

(1973) 09 DEL CK 0017

In the Delhi High Court

Case No : Suit Appeal No"s. 434A and 448A of 1969

Anil Narendra

APPELLANT

Vs

Virendra and Others

RESPONDENT

Date of Decision : 24-09-1973

Acts Referred:

Citation : (1974) ILR Delhi 117

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : T.N. Sethi and B.R. Malik, for the Appellant;

Judgement

Avadh Behari, J.

(1) At the conclusion of the hearing I announced my judgment. I dismissed the objections u/s 30 and 33 of the Arbitration Act filed against the award dated November 3, 1969. and made the award a rule of the court. I now proceed to give ray reasons.

(2) This is an unfortunate litigation between two brothers and their sons Mahashaya Krishan was the founder of a well known newspaper Daily Pratap. His two sons K. Narendra and Virendra continued the business of that newspaper after his death. Anil Narendra is the son of K. Narendra. Lalit Moban is the son of Virendra.

(3) The parties entered into a partnership on February 27, 1963. A deed in writing was executed. The arrangement was that K. Narendra and his son Anil Narendra will run the Delhi office of the newspaper "Daily Pratap". Virendra and his son Lalit Mohan will look after the Jullundur office. Daily Pratap is published both at Delhi and Jullundur.

(4) It appears that this partnership business could not be carried on between the brothers and their sons and the parties decided to put an end to it on August 5, 1965. Disputes regarding accounts arose and the same could not be settled

mutually. On August 31, 1968, all the four parties executed an agreement of reference and appointed Shri Som Nath Marwaha, an advocate of this court as the sole arbitrator to decide the disputes relating to the matter of accounts kept at New Delhi and Jullundur relating to the editions of the paper "The Daily Pratap" and differences regarding the termination of partnership with effect from August 5, 1965, as also regarding amounts due to each of the partner out of the profits of the partnership concern.

(5) It is recited in the arbitration agreement that Shri Som Nath Marwaha was conducting cases of K. Narendra for the last several years before the execution of the agreement. He was known to the family. The parties had trust and confidence in him- Therefore, wide powers for the settlement of the disputes were conferred on him so that the matter may not be litigated in court. Clause 3 of this agreement is material and is in these terms:

"IT is agreed that the awards whether interim or final of the arbitrator whether with or without enquiry made shall be final and binding on the parties and it will not be open to any objection. It would be in the sole discretion of the arbitrator to take evidence or not to hear any party or not, take assistance of any body in getting the accounts checked or not and to arrive at his decision in any way he likes even behind the back of all or any of the parties. It is open to him to keep the record of proceedings or not and even if any is kept it may not be made available to any court along- with the award or to the parties and may not be treated as an arbitration record and he may or may not preserve the same. It will be open to the arbitrator to extend the time for the making of the award with the consent of the parties to such time as is agreed to without applying to the court for extension of time for the making of the award."

(6) On December 17, 1968, the sole arbitrator entered upon the reference. During the course of the arbitration proceedings it became known to the arbitrator that Lalit Mohan son of Virendra had already instituted suit for rendition of accounts in the court at Jullundur against K. Narendra and his son. In that suit K. Narendra moved an application u/s 34 of the Arbitration Act which was decided against him. K. Narendra preferred an appeal to the High Court of Punjab and Haryana.

(7) On these facts coming to the knowledge of the arbitrator he asked the parties either to withdraw the suit and the appeal or to file the reference in court in the pending suit. On January 31, 1969, the suit was withdrawn by Lalit Mohan and the same was dismissed as withdrawn. Similarly, the appeal pending in the High Court of Punjab was also dismissed as withdrawn. Proceedings continued before the arbitrator. On September 30, 1968, the arbitrator extended the time for making the award upto January 31, 1970. This was done by him on a joint application made by the parties. This application, though undated is referred to in the order of September 30, 1969./ The parties in the application requested the arbitrator to extend the time for making the award. The arbitrator in terms of the joint memo signed and filed by all the four parties extended the time till January

31, 1970.

