the Act where *notice in writing of the making*

Ganga Ram of the award is to be given. In the present case
 v. notice in writing to the parties of the making of the
 Radha award was not given. That the parties signed the
 Kishan award does not bring the case within section 14(1)
 of the Act.
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In a case falling within section 14 (2) of the Act the arbitrator is called upon to file the award while in a case falling within rule 10 the award may be filed by any of the parties to the arbitration in the manner prescribed in Rule No. 3.

In *Radha Kishen v. Madho Kishan and another*, (1), Bind Basni Prasad, J., (Sankar Saran, J., concurring) found that Article 178 of the Indian Limitation Act does not govern period of limitation for an application for decree in accordance with the award when the party to the award files the award in Court with that application.

From the preamble to the Indian Limitation Act, 1908, it is clear that the Act does not provide periods of limitation for all applications. That being so, the present application may be an application for which no period of limitation is prescribed. If it be so, then it is for others than the Court to remedy the defect.

In *Sha Mulchand and Company, Limited, v. Jawahar Mills, Limited*, (2) the question that came up for consideration was the period of limitation for applications under section 38 of the Indian Companies Act, 1913. In delivering the judgment of their Lordships of the Supreme Court Dass, J., said—

“ If Article 181 does not apply then the only Article that can apply by analogy is Article 120 and the application is also within time.”

(1) A.I.R. 1952 All 856.

(2) (1953) S.C.R. 351

In my judgment, Article 178 of the Indian Limitation Act has no application to applications for the enforcement of the award made by the parties to the arbitration agreement and there being no period of limitation prescribed for such an application, the application made by Radha Kishan must be regarded to be within time.

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For the foregoing reasons, First Appeal from Order No. 2 of 1952 fails and is dismissed.

No orders as to costs in appeal.

KAPUR, J. This is an appeal brought by the original respondent Ganga Ram against an order passed by a learned Subordinate Judge of Amritsar passing a judgment in accordance with an award made by Girdhari Lal in favour of Radha Kishan, the original applicant.

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One Ram Chand died in 1941 and a curator of his property was appointed by the District Judge, and amongst his property was found a will in favour of Ganga Ram. The question of the validity of the will was agitated in the Probate Court and ultimately taken to the High Court of Lahore where a Letters Patent Bench decided in favour of Ganga Ram on the 30th May, 1944.

Ganga Ram first entered into an agreement with one Kanhaya Lal to finance the litigation arising out of the will and when that fell through he entered into a similar agreement with one Madan Lal and as that also fell through an agreement was entered into with Radha Kishan by which Radha Kishan was to finance the litigation and was to get a seven-anna share out of the property and Ganga Ram was to have the other nine-anna share.

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Some disputes arose in regard to this agreement and a reference to arbitration was made to Girdhari Lal on the 20th January, 1943, and an award given by this arbitrator on the 21st January, 1943 to which both the parties agreed. Ganga Ram signed it in Urdu stating that he had read the award. It was on the same day registered and in pursuance of the award Rs. 250 were paid to Ganga Ram in the presence of the Registrar. In order to enforce this award Radha Kishan brought a suit on the 23rd June, 1944, which was decreed, but the decree was reversed on appeal and this Court on the 30th May, 1951, upheld the decree of the appellate Court and this is reported as *Radha Kishan v. Ganga Ram*, (1).

In the meanwhile on the 2nd February, 1948, Radha Kishan filed an application under section 17 of the Arbitration Act "for making the award the rule of the Court and passing a decree in accordance therewith."

The defence was that the respondent Ganga Ram did not execute the agreement to refer "under a free will and was extortionate, unconscionable, illegal, champertous, unenforceable and against public policy"; that the arbitrator was guilty of misconduct; that there was no dispute between the parties and the reference to arbitration and the award were merely a sham transaction; that the application was barred by time. In his additional pleas it was pleaded that Radha Kishan took advantage of the position in which Ganga Ram was and paid him only Rs. 250 and got a "bogus agreement" executed and that the arbitration agreement and the award were written on the same day. Following issues were framed:—

- (1) Whether the application for filing the award as framed is incompetent?

(1) A.I.R. 1951 Punjab 121.

- (2) Whether the agreement of reference is void and illegal on account of the basis of the objections taken by the respondent in the written statement? Ganga Ram
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- (3) Whether the award, Exhibit P. 2, is unenforceable in view of the grounds mentioned in the written statement?
- (4) How does the decision of the appellate Court, Exhibit P. 3, affect the present suit, the previous proceedings having taken place between the parties to this litigation?
- (5) Whether the application in question is time barred?
- (6) Relief.

