

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

LAL CHAND,—Appellant.

versus

GOPI CHAND,—Respondent.

First Appeal From Order No. 104 of 1959.

*Limitation Act (IX of 1908)—Articles 158 and 181—
Application under section 33, Arbitration Act, for setting
aside the award—Whether governed by Article 158 or 181.* May. 1963 3rd.

Held, that article 158 of the Limitation Act, 1908, governs an application for setting aside the award on the ground that it is void or is otherwise invalid. It is immaterial whether the award is a nullity or is sought to be set aside on grounds other than the one that it is a valid award. In either eventuality the only provision under which an application can be made to set aside the award being in section 33 of the Arbitration Act, 1940, the period of limitation for such an application is the one provided in article 158 of the Limitation Act. It is hard to conceive that in an application under the same provision two different periods of limitation were contemplated or are applicable.

Case law discussed.

First Appeal from the order of Shri Gurcharan Singh, Sub-Judge, 1st Class, Patiala, (A), dated the 22nd June, 1959, ordering that the objections filed by Lal Chand, under Section 30 of the Act are barred by time, and further ordering that the application under section 33 shall proceed.

PURAN CHAND, ADVOCATE, for the Appellant.

D. N. AWASTHY, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—This order will dispose of F.A.O. Mahajan, J.
No. 104 of 1959 and Civil Revision No. 453 of 1962.

The dispute is between the brothers and it is unfortunate that they have been litigating right from

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the year. 1937 and I hope that this decision will put a seal on their dispute. The earlier history of this dispute is fully set out in the decision of the Pepsu High Court in *Gopi Chand v. Lal Chand* (1), and, therefore, it is not necessary to cover that ground all over again.

The arbitration agreement is dated the 10th May, 1937. The relevant part of that agreement reads thus:—

“that according to Gopi Chand, under the partition of 1930 the income of the land in village Mohammadpur Rurke and other dues have not been paid and about which a settlement is necessary. The same basis on which the dispute with Gopi Chand will be settled will be the basis as regards other parties to the partition, that is, the mother and Harish Chand.”

For that purpose they appointed their elder brother Lala Partap Chand as the arbitrator. In the second paragraph of the agreement, it is provided “that the arbitrator will have the power to see that whatever is awarded to Gopi Chand is actually paid to him and the authority of the arbitrator will continue till the decision of the arbitrator has been enforced.” The arbitrator gave his award on the 14th November, 1937, for Rs. 3,700. With the consent of the parties, the award was modified and the amount was reduced to Rs. 1,200 on the 28th November, 1937. Lal Chand, had to pay this amount to Gopi Chand and this would, according to the arbitration agreement, furnish the basis for the determination of the rights of the mother and the other brother. Unfortunately, this award was not made a rule of the Court with the result that it remained a dead letter. In pursuance of the power given to the

(1) A.I.R. 1956 Pepsu 74.

arbitrator in the second paragraph of the agreement, Gopi Chand invoked the jurisdiction of the arbitrator to determine the matter afresh. Notice of this determination was given by the arbitrator to Lal Chand, who scrupulously kept away from the arbitration proceedings in spite of service of notice with the result that an *ex parte* award in the sum of Rs. 16,500 was made against Lal Chand on the 18th February, 1956. In this award the amount due to Gopi Chand from the year, 1930 to the year, 1947 was taken into account. On the 21st of March, 1956, Gopi Chand, applied to the District Judge Patiala, for making the award rule of the Court. Notice of this application was sent to Lal Chand. Lal Chand was served on the 5th May, 1956, and he appeared in Court on the 9th May, 1956, but filed no objections to the award. For the first time he filed objections to the award on the 7th June, 1956, and these objections were filed on the grounds given in section 30 of the Arbitration Act. The objections were rejected as time-barred and against this decision F.A.O. No. 104 of 1959 is pending in this Court and will be disposed of by this order.

On the 18th August, 1956, Lal Chand, made another application under section 33 on the ground that the arbitration agreement had exhausted itself and the award of the arbitrator on the basis of that arbitration agreement was a nullity and, therefore, it should be ignored. This application was dismissed in default on the 16th January, 1957. However, the petition was restored on his application on the 13th August, 1957, and the plea of the respondent that the application was barred by time was negatived on the ground that the period of limitation for such an application was governed by Article 181 of the Indian Limitation Act. It was further held that the award was a nullity because the arbitration agreement had exhausted itself when the previous award was given and, therefore, the arbitrator had no jurisdiction to give a second award. Against

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this decision, Civil Revision No. 453 of 1962 is before me and it will be disposed of by this order as well.

