

(1997) 12 PAT CK 0005

In the Patna High Court

Case No : Appeal from Original Order No. 54 of 1994 (R)

Ashok Prasad Mukherjee @ Ashok Mukherjee

APPELLANT

Vs

Smt. Jyoti Prasad Mukherjee and Others

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Arbitration Act, 1940 — Section 14, 28, 3, 30
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1998) 2 BLJR 872

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—The members of a Hindu Joint Family in order to resolve their disputes over some properties, amicably decided to refer the dispute to some arbitrators. They deposed their faith on some of the eminent lawyers and well-wishers of the entire family by appointing them as their arbitrators. The arbitrators entered into the arbitration and gave their award on 11.6.93.

2. The first-party, respondent Nos. 1 to 3, filed a petition before the Court u/s 14 of the Arbitration Act praying therein for issuing of notices to the parties to show cause as to why the award filed in the Court would not be made rule of the Court. This petition was filed on 12.7.93 and out of five members of the second party, three of them, namely, Smt. Renuka Mukherjee, Sri Ashok Prasad Mukherjee and Smt. Sriparna Banerjee filed their objections u/s 30 of the Indian Arbitration Act. However, one of the second member, Smt. Saswati Mukherjee, by filing a petition, prayed before the Court that award may be made a rule of the Court. On said objection being filed, Misc. Case No. 8/93 was registered and the learned Subordinate Judge, 1st, by his order dated 5.3.94, rejected the objection filed by the appellant and others and made the award a rule of the Court. This order has been impugned by only the appellant, who is second-party No. 4 to the

agreement.

3. The validity of the award has been challenged by Mr. N.K. Prasad, learned Senior Counsel for the appellant, on the following grounds:

- (i) The award was not filed within the statutory period of four months.
- (ii) The award being unregistered, cannot have any binding force.
- (iii) The award cannot be subsequently registered after filing the same in the Court.

4. Elaborating his argument, learned Counsel has referred to Sections 3, 28 and Clause 3 of the 1st Schedule of the Arbitration Act, 1940 (hereinafter referred to as "the Act"). According to him, the arbitrators deemed to have entered into the arbitration on 2.1.92, when the parties jointly agreed to resolve the dispute and the award having filed on 14.6.93, it is definitely after expiry of four months. The observations of the Court below that Section 28 of the Act empowers the Court to enhance this period of four months for submitting the award has been criticised by Mr. Prasad by Contending that the Court failed to notice the provision of law that without making an application in this regard, the period cannot be extended. In this connection he has referred to a decision of the Supreme Court in the case of State of Punjab Vs. Hardyal, .

5. Secondly, it is contended that by the award rights over the property have been allotted to the parties and by implication second party's right over the property has been allotted to first-party, by which second party's right over the said property has extinguished and similarly first party's right over the property has been allotted to second-party thereby extinguishing the right of the first party over the said property and as such, registration of the award is mandatory. In support of his argument, he has relied on the decision in the case of Satish Kumar and Others Vs. Surinder Kumar and Others, . In this premises, the learned Counsel urged that subsequent registration of the award will not validate the effect of the award and such unregistered award will have no binding effect on the parties.

6. Mr. P.K. Sinha, learned Sr. Counsel appearing on behalf of the respondent Nos. 1 to 3, countering the argument of Mr. Prasad, however, has submitted that the very intentions of the parties are reflected in the terms of the agreement by which they jointly referred the disputes to the arbitrators and the award having made the rule of the Court, the appellant cannot be allowed to raise some technical grounds challenging the validity of the award. He submits that it is too late for the appellant to raise an objection that the arbitrators submitted their award beyond the period inasmuch as he readily participated in the proceeding without raising any objection in this regard. In support of his contention, he has relied on the decision in the case of State of Punjab v. Hardyal reported in 1985 SC 920 and in the case of Nagar Palika, Mirzapur Vs. The Mirzapur Elect. Supply Co. Ltd., .