The trial Court on all the issues held that the application was not under section 14 of the Indian Arbitration Act but under section 17 and was, therefore, competent, and that it was not barred by limitation, and he rejected the pleas of the original respondent against the legality of the arbitration agreement and against the enforceability and legality of the award. Ganga Ram, the unsuccessful party, came in appeal to this Court and the case was heard *ex parte* by Khosla, J., who held that the application was under section 14 and that, therefore, Article 178 of the Indian Limitation Act was applicable and it was consequently barred by time, and he, therefore, set aside the order of the trial Court and dismissed the application of Radha Kishan. This is *Ganga Ram v. Radha Kishan*, (1).

Radha Kishan then made an application for setting aside the *ex parte* order which was set aside on the 16th June, 1953 by Khosla, J. The matter was then placed before Harnam Singh, J., who has referred this case to a Division Bench by

(1) 54 P.L.R. 389.

Ganga Ram v. Radha Kishan Kapur, J. his order, dated 10th December, 1953. He was of the opinion that amongst others the following two questions arise for decision:—

- “(1) Whether the rules framed by the High Court under section 44 of the Indian Arbitration Act, 1940, are inconsistent with the provisions of the Act? and
- (2) Whether Article 178 of the Indian Limitation Act, 1908, provides period of limitation for applications made by parties to the reference?”

In order to decide as to whether the application is competent or not reference may be made to certain sections of the Indian Arbitration Act. Section 14 deals with the signing and filing of the awards and it runs as follows:—

- “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.

* * * * *

Section 17 provides that when a Court does not see any reason to set aside the award or to remit it and the time for making an application to set aside the award has expired or the application has been refused, the Court shall proceed to pronounce judgment according to the award and a decree shall thereupon follow.

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As I read section 14 the first subsection provides that after the arbitrator has made his award he shall sign it and shall give a notice in writing to the parties of the making of the award and of the amount of fees to be paid in respect of the arbitration and award. Thus, this is a step which the arbitrator takes after he has made and signed the award, and in such a case the notice given by him has to be in writing.

Section 14(2) provides that the arbitrator either at the request of one of the parties to the arbitration agreement or on the direction given by the Court and after payment of fees, etc., shall cause the award together with other documents to be filed in Court. This is a second step which arises after notice has been given by the arbitrator to the parties of the making and signing of the award and it is then for the parties to get the award filed in Court by requesting the arbitrator to do so or by getting the Court to make such an order.

Section 17 by itself does not contemplate any application being made.

Under section 32 no suit can be brought to challenge the existence, effect or validity of an arbitration agreement or an award. Section 33 of the Act provides for contesting the existence or validity of an arbitration agreement or an award, but it makes no provision for enforcing an award.

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Under section 41 of the Arbitration Act the provisions of the Code of Civil Procedure are made applicable subject to the provisions of the Act and of the Rules made thereunder. Section 44 of the Act gives to the High Court the power to make rules in regard to certain matters—

“(a) the filing of awards and all proceedings consequent thereon or incidental thereto.”

Under section 44 rules have been made by this Court. Rule 3 deals with the mode of application and provides that applications shall be made to the proper Court and shall be made by petition and presented in the manner provided for plaints * * *. Rule 10 is a provision for filing of the awards and is as under:—

“10. Filing of award—(a) The arbitrator or umpire or any of the parties to the arbitration may cause the award or a signed copy thereof to be filed in Court in the manner prescribed in rule No. 3.

(b) When the award is filed by the arbitrator or umpire, he shall, together with the award, send to the Court any depositions and documents which have been taken and proved before him, and the opinion pronounced by the Court on the special case submitted by him, if any, in accordance with section 14 of the Act, by forwarding the same under a sealed cover addressed to the Court. He shall also send together with the award a copy of the notice given to the parties concerned and affidavit of service of such notice and of attestation of his signature on the award.

- (c) When the award is filed by any of the parties to the arbitration under clause (a), the party may move the Court for directing the arbitrator to produce in original such of the documents as were produced before him together with the record of the arbitration.”
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Rule 12 is—

- “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.”

It was contended by the appellant that the only method by which under the Indian Arbitration Act an application can be made for the enforcement of the award is section 14 and that there is no other method which is available to any party for the purpose of getting a judgment and decree in accordance with the award, and reliance was placed on *Kumbha Mawji v. Union of India*, (1). In that case two awards were made by the umpire who made over the two awards in original to each of the parties and the respondent filed an application under section 14(2) of the Indian Arbitration Act in the Subordinate Judge's Court at Gauhati in Assam praying that the umpire be directed to file both the awards in Court. On this a notice was issued to the umpire who sent a letter to the Subordinate Judge along with the copies of the awards. The respondent then filed the awards which had been handed over to him by the umpire and the matter was proceeded with in the Court of the Subordinate Judge by issue of further notices and filing of objections.

