

Kidar Nath  
v.  
The State of  
Punjab  
and others  

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Tek Chand

provisions of section 476 read with 195 of the Criminal Procedure Code. He has next urged that respondent No. 2 has committed contempt of Court. He has referred me to a recent decision of the Supreme Court in *Ranjit Singh v. State of Pepsu* (1), Without expressing at this stage any opinion upon the merits of the submission, I think that this Court should adjudicate upon these questions not during the course of these proceedings but only if and when its jurisdiction is properly invoked.

The result, therefore, is that on the release of Motil Lal from police custody on 22nd August, 1959, this petition, which was made on 21st August, 1959, had become infructuous, and, therefore, I discharge the rule.

A copy of this order may be sent to the Punjab Government.

K.S.K.

#### APPELLATE CIVIL

*Before Shamsher Bahadur, J.*

THE AZAD HIND CHEMICALS LTD.,—Appellant.

*versus*

RAM LAL AND ANOTHER,—Respondents.

**First Appeal from Order No. 82 of 1957.**

1959  

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Sept., 18th

*Indian Arbitration Act (X of 1940)—Sections 9 and 40—Party absenting himself from arbitration proceedings in spite of notice—Arbitrator recording evidence ex parte—Absenting party moving the Court for setting aside the appointment of the arbitrator—Application dismissed—Arbitrator announcing the award without further notice*

*to the party—Whether guilty of misconduct—Award—Whether vitiated.*

Held, if a party persists in absenting himself from the arbitration proceedings in spite of notice, the arbitrator will be justified in directing *ex parte* evidence to be recorded. He is not bound to give notice to that party of the date for announcing the award and the arbitrator will not be guilty of judicial misconduct if he does not serve a fresh notice before the announcement of the award. The party who deliberately chooses to absent himself from the arbitration proceedings and moves the court for setting aside the appointment of the arbitrator, can always approach the arbitrator after the dismissal of his application by the Court. It is the litigant who would approach the arbitrator and no duty is cast on the arbitrator to invite a recalcitrant party to be present when it has evinced its intention to remain absent and when the entire *ex parte* evidence has already been recorded. The arbitrator is not guilty of judicial misconduct and his award is not vitiated.

*First Appeal from the order of Shri Om Nath Vohra, Sub-Judge 1st Class, Jullundur; dated 28th January, 1957, and passing a decree for Rs. 12,791/5/- on account of principal amount and Rs. 400 on account of costs in favour of Shree Ram Lal, plaintiff, and against the Azad Hind Chemical Works Ltd.; Defendant.*

S. D. BAHRI and V. C. MAHAJAN, for Appellant.

H. L. SIBAL, for Respondent.

#### JUDGMENT

SHAMSHER BAHADUR, J.—This is an appeal of the Azad Hind Chemicals, Ltd., from the order of Mr. Om Nath Vohra, Subordinate Judge, 1st Class, Jullundur, who has passed a decree for Rs. 12,791-5-0 as principal and Rs. 400 as interest against the appellant in favour of Ram Lal, in pursuance of an award which has been made a rule of the Court.

Shamsher  
Bahadur, J.

In order to appreciate the contention of Mr. Bahri, who has argued the appeal on behalf of

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the Azad Hind Chemicals, Ltd., with great force, it is necessary to set out briefly the facts and the course of the arbitration proceedings. Certain disputes arose between the Azad Hind Chemicals, Ltd., and the respondent Ram Lal, who held its managing agency. Under clause 14 of the agreement between the parties, dated 9th October, 1953, any dispute or difference is to be decided by two arbitrators, one to be named by each party to the agreement. Shri A. D. Kapur was nominated an arbitrator by the respondent, Ram Lal,—*vide* letter of the 3rd December, 1954, served on the appellant on 8th December, 1954. On 24th of December, 1954, Ram Lal informed Shri A. D. Kapur that he should proceed with the arbitration as the other side had failed to intimate the name of its nominee for arbitration. Shri A. D. Kapur intimated to the appellant by his letter of the 29th of December, 1954, about his appointment as a sole arbitrator and asked the parties to attend his office on 8th of January, 1955. The proceedings were adjourned at the request made by Azad Hind Chemicals for 25th of January, 1955. The Azad Hind Chemicals had received notice of this adjourned hearing on 17th of January, 1955. An application was sent by the appellant to the arbitrator not to proceed with the reference as his appointment as a sole arbitrator was illegal and *ultra vires*.

Under section 9 of the Indian Arbitration Act, “where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement—

(a) \* \* \* \* \*

(b) If one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for *fifteen* clear days

after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent."

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The appellant moved the Court under the proviso to clause (b) of section 9 for setting aside the appointment of Shri A.D. Kapur as sole arbitrator. This application was dismissed by the Court of Shri Ranjit Singh, Subordinate Judge, 1st Class, Jullundur, on 22nd of March, 1956. The Court had earlier directed the arbitrator not to pronounce his award.