7. The next contention of Mr. Sinha is that the award cannot be said to be non-est merely on the ground that the same is not registered. According to him, the award stipulates that on acceptance of the award by the parties, a line of demarcation of their respective shares would be marked and a proper deed of partition would be executed and registered between them in conformity with the award and this is sufficient to indicate that the arbitrators were aware of the facts that on preparation of a partition deed the same would be registered and then only it would be given effect to. Referring to the case of Capt. (Now Major) Ashok Kshyap Vs. Sudha Vasisht and Another, , Mr. Sinha contends that the award only indicates the shares of the parties in the property and nothing more. Elaborating his argument, Counsel urged that assuming that the parties to the agreement, after award, do not get a proper partition deed executed and get the same registered in terms of the deed, no vested right would be created on the parties and under these circumstances, it is the partition deed which is required to be registered because the same will actually create or extinguish respective shares of the parties to the agreement. According to him, law does not prohibit filing of an unregistered award in the Court and as such, when, in the instant case, the award was filed by the arbitrators, though the same is an unregistered, cannot be said to be an invalid one.

8. Lastly Mr. Sinha contended that the objection petition filed by the appellant u/s 30 of the Act before the Court below was barred by limitation inasmuch as by a registered notice dated 14.5.93, the arbitrators gave notice to the parties of giving their award in writing on 31.7.92 and the award was filed on 14.6.93 in the Court but the objection u/s 30 was filed on 1.9.93.

9. In order to appreciate the argument advanced by the learned Counsel, some admitted facts are to be looked into.

The parties to the agreement are co-owners of Holding No. 103, Sakchi New Planning Area, commonly known as "Thakurbari Road" in the town of Jamshedpur, consisting of double stories building, out houses, shed, garage, compound wall etc. The properties aforesaid have been described in Schedule "A" to the agreement. There is no denial of the fact that each of the parties Nos. 1 to 7 have undivided 1/14th shares whereas party No. 8 has undivided 7/14th share in the said immovable properties. Parties agreed to dissolve the jointness in any way amongst themselves in all respect in the Schedule "A" property. According to the shares of the parties, as because some disputes and differences had arisen regarding mode of distribution of the said immovable properties, they jointly agreed to refer the dispute relating partition of the properties in question to the Arbitrators. The Arbitrators were given power and authority to inspect the Schedule "A" property and to make valuation of the same and further to divide and distribute the said property among the parties according to their respective shares. One of the terms of the agreement was that if the Arbitrators were unanimous in their decision then the award of the Arbitrators shall be final and binding on the parties and in case the Arbitrators differs, the award of the

majority of the Arbitrators be final and binding on the parties. This agreement: is dated 2nd January, 92 and was signed by all the parties in presence of two witnesses and pursuant to that agreement, on 3rd January, 92 they requested the Arbitrators to commence and proceed with the arbitration matter. The arbitrators gave their award on 11.6.93 and the same was filed in the Court of Subordinate Judge, 1st Jamshedpur on 23.6.93 as required u/s 14(2) of the Act. On 28.7.93 the respondent Nos. 1 to 3 applied before the Court for making the award as rule of the Court and for issuing notices to the parties. On the basis of the said application Misc. Case No. 8/93 (Arbitration) was registered and on 3.8.93 notices were directed to be issued. Being noticed, the appellant alongwith Renuka Mukherjee and Sriparna Banerjee appeared in the Court on 13.8.93 and prayed for one month time for filing objection and the same was allowed and case directed to be listed on 1.9.93. On the date fixed, an objection u/s 30 of the Act was filed. Thereafter the case was adjourned from time to time and on 4.12.93 Saswati Mukherjee and Ranjan Prasad Mukherjee appeared filing a petition praying therein to make the award as rule of the Court. On 21.2.94 the matter was heard and finally on 5.3.94, the learned Court below, rejecting the objection to the award, made the award rule of the Court.

