

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

AFTAB AHMED KHAN,—Petitioner

versus

THE INSTALMENT SUPPLY, PRIVATE LTD., AND OTHERS,—
Respondents.

Civil Revision No. 439-D of 1959.

Arbitration Act (X of 1940)—Section 28—Application for extension of time for making the award—Whether, can be made by the arbitrator alone.

1961

Sept. 5th

Held, that section 28 of the Arbitration Act, 1940, does not mention as to who should move the Court to enlarge the time for making the award. Since one or both of the parties have interest in getting the time extended in different circumstances, any party to the arbitration agreement can file an application under this section and it is not the arbitrator alone who can do so.

Petition under section 115 of Act V of 1908, from the revision of the order of Shri Dalip Singh, Sub-Judge, 1st Class, Delhi, dated the 2nd September, 1959, granting the arbitrator an ex post facto extension of time for making the award till March, 27, 1958.

N. R. SURI, ADVOCATE, for the Petitioner.

PARKASH CHAND, ADVOCATE, for Respondent No. 1, only.

ORDER.

PANDIT, J.—This revision raises the question as to whether an arbitrator alone is entitled to file an application under section 28 of the Arbitration Act, 1940.

It appears that on 23rd August, 1956, by virtue of a hire-purchase agreement, Aftab Ahmad Khan purchased a bus from Messrs. Instalment Supply Private Limited. Some disputes arose between the

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parties and, on the basis of an arbitration clause in the said agreement, on 26th August, 1957, the Company referred the matter in dispute to the arbitration of Shri Sardar Bahadur, Advocate. On 10th March, 1958, the arbitrator made an application under section 28 of the Act, in the Court of Shri Pritipal Singh, Subordinate Judge, Ist Class, Delhi, for the extension of time for making the award. On 14th March, 1958, the said Court extended the time till March 29, 1958. The arbitrator gave his award on 27th March, 1958, and the same was filed in the Court of Shri Dalip Singh, Subordinate Judge, Ist Class, Delhi, on 30th October, 1958. The arbitrator also made an application under sections 14 and 28 of the Arbitration Act, stating that since he was under a *bona fide* belief that no other Court had been previously moved in this case, he filed an application in the Court of Shri Pritipal Singh, Subordinate Judge, Ist Class, for extension of time for making the award and, under these circumstances, he was under a *bona fide* mistake in approaching that Court. He, therefore, prayed that the time for making the award be extended till 27th March, 1958, and the same be made a rule of the Court. Aftab Ahmad Khan and others raised objections under sections 30, 31 and 33 of the Arbitration Act, on 12th January, 1959, that since the Company had filed an application under section 41 of the Act on 28th July, 1957, in the Court of Shri Om Parkash Garg, Subordinate Judge, Ist Class, Delhi, the predecessor of Shri Dalip Singh, for some interim relief by way of injunction and that application was disposed of by the said Judge by his order dated 29th November, 1957, that Court alone had the jurisdiction to extend the time in view of the provisions of section 31 of the Arbitration Act. It was, therefore, contended that the order dated 14th March, 1958, passed by Shri Pritipal Singh extending the time for making the award till 29th March, 1958, was without jurisdiction. On 16th March, 1959, the Company also filed an application under section 28 of the Arbitration Act in the Court of Shri Dalip Singh, Subordinate Judge, Ist Class, for extension of time till 27th March, 1958, for making the award, *inter alia*, on the ground that the arbitrator was under a *bona fide* belief that no other application had been moved in connection

with this reference to any other Court. On 3rd April, 1959, Aftab Ahmad Khan and others gave a reply to this application of the Company and pleaded that the Company had no *locus standi* to make an application for extension of time under section 28 of the Arbitration Act. On this very date, the following issue was framed—

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“Whether there is sufficient cause for extension of time for making and filing the award under section 28 of the Arbitration Act?”

