amount now claimed by them and the one which was allowed by the learned District Judge. The appellants had, however, paid a fixed court-fee of Rs. 19/8/- under Article 17 Schedule I of the Court-fee Act; and (2) that one of the respondents, namely, Makhan Singh son of Sher Singh and two of the appellants, that is, Hari Singh, son of Mayya Singh, and Mota Singh, son of Harnam Singh, had died during the pendency of the appeal in this Court and their legal representatives had not been brought on the record within limitation, with the result that the appeal had abated *qua* them. The result of this abatement was that the appeal could not proceed against the remaining respondents as well. Reliance for this submission was placed on a decision of the Supreme Court in *State of Punjab* v. *Nathu Ram* (3). There is, however, no need to decide these preliminary objections, because the appeal is being dismissed on the merits as indicated above.

Pandit, J.

INDER DEV DUA, J.—I agree.

Dua, J.

B.R.T.

REVISIONAL CIVIL

Before R, S. Narula, J.

SHRI DEWAN CHAND,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Revision 119 of 1964

1965

August, 25th

Arbitration Act (X of 1940)—Ss. 2 and 8(2)—Agreement in writing signed by the parties to refer their disputes to a named arbitrator but the name of the arbitrator scored out before the agreement is signed—Whether valid and can be enforced under section 8.

Held, that there can be three categories of arbitration cases. First is the case, where parties may name an arbitrator in their arbitration agreement. In the second category of cases, parties may agree to refer their disputes to arbitration without naming anyone or without even defining the qualifications of the person sought to be appointed as

...R. 1962 S.C. 89.

an arbitrator. In either of these cases there would be a valid enforceable arbitration agreement. The third category of cases is where the clear intention of the parties is to appoint a named arbitrator but no agreement is reached about the name and the name of the arbitrator is left blank. Such an agreement cannot be said to be a completed agreement and cannot be enforced under section 8(2) of the Arbitration Act, 1940.

Petition under section 115 the Code of Civil Procedure for revision of the order of Shri Pritam Singh Sekhon, Senior Sub-Judge, Sangrur, dated the 13th January, 1964, allowing the application and appointing Superintending Engineer, B. & R. Patiala, as an Arbitrator and directing the parties to appear before him on 1st February, 1964.

G. P. JAIN AND B. S. GUPTA, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL WITH JAGMOHAN SETHI, ADVOCATE, for the Respondents.

JUDGMENT

Narula, J. NARULA, J.—The solitary but important question of law involved in this case is as to whether the agreement in writing signed by the parties to refer their disputes to a named arbitrator is a valid agreement, if the name of the arbitrator therein had been scored out, before the agreement is completed.

In February, 1955, an agreement was executed between Messrs Dewan Chand Jagdish Rai of the one part and the State of Punjab of the other part. In this agreement, the contractor was to supply 22 lakhs of burnt bricks. The coal for burning the bricks had to be supplied by the Government but its cost had to be adjusted against the price of the bricks payable to the contractor. The supply was to commence on March 5, 1955 and to terminate on the 4th September, 1955. The relevant part of the clause 22 in the Agreement reads as follows:—

> "If any question, difference or objection whatever shall arise between the parties to these presents or their respective representatives * * *
> * * * * * *
> including any question or difference * *
> * * * * * *

as regards whether the decision of any particular matter has been otherwise provided for and, or, whether it has been finally decided accordingly, failing either of which whether the arbitrator referred to below should decide it or whether the contract hereinbefore contained should be terminated and as regards the rights and obligations of the parties as the result of such termination, shall be referred for arbitration to the ('A A A') * * * and his decision shall be final and binding * * * * * *."

In the above quotation, the words "Chief Engineer, P.W.D., PEPSU, Patiala", had been cyclostyled at place marked "AAA", but had been scored out before the signing of the agreement. I am saying that they were scored out before the signing of the agreement because that is the admitted case of both the parties before me at this stage.

Disputes arose between the parties and the State of Punjab made a reference of the same to the Superintending Engineer, Buildings and Roads, Patiala. The Superintending Engineer asked the contractor, who is petitioner before me if he was willing to have the disputes adjudicated upon by him. The contractor declined. Thereupon, the Superintending Engineer, Buildings and Roads, Patiala, passed an order in that reference on September 25, 1958 in the following words:—

"The statement of Shri Dewan Chand has been recorded and he does not agree for arbitration to be done by the Superintending Engineer, Patiala Circle. In the arbitration clause in the agreement produced by the Executive Engineer, Sangrur, Division, the words 'Chief Engineer, P.W.D., PEPSU and S.E., Roads Circle' have been scored off; as such it does not lie in my competence to act as arbitrator in this case, since one of the parties declines to have his case arbitrated by S.E. The case is filed and the parties are directed to have legal remedies. A copy of these orders may be supplied to both the parties."