10. From the above facts, it is clear that the appellant alongwith two others filed their objections within 30 days from the knowledge of the date of filing of the award in the Court. From the lower Court records, it appears that on 3.8.93 notices were issued to the objectors to appear on 13.8.93 and they complied with the notice and filed a petition for time before the Court, which was allowed. Though one month time was allowed by the Court, it appears that within the same period the objection u/s 30 was filed by the objectors and in such view of the matter, the argument of Mr. Sinha that objection petition filed by the appellant was beyond the time, cannot be sustained. Though it appears that by registered notice dated 14.5.97 the Arbitrators informed the parties of signing of the award but from the notice, it appears that there is some discrepancy in the date of the award. Whereas the original award indicates that same was made ready and signed on 11.6.93, paragraph 2 of the notice reveals that the Arbitrators had given their award in writing on 31.7.92. In my view, if actually the award was signed on 11.6.93 notices could not have been issued on 14.5.93 informing the parties that award was given in writing on 31.7.92. Thus, objection raised by Mr. Sinha that the appellant did not file his objection within 30 days from the date of receipt of the notice of the Arbitrators, has got no force.

11. In order to appreciate the first contention of Mr. Prasad to the effect that the award is, invalid being submitted beyond four months, law on this point may be discussed.

12. It is now well settled that the arbitration proceeding should not be unduly prolonged and so the Arbitrator has to give the award within the time prescribed or such time as the Court concerned may in its discretion extend and the Court alone has been given power to extend time for giving the award. The Court has

got power to extend the time even after the award is given or after expiry of the period prescribed for the award, but definitely the Court has to exercise its discretion in a judicial manner.

13. In the case of Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao, , their Lordships were of the view that "this power, however, could be exercised even by the appellate Court. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur and had all along been willing to extend time, this will be a fit case, in our opinion, for the extension of time." It has been reiterated that the arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on the arbitration the parties to the arbitration agreement consent to such enlargement of time.

14. Similar view has been expressed by their Lordships of the Supreme Court in the case of Nagar Palika, Mirzapur Vs. The Mirzapur Elect. Supply Co. Ltd., , by holding that the conduct of the parties is a major factor to waive the extension of time given by the Court.

15. Reliance of Mr. N.K. Prasad in the case of State of Punjab (supra), in my considered opinion, does not help the appellant inasmuch as, while holding that the arbitrators cannot extend the time at their own pleasure without consent to the parties of the agreement to enlarge time for making the award their Lordships considered the policy of law of Arbitration and held as follows:

This power, however, can be exercised even by the appellate Court. The present appeal has remained pending in this Court since 1970. No useful purpose will be served in remanding the case to the trial Court for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time.

16. In the back ground of such authoritative pronouncement the conduct of the parties in the instant case has to be looked into. There is no denial of the fact that the arbitration agreement itself does not stipulate any period by which the arbitrators were required to give their award. During pendency of the instant appeal two of the objectors, namely, Renuka Mukherjee and Ranjan Prasad Mukherjee filed a petition under Order I, Rule 10 (2) read with Section 151 CPC with a prayer to transpose them as appellant Nos. 2 and 3. Similarly the respondent No. 5, Saswati Mukherjee and Ranjan Prasad Mukherjee, respondent No. 7, filed a petition before this Court praying therein that the appeal may be dismissed and the impugned order of the Court below dated 5.3.94 be up-held. On 10.7.95 the parties were heard on the aforesaid two petitions and as the

whole appeal was heard on merit, it was observed that no separate order need be passed at this juncture on the petitions under consideration and the order be passed on the merits of the case which will also cover the arguments advanced on the aforesaid two petitions.