After recording the evidence on this issue, the Court below (Shri Dalip Singh, Subordinate Judge, 1st Class) came to the conclusion that the arbitrator made the application dated 10th March, 1958, in the Court of Shri Pritipal Singh, Subordinate Judge, 1st Class, under the *bona fide* belief that that Court had jurisdiction to extend the time for making the award. That being so, he found that it was a fit case in which time should be extended under section 28 of the Arbitration Act. As a result, he granted the arbitrator an *ex post facto* extension of time for making the award till March 27, 1958. Against this order, the present revision has been filed by Aftab Ahmad Khan.

Learned counsel for the petitioner contended that the finding of the learned Subordinate Judge, that the arbitrator was under a *bona fide* belief that the Court of Shri Pritipal Singh, Subordinate Judge, 1st Class, had jurisdiction to extend time for making the award, was erroneous in law, because the arbitrator had not come into the witness-box and deposed to this fact. It was he alone who could have done so. The Court below, according to the learned counsel, erred in law in relying on the evidence produced by the Company for arriving at the finding that it was a fit case, in which time should be extended under section 28 of the Arbitration Act, because the Company had no jurisdiction to file such an application under this section. It was the arbitrator alone, who could move the Court for the extension of time under section 28 of the Act. He, however, conceded that, if a party could, in law, file an application under this section, then the decision of the Court below was

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correct. The sole question for decision, therefore, is whether it is only the arbitrator, and not a party, who can move the Court under section 28 of the Act.

Section 28 of the Arbitration Act is in the following terms:—

- “(1) The Court may if it thinks fit whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.
- (2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award shall be void and of no effect.”

A bare reading of this section would indicate that it does not mention as to who should move the Court to enlarge the time for making the award. Thus, a party to the arbitration agreement is not debarred from filing an application under this section. The Court may enlarge the time under this section, whether the time for making the award has expired or not and whether the award has been made or not. Supposing the award has been made in favour of a party, but the time for making the award had expired then, naturally, that party would be interested in getting the time for making the award extended. Further, if the award has not yet been made and the time for making the same had expired, then any or both of the parties to the arbitration agreement would be interested in getting the time enlarged, in order to get their disputes settled by the arbitrator. Moreover, it can well be that an arbitrator, after making the award beyond time, may not be interested in getting it validated by obtaining an extension of time from the Court. In that case, obviously, it would be the party, or both the parties, who might be interested in approaching the Court under this section. In my opinion, therefore, any party to the arbitration agreement also can file an application under this section, and it is not the arbitrator alone who can do so.

In this view of the matter, the petition fails and is hereby dismissed. In the circumstances of this case, however, I would make no order as to costs in this Court.

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UMRAO DEVI AND ANOTHER,—*Petitioners.*

versus

ISHAR SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 444-D of 1959.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13(5)—Order of the Court—Whether should specify the amount of rent to be deposited.

1961

Sept. 6th

Held, that under section 13(5) of the Delhi and Ajmer Rent Control Act, 1952, the Court in its order, after hearing the parties, must specify the rate of the monthly rent and the amount of arrears of rent, which have to be deposited by the tenant. The Court is not absolved from the duty imposed by the statute of specifying the exact amount of monthly rent to be deposited by the tenant, even in those cases where there may be no dispute between the landlord and the tenant regarding the same. It will be seen that the consequences on account of the failure of the tenant to comply with that order are very drastic and, therefore, the Legislature enjoins it on the Court to make its order specific and exact. The order of the Court, therefore, should be strictly in accordance with the requirements of this sub-section, before the penalty provided therein can be imposed on the tenant.

Petition under section 35 of Act 38 of 1952, for revision of the order of Shri Diali Ram, Senior Sub-Judge, Delhi, with special appellate powers, dated the 31st August, 1959, reversing that of Shri Krishan Lal Wason, Sub-Judge, III Class, dated the 18th day of October, 1958, ordering that