(1) 1953 S.C.R. 878.

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A week after the filing of the application by the respondent in the Gauhati Court the appellant made an application to the Calcutta High Court for filing of the awards of the umpire along with the original awards duly stamped which had been handed over to them by the umpire. In the Calcutta High Court it was held that there had been no due filing of the awards under section 14(2) of the Indian Arbitration Act, inasmuch as the awards which were claimed to have been duly filed were in fact not filed by the umpire, nor was it shown that they were filed under his authority, and when the matter was taken to the Supreme Court it was held that section 14(2) implies that when an award is in fact filed in Court by a party he should have the authority of the umpire for doing so, and where awards are handed over to a party it cannot be assumed that the mere handing over of the awards necessarily implies the authority of the umpire to file the same in Court on his behalf. That authority has to be specifically alleged and proved. It was also held that the actual filing by an arbitrator or an umpire is not essential. It is sufficient if he forwards the award to the Court by post.

Now this case dealt with applications under section 14(2) of the Indian Arbitration Act which specifically provides for the filing of the award by the arbitrator either at the instance of a party or under the directions of the Court. It is not a section which deals with the right of a party to file an application for the enforcement of an award. It cannot be said that where the award is handed over to a party he cannot make an application *dehors* section 14 and that is obvious from a perusal of the other sections of the Arbitration Act. Under section 32 a suit on an award does not lie. Under section 33 an application can be made for challenging the existence of

an arbitration agreement or an award, and under rule 10 of the Rules made by this Court which I have quoted above a party as also an arbitrator or an umpire can cause an award to be filed in Court in the manner prescribed in rule 3.

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There are decided cases which have dealt with the filing of an application by a party for the enforcement of an award.

In *John B. Paes v. Soomar* (1), three distinct ways of filing an award in Court were indicated—(1) by an arbitrator under section 14(2) at the request of a party; (2) by an arbitrator directed by the Court to cause an award to be filed in Court; and the third manner was gathered by the Court from the provisions of section 38 of the Act. Dealing with this Lobo, J., said at page 34—

“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.”

and to such an application it was held that Article 178 is not applicable.

Abdur Rahman, J., in *Jai Kishen v. Ram Lal Gupta*, (1), held that section 14 of the Indian Arbitration Act is not exhaustive and that an application by a party for enforcement of the award could be made in the absence of a clear provision in the Act to the contrary, and the learned Judge was also of the opinion that the petitioner had

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

(2) A.I.R. 1944 Lah. 398

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asked for the award to be made a rule of the Court or in other words for a judgment and a decree to be passed in accordance with the award, and that was provided in section 17 of the Arbitration Act. It is not necessary for me to say anything in regard to section 17 of the Arbitration Act. In Allahabad the opinion of the Lahore High Court was accepted by a Bench decision in *Radha Kishan v. Madho Krishna and another*, (1), and it was said—

“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.”

A review of these cases shows that applications for enforcement of the awards are not confined to section 14 alone but such applications are possible even outside that section, because section 14 deals with filing of the awards by an arbitrator or an umpire and this section does not cover an application made by a party for the enforcement of the award.

Reference may now be made to *M. Gulamali Abdulhussein & Co. v. Vishwambharlal Ruiya*, (2), and it was there held that as under section 32 all suits with regard to the existence, effect or validity of an arbitration agreement are barred and the Legislature cannot conceivably deal with all possible applications that may arise with regard to matters which are barred under section 32, the right to make an application to establish the existence or validity of an arbitration agreement, a suit with regard to which is barred under

(1) A.I.R. 1952 All. 855,

(2) A.I.R. 1949 Bom. 158

section 32, can be entertained by the Court under the Arbitration Act. Chagla, C. J., observed at page 160—

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“It is perfectly clear that when the Legislature enacted section 32 and barred all suits with regard to the existence, effect or validity of an arbitration agreement the object of the Legislature was that all questions with regard to these matters should be dealt with under the Arbitration Act and not by substantive suits.”

Thus, the sections of the Arbitration Act and the decided cases show that—

- (1) when an award is to be filed by an arbitrator at the instance of the party or on the direction of the Court, section 14 (2) will be applicable ; and
- (2) when an award is sought to be enforced by a party, section 14(2) is not applicable and that this section is not exhaustive and the Act does contemplate applications outside section 14(2).

I would, therefore, respectfully disagreeing with the view taken by Khosla, J., in *Ganga Ram v. Radha Kishan* (1), hold that the application which was made by Radha Kishan on the 2nd of February, 1948, is not barred by section 14(2) and is competent under the provisions of the Arbitration Act read with the rules made by this Court.