17. In the petition u/s 151 CPC, Saswati Mukherjee and Ranjan Prasad Mukherjee have stated that after the award was given by the arbitrators they alongwith the appellant and others jointly applied for permission for making construction of a new building on the respective vacant land, which fell in the shares of the petitioners as well as the appellant in anticipation of creating a deed of partition of the disputed property. Annexure-A to the petition reveals that the appellant, Ashok Prasad Mukherjee alongwith Renuka Mukherjee, Ranjan Prasad Mukherjee, Saswati Mukherjee and Sriparna Banerjee made an application before the General Manager (Town Service) of M/s. Tata Iron and Steel Company Ltd. for approval of the sketch plan submitted by them for construction in the vacant space with lower ground etc. It was decided that none of the parties would raise any objection if the award is made as rule of the Court. It is stated that when the objection petition u/s 30 of the Act was filed by the appellant before the trial Court, no concurrence was taken from these petitioners. It is further stated that though the petitioners did not consent to the filing of the objection petition against the award, appellant Ashok Prasad Mukherjee on some wrong legal advice was trying to prolong the dispute, as a result of which all the family members are suffering. Having come to know about the filing of the instant appeal in this Court, petitioners met Renuka Mukherjee and Sriparna Banerjee, who are the mother and youngest sister respectively of these petitioners and they were surprised to learn that though they never agreed to raise any objection to the award in question but they have been dragged into the litigation mischievously by the appellant Ashok Prasad Mukherjee both in the Court below and before this Court. According to them, Ashok Prasad Mukherjee, the appellant, purposefully obtained their signatures on some papers purportedly representing that they were required for the purpose of making a partition deed through the Court. Under these circumstances, the petitioners have prayed that the appeal may be dismissed at the earliest which will ensure the benefits to every body including the appellant Ashok Prasad Mukherjee. In support of the statements separate affidavits have been filed by Renuka Mukherjee and Sriparna Banerjee, which are Annexures 2 and 3 respectively.

18. Mr. Mazumdar, learned Counsel appearing for these two petitioners, submits that from the aforesaid statements as well as the affidavits filed, it will be clear that these two petitioners have no objection regarding making the award a rule of the Court and the appeal should be dismissed. The averments of the petitioners in this petition have not been controverted by the appellant by filing any rejoinder, though a copy was served on him on 27.6.95.

19. In the premises, it is crystal clear that the appellant alongwith other parties to the agreement, without any objection, wilfully participated in the proceedings

before the arbitrators and on their active participation the arbitrators decided the dispute and finally made the award. Thus, it is too late for the appellant to suggest that the arbitrators filed the award beyond the period as prescribed under the law and as such, illegal. Moreover, there is nothing on records to show that particularly from which date the arbitrators entered into the agreement which can suggest that they took more than four months time to submit the award.

20. The need for settlement of dispute between the parties thereto through arbitration proceeding has been emphasised by their Lordships in the case of Food Corporation of India Vs. Joginderpal Mohinderpal, , where it has been observed as follows:

Therefore, arbitration as a mode for settlement of disputes between the parties, has a tradition in India. It has a social purpose to fulfil today. It has a great urgency today when there has been an explosion of litigations in the Courts of law established by the sovereign power. New rights created, or awareness of these rights, the erosion of faith in the intrinsic sense of fairness of men, intolerant and uncompromising attitudes are all the factors which block our Courts. The Courts are full of litigations, which are pending for long time. Therefore, it should be the endeavour of those who are interested in the administration of justice to help settlement by arbitration, if possible. It has also a social efficacy being the decision by the consent of the parties. It has greater scope of acceptance today when there is a certain erosion of faith in view of the failure to appreciate the functions of the Courts of law. It has also the advantage of not only quickness of decision but of simplicity of procedure. But in proceedings of arbitration there must be adherence to justice, equity, law and fair play in actions. However, the proceedings of arbitration must adhere to the principles of natural justice and must be in consonance with such practice and procedure which will lead to a proper resolution of the dispute and create confidence of the people for whose benefit these processes are restored to. It is, therefore, the function of Courts of law to oversee that the arbitrators act within the norms of justice. Once they do so and the award is clear, just and fair, the Courts should as far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. It is in this prospective that one should view the scope and limit of correction by the Court of an award made by the arbitrator. We should make the law of arbitration simple, less technical and more responsive to the actual realities of the situation, but must be responsive to the canons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating a sense that justice appears to have done.