To take the thread of the arbitration proceedings, when the appellant did not appear before the arbitrator he started *ex parte* proceedings against Azad Hind Chemicals, Ltd. On 5th of February, 1955, the evidence of Ram Lal was recorded *ex parte*. The arbitrator was moved on behalf of the appellant to stay proceedings but the arbitrator informed the counsel, Mr. Dina Nath, appearing on behalf of the appellant that unless an order from the Court was produced he would not discontinue the proceedings. An adjournment was granted up to 26th of February, 1955, to enable Mr. Dina Nath to obtain the stay order and as it was not produced before the arbitrator, *ex parte* evidence was recorded by him on 26th of February, 1955. After the order dismissing the application of the appellant under section 9(b) was passed by the Court on 22nd of March, 1956, the award was announced by the arbitrator on 28th of April, 1956,

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In the note recorded on the award by the arbitrator, it was stated that "the proceedings before me were stayed by the order of the Court in application by the Azad Hind Chemicals, Limited, against Shree Ram Lal and the application having been dismissed and the time for making the award was extended by the Court up to 30th April, 1956."

The only point which has been canvassed in this appeal is that the award which has been made a rule of the Court by the order under appeal is vitiated because of the judicial misconduct of the arbitrator. It has been urged that the arbitrator was under a bounden duty to keep the appellant informed about the proceedings before him and more especially after the order passed by the Court on 22nd of March, 1956. It is well to observe that no proceedings were taken by the arbitrator after he had been asked to refrain from making an award. By that time the *ex parte* evidence of Ram Lal had been recorded. Mr. Bahri contends that after the order of the Court dismissing the objections of the appellant, the arbitrator should have called upon the appellant to produce any evidence if it so desired. I am unable to appreciate this contention. The persistence of the appellant to absent himself from the arbitration proceedings had culminated in the order of the arbitrator wherewith he directed *ex parte* evidence of Ram Lal to be recorded. Only the award had to be pronounced after the order of the Court and in absence of any direction to this effect no intimation need have been given to the appellant before doing so. Mr. Bahri has placed reliance on the following passage in Russel on Arbitration (Sixteenth edition) at page 159 :—

*"Whether notice requisite when authority denied"*

“If a party says ‘I will not attend, because you (the arbitrator) are receiving illegal evidence, and no award which you can make will be good’, the arbitrator may go on with the reference in his absence ; and it seems that it is not necessary in such a case to give the recusant any notice of the subsequent meetings. But, though it may not always be necessary, it is certainly advisable that notice of every meeting should be given to the party who absents himself, so that he may have the opportunity of changing his mind, and of being present if he pleases.”

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So far as I can see no meeting was ever held by the arbitrator after he had concluded with the *ex parte* evidence. The pronouncement of the award did not require a meeting as the arbitrator had to proceed on the evidence recorded by him. If the appellant was so minded, he could have approached the arbitrator to give him an opportunity to produce evidence. It is not open at this stage for Mr. Bahri to contend that the arbitrator was guilty of judicial misconduct because he did not invite the Azad Hind Chemicals, Ltd., after the order of 22nd March, 1956, to participate in arbitration proceedings. The appellant had deliberately chosen to absent himself and had moved the Court to set aside the appointment of Shri A. D. Kapur, as the sole arbitrator. Having failed in this attempt the appellant should have approached the arbitrator who, it would be noted, gave his award more than a month after the dismissal of the application presented by the appellant for the arbitrator's removal. It is the litigant who should approach the Court and no duty is cast on the arbitrator to invite a recalcitrant party to be present when it has evinced its intention to remain

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absent and especially in this case when the entire *ex parte* evidence had already been recorded against the appellant.

Mr. Bahri on basis of the authority of Wadia, J., in *Pratapsingh v. Kishanprasad and Co., Ltd.* (1), contends that "an enquiry before the arbitrator should be assimilated as near as possible to proceedings in a trial in a Court of law, and therefore, a party to the arbitration must not only have notice of the time and place of the meeting, but he should be allowed reasonable opportunity of proving his case either by evidence or by arguments or both, and of being fully heard". I do not see any justification for the assertion made by the learned counsel that there has been a breach of this salutary rule by the arbitrator. Under the Code of Civil Procedure, when *ex parte* proceedings are taken against a party, it is the party aggrieved which has to approach the Court to have these set aside. I can see no warrant for the proposition that an arbitrator is under any duty to inform a party about the time of announcement of the award when it has throughout absented itself from the proceedings. The passage in Russel on Arbitration to which I have adverted earlier refers to the case of a party who has lodged a protest against the arbitrator receiving some evidence which it regards as illegal and I cannot see how the rule of prudence enunciated by the learned author can be pressed into service to support the appellant's contention. In my judgment, no case of judicial misconduct has been made out against the arbitrator and that being the only argument advanced in this appeal, I must uphold the decision of the Court below. The appeal fails and is dismissed. In the circumstances of the case, I make no order as to costs.

K.S.K.

(1) A.I.R. 1932 Bombay 68