One of the questions that arise for determination in both the F.A.O. and the civil revision is common, that is the question of limitation. If the question of limitation is settled against Lal Chand, then the result would be that the first appeal will stand dismissed and the civil revision will have to be allowed. It is for this reason that I am dealing with the question of limitation in the first instance.

It is not disputed that if Article 158 of the Indian Limitation Act governs both the applications, they are barred by time. However, Mr. Puran Chand, contends that it is Article 181 which governs the application filed on the 18th August, 1956. He does not attach any importance to the application dated the 7th June, 1956, because according to the learned counsel that was merely a written statement to the notice. According to him, the only application on which the fate of the entire arbitration proceedings depends is the application of the 18th August, 1956. Therefore, the principal question to be decided is whether Article 158 or Article 181 of the Limitation Act will apply, or there is no period of limitation for such an application. This would be so if Article 181 or Article 158 do not apply. Fortunately, the matter is not *res integra*. The Bombay High Court in *A.R. Savkur v. Amritlal Kalidas* (2), has dealt with a similar matter and has held that the article applicable in such a case is 158. The Bombay view is also shared by the Calcutta High Court in *Saha & Co. v. Ishar Singh-Kripal Singh & Co.* (3). The judgment of the learned Chief Justice is very illuminating and His Lordship held that it was immaterial whether the award was a nullity or was sought to be set aside on grounds other

(2) A.I.R. 1954 Bom. 293.

(3) A.I.R. 1956 Cal. 321 (F.B.).

than the one that it was a void award. In either eventuality the only provision under which an application could be made to set aside the award being in section 33, the period of limitation for such an application is the one provided in Article 158 of the Limitation Act. It is hard to conceive that in an application under the same provision two different periods of limitation were contemplated or are applicable.

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On the other hand the learned counsel for the respondent Lal Chand placed reliance on two decisions of the Patna High Court in *Basant Lal v. Surendra Prasad* (4), and *Deep Narain Singh v. Mt. Dhaneshwari and others* (5). Both these decisions do support the contention of the learned counsel. But I am not prepared to agree with them because it appears to me that the reasoning of the learned Chief Justices of the Bombay and the Calcutta High Courts with utmost respect to the learned Judges of the Patna High Court is sound. Therefore, it must be held that the application for setting aside the award on the ground that the award is void or is otherwise invalid, is barred by time.

The other contention advanced by the learned counsel for the petitioner Gopi Chand is that the reading of the arbitration agreement clearly shows that the agreement was not exhausted by the first award. I have already quoted the relevant part of that agreement in the earlier part of this judgment and in my view the rule laid down by the House of Lords in *Chandanmull v. Donald Campbell & Co.* (6), fully applies. This decision is also reproduced in *Uttam Chand Saligram v. Mahmood Jawa Manooji* (7). This decision of the house of Lords was followed by a Bench of the Calcutta High Court in *The Baranagore Jute Factory Company Limited v. Messrs Hulaschand Rupchand* (8), and in my

(4) A.I.R. 1957 Pat. 417.

(5) A.I.R. 1960 Pat. 201.

(6) 23 Cal. W.N. 707 footnotes.

(7) 23 Cal. W.N. 704 footnotes.

(8) A.I.R. 1958 Cal. 490.

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view on the correct interpretation of the agreement, the same rule will apply to this case. I am not prepared to accept the contention of the learned counsel for Lal Chand that the arbitration agreement had exhausted itself when the first award was given. I cannot accept this argument for the simple reason that it would be contrary to the intention of the parties to the arbitration of agreement as expressed in the agreement itself. For the reasons given above, I dismiss F.A.O. 104 of 1959 and allow Civil Revision No. 453 of 1962.

In view of the fact that the parties are closely related I will not make any order as to costs.

B.R.T.

APPELLATE CRIMINAL

Before D. Falshaw, C.J. and Jindra Lal, J.

THE STATE,—Appellant.

versus

SULEKH CHAND,—Respondent.

Criminal Appeal No. 799 of 1962.

1963

 May, 8th.

Penal Code (XLV of 1860)—Ss. 361, 363 and 366—Kidnapping—Essentials of—Accused taking a girl of less than 18 years with her consent—Whether commits an offence.

Held that in section 361 which defines the offence of kidnapping from lawful guardianship all that is required is that a minor, under 16 in the case of a male or under 18 in the case of a female, must be “taken or enticed” from the keeping of the lawful guardian. “Taking” implies neither force nor misrepresentation and if a girl of less than 18 is taken away from the keeping of her lawful guardian, even at her own wish, the offence of kidnapping is established. The offence of kidnapping under section 363 consists solely of taking a minor from the keeping of her lawful guardian, and no intention needs to be established. Section 366 applies whether the offence is kidnapping or