Thus, considering the facts and circumstances of the present case, I am constrained to hold that the appellant having participated in the arbitration proceeding without raising any objection and having filed application before the

authority for approval of sketch map, now trying to delay the settlement of the disputes by urging flimsy grounds. Therefore, the first contention of Mr. Prasad, in my view, has no legal stand and must be rejected.

21. The next argument of Mr. Prasad is that the Award in question is only a waste paper inasmuch as having allotted some shares to the parties through it, the same is required to be registered under the law and non-registration of the award makes the whole award void. However, Mr. Prasad has fairly conceded that if the impugned order of the Court below making the award rule of the Court is set aside, the Award itself does not get quashed automatically and it remains in papers and the arbitrators can get it registered and refile the same, if they so like. In support of his contention that an unregistered award cannot be looked into, learned Counsel has relied on the decisions in the case of *Seonarain Lal Vs. Prabhu Chand*, *Satish Kumar and Others Vs. Surinder Kumar and Others*, and *Ratan Lal Sharma Vs. Purshottam Harit*.

22. Mr. Sinha, on the other hand, has strongly contended that as the award does not create or declare, assign, limit or extinguish any right, title or interest whether vested or contingent and as such, it does not require any registration. Continuing, learned Counsel submits that the award should be read as a whole and on the background of reference of the disputes to arbitrators and if the agreement of the parties for referring their disputes to the arbitrators is looked into it would be clear that the award itself does not create or extinguish any existing or future right of the parties over the properties, Mr. Sinha has relied on the decision of the constitutional Bench of the Supreme Court in Civil Appeal No. 296 of 1960 decided on 6th December, 1962 *Sheonarain Lal v. Rameshwari Devi*.

23. Before averting to the law on this point, the recital in the agreement may be looked into. The point of reference, as it appears from the agreement, was as follows :

To determine the share of the members of the first party and of second party in respect of their house and landed property situated at Holding No. 103, S.N.P. Area, Sakchi, Jamshedpur and,

To partition them by metes and bound to the extent of their shares accordingly.

The agreement shows the extent of share of the parties over the said property and they mutually agreed to dissolve the jointness by distributing Schedule "A" property according to the shares of the parties to the agreement. Moreover, power was given to the arbitrators to divide and distribute Schedule "A" property among the parties according to their respective shares so that each of the parties may get the same absolutely in severalty in lieu of their undivided shares of the said property. Thus, from the reading of the contents of the agreement, it is clear that the parties admitted of having their existing shares to the extent indicated therein and they wanted that the same should be determined by the arbitrators according to their shares. The award shows that Jyoti Prasad Mukherjee, Tipati Bhattachariya and Pratima Chatterjee were the first party and Renuka

Mukherjee, Saswati Mukherjee, Sriparna Banerjee, Ashok Prasad Mukherjee and Ranjan Prasad Mukherjee were the members of the second party. The award reveals that the first party member Nos. 2 and 3 i.e. Tipati Bhattachariya and Pratima Chatterjee expressed their willingness before the arbitrators to have their respective shares amalgamated with the shares of Jyoti Prasad Mukherjee i.e. first party No. 1 and similarly all the members of the Second party expressed their willingness to have their respective shares amalgamated with each other. Further, the members of the second party requested the arbitrators to allot their shares as far as possible from the northern portion of the said holding which includes vacant land and some small structure. On such desire expressed before the arbitrators by the parties, the arbitrators got the land of the holding measured and assessed the valuation of the land and building including structures. Thereafter the arbitrators held that on acceptance of the award by all the members of both the parties the right of demarcation of their respective shares were to be marked within three (3) days from the date of the award by taking proper measurement by competent person in presence of the parties. The most important part of the award is that "it was desired by the parties that a proper deed of partition would be executed and registered between them in conformity with the award within 30 days from the date of the award and before execution of such deed the delivery of possession to the respective parties would be given by vacating any portion, if occupied by other party." It was further observed that until the partition between the parties be accepted by the TISCO and other authorities for the purpose of treating their respective portions in the said holding as their separate lease hold properties, none of the members of any party will do any act or omission which may be prejudicial to the terms of the lease with TISCO and also to the interest of any of the members of the other parties.