(8) On October 25, 1969, the arbitrator directed the parties to appear before him on November 2, 1969. The parties appeared on November 2, 1969. On that day efforts were made for an agreed award. It was not found possible. The parties, however, agreed that for the purposes of arbitration K. Narendra and his son Anil Narendra be treated as one party and Virendra and Lalit Mohan be treated as other. The parties requested that the arbitrator may find the amount payable by one party to another without specifying any definite share. Regarding payment of interest on the amount so found due K. Narendra suggested that it should not be awarded at the market rate but at the Bank rate if the amount is not paid within a fixed period. At the end the parties requested the arbitrator to make his award. In the proceedings dated November 2, 1969, the arbitrator said :

" IN view of the above, I shall Therefore, be making an award. Parties state that they have to say nothing further in respect of disputes referred to the arbitrator for decision."

(9) On November 3, 1969, the arbitrator made his award. It is a brief award. After reciting the disputes between the parties the arbitrator made the award in these terms :

"AWARD

WHEREAS the Claimants and Respondents have been carrying on business as Newspaper Proprietors under the name and style of Daily "PRATAP" at New Delhi and Jullundur.

WHEREAS disputes arose between the parties in the matter of Accounts kept at New Delhi and Jullundur relating to the Editions of the paper, the "DAILY PRATAP" published at the said two places as a joint concern of the parties, and also regarding the termination of Partnership with effect from 5-8-1965 effected by Shri K. Narindra and also regarding amounts due to the partner out of the profits of the Joint concern.

AND whereas by an Arbitration agreement dated 31-8-1968 the said disputes and such other which incidentally or otherwise arise in connection with the disputes where referred to me as Sole Arbitrator for determination.

Nowi, having duly considered the various disputes which arose between the claimants and the respondents do hereby make my Award as follows :

Award

1.That the respondents are liable to pay to the Claimants a sum of Rs. 2,61,000.00 (Rupees Two Lacs and Sixty one thousand) only, in full and final settlement of all the Claims and Disputes.

2.That the Awarded amount of Rs. 2,61,000.00 (Two Lacs & Sixty one thousand only) shall carry 4 per cent interest from the date of Award till date of actual

payment.

3. That the respondents are given time to pay Rs. 1,00,000.00 (Rupees one lac) to the Claimants within 3 months of the date of Award. The next Rs. 1,00,000.00 (Rs. One Lac within one year from the date of award and the balance amount within one and a half year from the date of Award.

4. That the parties are left to bear their own costs of Arbitration proceedings.

THIS Award is made this 3rd Day of November 1969 at Delhi.

Sd..00

(SOMNATH MARWAHA)

Sole-Arbitrator."

Delhi.

DATED 3-11-69.

(10) The arbitrator gave notice of the award on November 12, 1969.

(11) On November 12, 1969, Anil Narendra made an application u/s 14(2) of the Arbitration Act praying that the arbitrator may be directed to file the award together with depositions and documents taken and proved before him. This application was registered as Suit No. 434-A of 1969.

(12) On November 29, 1969, Virendra and his son Lalit Mohan moved another application u/s 17 of the Arbitration Act praying that the award be made a rule of the court. This application was registered as Suit No. 448-A of 1969. This judgment will govern both the suits.

(13) The arbitrator filed his award sometime in December, 1969. On February 13, 1970, Anil Narendra filed objections to the award under Ss. 30 & 33 of the Arbitration Act. On February 18, 1970, his father K. Narendra filed identical objections to the award.

(14) In the objections the award has been attacked on a variety of grounds. Firstly it is said that the reference to the arbitrator was illegal as a suit was pending at the time when the parties executed the agreement of reference on August 31, 1968. Second it was alleged that the agreement is couched in terms far too wide and it confers arbitrary powers on the arbitrator which are against the principles of natural justice. Third it was said that the arbitrator was guilty of misconduct as he decided the matter in the absence of the objectors. Fourth it was said that though the objectors specifically challenged the accounts, yet the arbitrator did not summon the account books from the opposite parties and did not go through the accounts. It was said that the arbitrator was labouring under a misapprehension about the accounts of Jullundur office. Lastly, it was said that the award was illegal as it was made beyond time.

(15) On the pleadings of the parties the following issues were framed on April 21, 1970 :-

1. Was there no valid agreement between the parties to refer the dispute to arbitration ? O.P.

2. Is the award liable to be set aside on the basis of the objections contained in para 5 of the objections filed on behalf of the petitioner ? O.P.

3. Are parties other than respondents I and 2 estopped from raising the objections which they have filed to the award onus on respondents 1 & 2.