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Thereupon, the State of Punjab made an application to the Court of Senior Subordinate Judge, Sangrur, purporting to be under section 8(2) of the Arbitration Act, X of 1940, (hereinafter referred to as the Act) on 2nd August, 1962. In para 7 thereof, it was alleged that a notice had been served by the State on the Contractor under section 8(1) of the Act for giving his consent to get the case decided through the arbitration of the Superintending Engineer, Buildings and Roads Circle, Patiala; but that the contractor had not agreed to it. The prayer in the application was to appoint an arbitrator under section 8(2) of the Act to adjudicate upon the claim of the State. The application was resisted by the contractor on various grounds, which were taken up in the written statement, dated 21st October, 1963. The allegations in para 7 of the application (referred to above), except to the extent that the contractor did not agree to the arbitration of the S.E., Patiala, were expressly denied by the contractor. One of the objections to the enforcement of the alleged arbitration agreement was that the original agreement had been tampered with at many places and it had lost the value of its originality and was not liable to be acted upon. It was the last part of this objection which was seriously pressed before me by the learned counsel for the contractor. It was argued that the arbitration agreement is not entitled to be acted upon.

By judgment, dated 13th January, 1964, Shri Pritam Singh Sekhon, the learned Senior Subordinate Judge, Sangrur, rejected all the objections of the contractor and granted the application of the State and appointed the Superintending Engineer, Buildings and Roads, Patiala, as an arbitrator in the case. By paragraphs 12 and 13 of the judgment, he disposed of the abovesaid objections of the contractor. These paragraphs are in the following terms:—

> "12. It is true that the words "Chief Engineer, P.W.D., Pepsu, Patiala" seem to have been scored off. But it does not amount to mean that in the event of dispute the parties have rescinded their terms of contract which was entered in between them on February 9, 1955 and that they would not refer the matter to an arbitrator."
>
> 13. "Had it been so, a clause would have been inserted in it to the effect that in the event of

dispute or difference the matter would be referred by either of the parties to the Civil Court for fresh decision. In the absence of such a clause. I have no hesitation in remarking that the parties under the terms of the contract agreed to refer the dispute to an arbitrator. Therefore, I allow the application and appoint Superintending Engineer, B. & R., Patiala, as an Arbitrator. He will arbitrate on the dispute of the parties and shall submit his award within four months from an order of today's date."

Three points have been urged before me in this revision petition by Shri G. P. Jain, learned counsel for the contractor. It is firstly contended that the agreement which contains the alleged arbitration clause was executed at Bhatinda and it was the Bhatinda Court alone which had jurisdiction to entertain State's application under section 8(2) of the Act. It was not disputed that if a suit had to be filed on the original cause of action, the Court at Sangrur had jurisdiction to try the same. That being so, there is no force in the contention of Shri Jain and I hold that the Court at Sangrur was competent to entertain the application under section 8(2) of the Act.

The second objection of the learned counsel for the petitioner is that the Court below should have held, on the facts found by it, that there was no enforceable agreement between the parties and, in any case, the Court had no jurisdiction to pass an order under section 8(2) and to force an arbitrator on the contractor. This contention is based on three grounds. It is firstly stated that one of the conditions precedent for undertaking the remedy available under section 8(2) of the Act is the service of the notice required by sub-section (1) of that section. The service of such a notice was alleged in para 7 of the petition of the State but was expressly denied by the contractor. There is no finding by the Court below about the service of such a notice nor has any evidence on the record of this case been brought to my notice on which I could hold that such a notice had, in fact, been served by the respondent on the petitioner. This would be enough to dispose of the Revision petition. But there is a serious attack against the order of the trial Court. It is contended by Shri G. P.