The question then arises as to what Article of the Indian Limitation Act would be applicable

(1) 54 P.L.R. 389

Ganga Ram. to such applications. Article 178 as amended by
 v. Act X of 1940 is as follows:—
 Radha Kishan
 ———
 Kapur, J. “178. Under the Ninty The date of ser-
 Arbitration Act, days vice of the
 1940, for the fil- notice of the
 ing in Court of making of (the
 an award. award.”

Now, this provides the period of limitation for the filing in Court of an award for which the period is ninty days from the date of notice of making the award. This Article in my opinion refers to section 14(1) because it is under that section that a notice is required to be given to the parties of the making of the award, and under that section it has to be in writing. In the present case there was no notice in writing of the making of the award. Therefore, the strict provisions of this Article cannot be applicable.

It was submitted by Mr. Salooja that in the present case there was something more than the notice of making the award in writing, because the parties signed the awards and got them registered. Whatever might have happened in this case, it is still not covered by the *terminus a quo* as given in Article 178 of the Limitation Act and in my opinion that Article is not applicable. Reliance was placed by Mr. Salooja on a Bench decision of this Court in *Hari Chand v. Lachhman Das* (1) but that was a case under section 14(2) where no notice in writing is necessary and the Court had to give notice to the parties. The same was the case in *Imam Din v. Allah Rakha* (2). It will be noticed that in applications which come under section 14(2) notice is to be given by the Court for the purpose of inviting objections, if any,

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

(2) A. I. R. 1942 Lah. 190.

and to these Article 158 of the Indian Limitation Act is applicable where the *terminus a quo* is the date of service of the notice of filing of the award. It is not necessary to deal with the other two cases relied upon by Mr. Salooja, *Saroj Bala Bose v. Jatindra Nath Bose* (1), which again deals with the notice of the filing of the award, and *Valchand Dipchand v. Gulba Laxman* (2), which are cases under Schedule II of the Code of Civil Procedure which has now been repealed and are not applicable to cases of written notice by the arbitrator. In my opinion, therefore, Article 178 of the Indian Limitation Act is not applicable.

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The question then arises which is the Article which was applicable to a case of this kind. The preamble to the Indian Arbitration Act shows that the Act applies to suits, appeals and certain applications and not to all applications. It may be that this is a case where no period of limitation is prescribed, and there is no provision in the Limitation Act, or it may be covered by the rule laid down by the Supreme Court in *Sha Mulchand & Co. Ltd. (In liquidation) v. Jawahar Mills Ltd.* (3), where it was held that Article 181 applies to applications under the Code of Civil Procedure, and if an application under the Indian Companies Act is not governed by Article 181, then Article 120 would be applicable. Although this Article applies to suits the Supreme Court has applied it to applications under the Companies Act and it would by analogy be applicable to the present case. I am, therefore, of the opinion that the application made by Radha Kishan was not barred by time when it was made.

(1) A.I.R. 1927 Cal. 619
(2) A.I.R. 1926 Bom. 312
(3) 1953 S.C.R. 351

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The next submission raised by the learned Advocate was that the arbitration agreement was as a result of undue influence and fraud and the appellant was not a free agent when he signed it. But no particulars of this undue influence or of fraud as required by Order VI, Rule 4, Civil Procedure Code, were given in the objections raised by Ganga Ram excepting that he was unable to raise money for the fighting of his litigation and had to go to Radha Kishan for the purpose. Apart from the fact that no particulars are given, I cannot find any evidence to support the plea of undue influence or fraud.

The next question raised is as to the validity of the award and its enforceability. This award was accepted and signed by the appellant after reading it. No explanation has been given as to why he accepted the award and there is nothing indicated in the evidence to show that the arbitrator was guilty of any kind of misconduct, nor is it shown as to why the award is unenforceable. I am of the opinion, therefore, that the Court below has rightly held that the appellant has not been able to show that the award is either illegal or unenforceable. The appeal of Ganga Ram is, therefore, dismissed.

APPELLATE CIVIL.

Before Khosla and Falshaw, JJ.

MR. P. S. NAGARUNJAN, SOLE PROPRIETOR, M/S BLISS
AND COTTON, SIMLA,—Defendant-Appellant

versus

MR. ROBERT HOTZ, ADMINISTRATOR OF THE ESTATE OF
LATE MR. A. B. POOK, WILLOW BANK COTTAGE, SIMLA,—
Plaintiff-Respondent.

Civil Regular First Appeal No. 243 of 1950.

1954

June, 23rd

*Indian Partnership Act (IX of 1932), Section 37—
Business of the partnership carried on by the surviving
partner after the death of the other partner—Share of
assets and profits of the deceased partner utilized therein—
Whether the representative of the deceased partner en-*