(16) Issues 1 and 2 : Mr. T. N. Sethi, counsel for the objectors has attacked the award mainly on five grounds. The first and the foremost ground taken by him is that the reference itself was illegal as a suit for accounts was pending between the parties. The counsel urged that in view of the provisions of Sections 21 and 23 of the Arbitration Act no agreement of reference could validly be executed regarding the subject matter of the suit. Reliance was placed by the counsel on *Jugaldas Damodar Modi and Co. Vs. Pursottam Umedbhai and Co.*, (1) I.G.H. Ariff and others v. Bengal Silk Mills Ltd. and another, Air 1949 Cal 350, *Indramoni Mohapatra Vs. Nilamoni Moharana*, and *Kunheen Marakkar Vs. Kunhipathumma and Others*. It is not necessary to examine these authorities at length for it is well settled that a private reference to arbitration in an identical suit without the knowledge of the court and without its direction is invalid and an award resulting there from cannot be made a rule of the court unless all the parties interested in the suit consent to the award being filed into Court as a compromise or adjustment of the suit under O. Xxiii, R. 3, CPC as is provided by Section 47 of the Arbitration Act. This is the rule enunciated in these authorities. The fact of this case are, however, different and, Therefore, the principle as enunciated these authorities is not applicable.

(17) It is true that on the date of the execution of the agreement of reference a suit for accounts was pending in Jullundur court and an appeal was pending in the High Court of Punjab against the refusal to stay of the suit. These facts, however, escaped the attention of the arbitrator probably because the parties did not bring these facts to his attention. Any way the fact remains that during the pendency of the suit the parties referred the matter of the sole arbitrator on August 31, 1968. On December 19, 1968, K. Narendra wrote a letter to his counsel at Chandigarh informing him that the matter has been referred to the sole arbitrator and in view thereof the proceedings both at Jullundur and Chandigarh will have to be withdrawn. In his proceedings on December 30, 1968, the sole arbitrator asked the parties to withdraw the proceedings. It appears that on, January 31, 1969, an application was moved in Jullundur court for the withdrawal of the suit and as a result the suit was dismissed. On that very day Varindra wrote a letter to the arbitrator informing him that the suit against K. Narendra and Anil Narendra has been withdrawn and that he can now announce his award whenever he thought proper. The appeal in the High Court was

similarly withdrawn as the suit out of which the appeal had arisen had itself been dismissed, it is the admitted case of the parties that on November 3, 1969, when the award was made, no suit or appeal was pending. The question, Therefore, is: Have Sections 21 and 23 of the Arbitration Act any application to the facts such as I have found?

(18) In *Jugaldas Damodar Modi & Co.'s case* (supra) Bachawat, J. held that like other arbitration agreements a contract in writing to refer to arbitration matters in dispute in a suit, while the suit is pending, is legal. Such contract does not oust the jurisdiction of the Court and is not in restraint of legal proceedings. Section 21 of the Arbitration Act pre-supposes that such contract is legal and that its subject-matter is lawful. There is a clear distinction in cases where the parties wish to proceed under Chapter 2 or Chapter 4 of the Arbitration Act. Where the parties want to have arbitration in a pending suit they must apply for an order of reference and the court draws up an order referring to the arbitrator the matters in difference in suit. Bachawat, J. said :

"THE agreement does not give life and vitality to the arbitration and award independently of the order of reference because the parties did not intend to arbitrate independently of the order of the Court made on their joint application. They intended to go to arbitration under the reference by the Court."

(19) In *Financiers and Fibre Dealers Ltd. Vs. Sankarlal Sardar*, , the ruling of Bachawat, J. was considered and the distinction was brought out. It was held that the parties can well refer the disputes in suit under Chapter II by withdrawing the suit and making a reference thereafter. Mallick J. said :

"IF that is so, why should the parties be legally incompetent to make the reference under Chapter II even when the suit is pending, if they intend that suit is to be withdrawn subsequently and in fact withdrew the suit before the arbitrator made his award. ?"

(20) An agreement to refer a dispute to arbitration when the suit is pending for adjudication of the dispute is not illegal. Bachawat, J. so held and his view was followed by P. C. Mallick, J. in *Financiers and Fibre Dealers Ltd.*, (Supra).