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Jain that the circumstances of this case are like that of a dispute where a party to a contract writes to the other party suggesting to enter into an arbitration agreement to make a reference to a named arbitrator, the other party agrees to enter into such a contract on the condition precedent to name a person, on which both parties may agree and to whom their dispute may be referred, and then the correspondence stops at that stage. If that would not amount to a completed agreement, contends Shri Jain, there is no such agreement to refer to arbitration in this case either. There could be three categories of cases. First is the case, where parties may name an arbitrator in their arbitration agreement. In the second category of cases, parties may agree to refer their disputes to arbitration without naming any one or without even defining the qualifications of the person sought to be appointed as an arbitrator. There is no dispute that in either of these cases, there would be a valid enforceable arbitration agreement. The present case, however, falls in the third category of cases where the clear intention of the parties is to appoint a named arbitrator but no agreement is reached about the name. In this case, a name is even mentioned but the same is scored off. A name seems to have been substituted for the same in the margin but that again has been scored off. This shows that the parties were not *ad idem* on the person to whom they intended to refer their disputes, though they were clear that they were not entering into an agreement to refer their disputes to the arbitration of a person not named by them. An agreement, in which an important ingredient or clause is left blank is, to say the least, an incomplete agreement. In an agreement intending to refer a dispute to a named arbitrator, if the name itself is left blank, it is impossible to hold that the parties had entered into a completed contract in that behalf.

Shri L. D. Kaushal, the learned Deputy Advocate-General, has invited my attention to a judgment of the Calcutta High Court in *Indian Hosiery Works* v. *Bharat Woollen Mills, Limited* (1), wherein it was held as follows:—

> "An arbitration agreement, neither specifying the number of arbitrators, nor specifying the mode

(1) A.I.R. 1953 Cal. 488:

of appointment, is perfectly effective and valid and the incidents of such an agreement are that it is to take effect as an agreement for reference to a sole arbitrator, to be appointed by consent of the parties, or, where the parties do not concur in making an appointment, to be appointed by the Court, except where the operation of Rule 1 of the First Schedule is excluded."

There is no quarrel with the proposition of law laid down by the Calcutta High Court. That was a case where the intention was to refer the dispute to an arbitrator without intending to refer the same to a named arbitrator. That case falls in the first category of cases referred to by me above. Shri Jain wanted to argue that the refusal by the S.E., Patiala to adjudicate upon the matters could not justify the filing of an application by the State as the case did not fall under section 8(1) (b) of the Act on that account, the S.E., Patiala not being the arbitrator named in the arbitration agreement. I need not deal with this argument in view of the fact that the learned Deputy Advocate-General has not even claimed that his case falls under section 8(1)(b). He insists that the application under section 8(2) of the Act could be filed because the case fell under section 8(1) (a) of the Act. The argument is that the arbitration agreement should be considered to be a simple agreement without naming any arbitrator or intending to name one. Once that is the situation, section 3 of the Act read with first item of the Schedule 1 of the Act, no doubt, solves the problem and subject to the service of a notice under section 8(1) of the Act, the State could approach the Court to appoint an arbitrator under section 8, sub-section (2) of the Arbitration Act. That, however, is not the case here.

In this view of the matter, it is impossible to sustain the order in revision, because:—

(i) There was no completed, valid and binding arbitration agreement between the parties; and

(ii) No application under section 8(2) of the Act could be filed without serving a notice under section 8(1) thereof, and there is no evidence of service of any such notice.

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The revision petition is, therefore, accepted; the order of the learned Subordinate Judge is set aside and the application of the State of Punjab under section 8(2) of the Act is dismissed with costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

THE WORKMEN OF THE BHUPINDRA CEMENT WORKERS SURAJPUR—*Petitioners*

versus

THE INDUSTRIAL TRIBUNAL, PUNJAB, PATIALA AND ANOTHER,—*Respondents.*

Civil Writ No. 1520 of 1962.

1965

September, 1st

Industrial Employment (Standing Orders) Act (XX of 1946)—S. 3—Certifying Officer or Appellate Authority—Whether can allow a departure from the model standing Orders—Constitution of India (1950)—Art. 226—Finding of fact recorded by Appellate Authority—Whether can be interfered with by High Court in a writ petition.

Held, that it is open to a Certifying Officer and the Appellate Authority under the Industrial Employment (Standing Orders) Act, 1946, to allow a departure from the model standing Orders—on the ground of fairness and reasonableness of the proposed provisions and that the authorities under the Act can certify the standing orders providing for matters covered by the relevant items of the Schedule to the Act even if there is no such provision (of the kind intended to be provided), in the model standing orders provided that the departure does not go contrary to model standing order concerned.

Held, that it is not open to the High Court to interfere with the findings of fact on discretionary matters recorded by the Appellate Authority under the said Act in a petition under Article 226 of the Constitution of India.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued calling for the records of respondent No. 1 relating to the order and after a perusal of the same the order be quashed in so far as it relates to the amendment