(21) In my view it is a good agreement in law. After withdrawal of the suit there can be no supervision by the court of the arbitration proceedings- After withdrawal the award cannot be filed in the suit. It cannot be said that the reference is void because such a reference amounts to an ouster of the jurisdiction of the court. The parties are competent to make a valid reference under Chapter II of the disputes in a pending suit if they agree to arbitration without the supervision of the court and to withdraw the suit, even if the reference is made before the withdrawal of the suit. It would be enough in law that the award is made after the suit is withdrawn when proceedings to obtain judgment in terms of the award can be obtained not in the suit itself under Chapter IV but under Chapter II of the Act in an independent and a new proceeding.

(22) The principle of law is this. If the parties desire that the dispute be settled by a private tribunal and without the intervention of the court the procedure is indicated in Chapter II of the Arbitration Act. If they want the reference of the disputes in a pending suit they must follow the procedure of Chapter IV. The same matter cannot come before two Tribunals—a public tribunal and a domestic forum chosen by the parties. The law does not permit the same question to be decided by a court of law as well as an arbitrator and it is only when the dispute before the two tribunals is identical that a decision given by the arbitrator must be treated as ultra vires. This is the principle enunciated in *Doleman and Sons v. Ossett Corporation* 1912 (3) K. B. 257 (6). This case has been followed in India in a large number of decisions.

(23) In the present case when the arbitrator made the award there was no suit pending. The suit and the appeal had been withdrawn on January 31, 1969. The parties agreed to an extension of time on September 30, 1969. This agreement to extend the time of the arbitrator for making the award itself amounts to a new agreement by the parties and is a clear proof of the fact that they wanted the matter to be settled by a domestic forum as they had withdrawn the court proceedings.

(24) The second ground of attack is that the arbitration agreement itself is invalid on account of the wide powers conferred on the arbitrator. It was urged that such an arbitration agreement is against the principles of natural justice. I do not agree. It is for the parties to choose how and in what manner they desire that the arbitrator should decide their disputes. The arbitration agreement was framed in identical terms in *Damodar Parshad Gupta v. Messrs. Saxena and Co.* 1958 Plr 638 (7). The Division bench in that case held that a submission clause may provide in clear and unequivocal language that the arbitrator may proceed in the absence of the parties or that he may or may not bear the witness, or that he may give his award without enquiry and the award will not be invalidated on the ground that the arbitrator had refused to hear evidence. If the arbitrator acts within the scope of the authority conferred upon him by the agreement of the parties, and if he keeps himself within the jurisdiction so conferred, his award is as valid and binding as a judgment of the court of law.

(25) The counsel for the objectors relies on *Dewan Singh Vs. Champat Singh and Others*, . In my view this authority does not assist him. The Supreme Court held that the arbitrators cannot decide the disputes on the basis of their personal knowledge even if the submission clause provides that they may decide the disputes referred to them in whatever manner they think. In this ruling itself it was held :

"IT is true that parties to an agreement of reference may include in it such clauses as they think fit unless prohibited by law. It is normally an implied term of an arbitration agreement that the arbitrators must decide the dispute in accordance with the ordinary law: See *Chandns v. Isbrandtsen Moller* 1951 1 Kb 240 that rule can be departed from only if specifically provided for in the

submission."

(26) The submission clause specifically provided that the arbitrator may adopt the procedure indicated in clause 3 which I have set out above.

(27) There is another answer to this objection. The arbitrator, though clothed with wide powers did not choose to exercise any of those powers. He kept record of the proceedings which he has produced in court. He fully heard the parties. He took pains on accounts. K. Narendra on December 17, 1968, stated before the arbitrator that he should be heard in the absence of his brother Virendra and his son. The parties, it appears, did not like to face each other in this unpleasant wrangle. The arbitrator agreed to adopt this procedure. He invited objections from K. Narendra. He called upon Virendra to answer the objections. One Mr. Chawla appeared before the arbitrator on behalf of K. Narendra to explain the case, On behalf of Virendra R. L. Sethi appeared to explain the accounts and the objections. The parties had no grievance on any score what soever. In their signed statement recorded on November 2, 1969, they stated that they had nothing more to say in respect of the dispute and requested the/arbitrator to proceed to the making of the award.

(28) All that the Court has to see is whether the arbitrator has kept himself within the jurisdiction conferred on him by the parties' agreement as his jurisdiction is essentially consensual. As regards the argument that wide powers conferred on the arbitrator conflict with the principles of natural justice I will prefer to say what P. B. Mukharji J. said in D.L. Miller and Co. Ltd. Vs. Daluram Goganmull, :

".....when the parties agree to go to arbitration they stipulate not so much for vague principles of natural justice as for concrete principles of contractual justice according to the contracts of the parties and unit specific stipulations."

"WHERE the contract of arbitration itself prescribes a private procedure of its own. then as long as such agreed private procedure is not against the laws and the statutes of the land, then such agreed procedure must prevail over the notions and principles of natural justice."

AND again:

" TIME has come to insist that enthusiasm for natural justice must always be tempered with due and proper regard for contractual justice to which the parties agree. Parties have the right by contract to provide for their own private forum of arbitration and also to prove for their private procedure. Where private procedure speaks in clear terms the voice of natural justice remains silent-"

(29) Next it was contended that the arbitrator did not call for the account books of Jullundur office and did not look into them and failed to find the capital investment of the parties. I find that there is no substance in this contention. The arbitrator went into the accounts as thoroughly as he could and came to his own conclusion.

(30) The objector argued that the account books of Jullundur office were never made available to them for inspection and that the arbitrator did not attempt to find out what was the capital account of the parties. It was said that the arbitrator could not have found that a sum of Rs. 2.61,000 was due from K. Narendra and his son to Virendra and his son if he had tried to find out the capital investment of the parties .

(31) I have been taken through the record of the proceedings of the arbitrator and the evidence led by the parties in court K. Narendra raised one objection as would appear from the arbitrator's proceedings dated December 18, 1968, December 19, 1968 and December 30, 1968 and it was this. He challenged the accuracy of the accounts maintained by the Jullundur office. He in particular objected to the accounts for the period February 27, 1973 to August 5, 1965. He asked for balance-sheets of this period. These were produced before the arbitrator. The arbitrator called upon K. Narendra to raise specific objections to the Jullundur accounts. In his letter dated December 26, 1968, he raised as many as ten objections. The arbitrator called upon Virendra to explain the objections which he did. Each item was considered in the proceedings. No request was, at any time, made for summoning the account books from Jullundur.

(32) As regards the capital investment K. Narendra raised a specific objection. The arbitrator called upon K. Virendra to explain his stand as regards the capital. In his letter dated January 17, 1969, Virendra stated that in Delhi balance-sheets the amount shown as capital was Rs. 3,61,150.46 which was split up amongst the partners. In Jullundur the capital was Rs. 1,18,753.58. Same was the capital at Delhi. The shares of the branches were 50 : 50. In the wealth tax statement also this statement of capital was given. It is well settled that the court cannot probe the mental process of the arbitrator and sit in appeal over his judgment. It is not within the province of this court to find out how the amount of Rs. 2,61,000 was arrived at by the arbitrator. What were his processes? What was the material and the evidence before him which he considered and weighed in his mind ?

(33) The counsel relied upon *Union of India v. Bakshi Ram* 1957 P&H 1210 (10) in support of his submissions. This ruling was considered at great length in *The Salween Timber and Construction Company (India) Vs. Union of India*, (11) and it was held that it is not open to the court to speculate or to go into the evidence and try to find out as to what impelled the arbitrator to arrive at his conclusions or to attempt to probe the mental processes by which he reached his conclusion.

(34) Next the objectors' counsel attacked the award on the ground that time was not validly extended and the award is vitiated on that ground. There is no merit in this argument. In the joint memo filed before the arbitrator a request was made to him to extend the time to make the award. The arbitrator agreed. Time was extended till January 31, 1970.

(35) The counsel then argued that time was extended long after four months of

the execution of the arbitration agreement. The arbitration agreement was executed on August 31, 1968, while the time was extended on September 30, 1969. Under the arbitration agreement the arbitrator had the power to extend the time with the consent of the parties without applying to the court. The parties consented and the arbitrator extended the time. There is nothing wrong in this. The arbitrator's jurisdiction is founded on consent. The parties having consented to extension of time are now estopped from challenging the award on that ground.

(36) Lastly, the counsel urged that Anil Narendra was never informed of the arbitration proceedings and the award is, Therefore, not binding on him. This argument is without substance. Anil Narendra appeared before the arbitrator on November 2, 1969, and his preference has been recorded before the arbitrator on that date. He made a statement that he had nothing more to add to his case. His father K. Narendra throughout appeared before the arbitrator on his own behalf and on behalf of his son. Father and son constituted one party on each side. This is in evidence of K. Narendra that he discussed the arbitration case with his son as well as the proceedings before the arbitrator. I am not, Therefore, prepared to place any reliance on the testimony of Anil Narendra in view of his signed statement before the arbitrator on November 2, 1969. He never raised an objection before the arbitrator that he was in the dark about the arbitration proceedings. On the other hand he invited the arbitrator to make his award.

(37) On issues 1 and 2 I hold that there was a valid agreement between the parties to refer the dispute to arbitration and that the award is not liable to be set aside on any of the grounds contained in paragraph 5 of the objection petition. Both these issues are decided against the objectors-petitions.

(38) Issue No. 3 This issue was raised on the pleadings of Virendra and his son.. They pleaded estoppel. The plea is founded on two facts. It is urged that K. Narendra and his son are estopped from raising the objection as (1) they participated in the proceedings from start to finish and (2) they made a joint application requesting the arbitrator to extend the time on September 30, 1969. On November 2, 1969, they submitted before the arbitrator that an award in a lump-sum be made without specifying the shares and that interest be not awarded at the market rate and that each branch be treated as one party. They said all that they wanted to say and requested the arbitrator to make his award as it was not possible for them to agree amongst themselves. The arbitrator then made the award. The award has gone against K. Narendra and his son.

(39) There is a plethora of decisions both in England and in India on the doctrine of estoppel- In India the leading case is Sarat Chunder Dey v. Gopal Chunder Laha 19 I.A. 203 (12) where the principle laid down by the House of Lords in Cairncross v. Lorimer (1860) 7 Jur. N.S. 149 (13) was approved by the Judicial Committee. The doctrine is contained in Section 115 of the Evidence Act.

(40) As long ago as 1876 Sir James Colvile delivering the judgment of the Privy

Council said :

"ONthe whole, Therefore, their Lordship think that the Appellant, having a clear knowledge of the circumstances on which he might have founded an objection to the arbitrator proceeding to make their award, did submit to the arbitration going on; that he allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less favorable to himself; and that it is too late for him, after the award has been made, and on the application to file the award, to insist on this objection to the filing of the award." (Chowdhri Murtaza Hossein v. Mussumat Bibi Beihunnissa 3 I.A. 209). (14)

(41) The essence of the doctrine is that a party cannot lie by and then object to the award if it is against him. A party cannot be permitted in law to participate in the arbitration proceedings without protest or objection and then attack the award on the ground of alleged misconduct or irregularity of procedure if it suits his purpose. Estoppel in this form is a kind of waiver. Although the distinction between estoppel and waiver has now been worked out with some precision and that estoppel is said to be a rule of evidence while waiver is said to be a cause of action the old statement of Bigelow that when something is called waiver what is done is that estoppel is given a new name, has perhaps not altogether lost its force : -See Union of India (UOI) Vs. K.P. Mandal, . (15)

(42) It is well settled that where a party has raised no objection at the appropriate stage and has in fact allowed the arbitrator to proceed with the case he cannot be permitted subsequently to take objection and impute misconduct to the arbitrator in that regard. Similarly objection with regard to time can also be waived. Where after the expiry of four months a party continues to appear before the arbitrator and make his submissions and request the arbitrator to make the award it will not be just and proper to allow that party to raise objection when he finds that the award has gone against him. In Bokaro and Ramgur Ltd. Vs. Dr. Prasun Kumar Banerjee, , it was held that the party having taken a willing part in the deliberations before the arbitrator after the expiry of four months without any objection or protest or the like was estopped from challenging the validity of the award on the ground of its having been given after the expiry of the period. The rule of estoppel is an equitable doctrine and equity will not assist a party who lies by and when the award goes against him raises all sorts of objections. I, Therefore, hold that the objectors are estopped from raising objections to the award and find this issue in favor of respondents I and 2.

(43) In the result, objections to the award filed by K. Narendra and Anil Narendra under Sections 30 and 33 of the Arbitration Act are dismissed. The award is made a rule of the court and I pronounce judgment and decree in terms of the award. Virendra and Lalit Mohan will be entitled to interest at the rate of 4 per cent from the date of the award till payment as directed by the arbitrator and as now ordered by me and costs.

(44) The application u/s 17 filed by Virendra and Lalit Mohan and registered as

Suit No. 448-A of 1969 automatically succeeds. Counsel's fee Rs. 200.00. One fee in both the cases.