24. Thus, if one reads the contents of the agreement alongwith the recital in the award, it would be clear that by the award the arbitrators have neither created any right nor extinguished any right in respect of any of the parties. The award merely indicates as to how the existing shares of the parties over the property will be distributed among themselves.

25. In the back drop of these facts, one has to consider the law regarding the registration of a document as required u/s 17 of the Registration Act, which reads as follows:

17. Documents of which registration is compulsory.--(1) The following documents shall be registered, if the property to which they relate is situated in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864 or the Indian Registration Act, 1866 (20 of 1866) or the Indian Registration Act, 1877 (3 of 1877) or this Act came or comes into force, namely:

(a) xxx xxx xxx (b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of

one hundred rupees and upwards, to or in immovable property.

Similarly Section 49 of the Registration Act declares the effect of non-registration of a document. A conjoint reading of Sub-section (1)(b) of Section 17 and Section 49 of the Registration Act establishes that a non-testamentary instrument which purports or operates to create, declare, assign, limit or extinguish, in present or future, any right, title or interest, whether vested or contingent to or in any immovable property of the value of Rs. 100/- and above, shall compulsorily be registered, otherwise the instrument does not affect any immovable property comprised therein or shall not be received as evidence of any transaction affecting such immovable property.

26. It is well settled that an award made by a private arbitrator is a non-testamentary instrument. In *Champalal Vs. Mst. Samrath Bai*, , the Supreme Court held that the filing of an unregistered award u/s 49 of the Registration Act is not prohibited; what is prohibited is that it cannot be taken into evidence so as to affect immovable property falling u/s 17 of that Act.

While considering various decisions of its own Court, the Apex Court in the case of *Sardar Singh Vs. Smt. Krishna Devi* and another, , inter alia, held that the unregistered award per se is not inadmissible in evidence and it is a valid award and not a mere waste paper. It creates rights and obligations between the parties thereto and is conclusive between the parties. It can be set up as a defence as evidence of resolving the disputes and acceptance of it by the parties. If it is a foundation, creating right, title and interest in praesenti or future or extinguishes the right, title or interest in immovable property of the value of Rs. 100/- or above it is compulsorily registrable and non-registration render it inadmissible in evidence. However, their Lordships further held that "if it contains a mere declaration of a preexisting right, it is not creating a right title and interest in praesenti, in which event it is not a compulsorily registrable instrument. It can be looked into as evidence of the conduct of the parties of accepting the award, acting upon it that they have pre-existing right, title or interest in the immovable property."

(Emphasis is mine)

27. I have already indicated above that in the instant case the parties to the disputes admitted of having their pre-existing right over the property and merely they intended to get their shares accordingly allotted. In this view of the matter, in my considered opinion, the award, is not compulsorily registrable.

28. In this context, the observation of the Supreme Court in the case of *Kale and Others Vs. Deputy Director of Consolidation and Others*, , may be looked into. Their Lordships considering the import of a family arrangement, have, inter alia, observed as follows:

A family arrangement is an agreement between the members of the same family, intended to be generally and reasonably for the benefit of the family either by

compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. Family arrangements are governed by principles which are not applicable to dealings between the strangers. The Court when deciding the rights of parties under family arrangements, consider what is the broadest view of the matter, having regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. If the terms of the family arrangement made under the document as a mere memorandum, itself does not create or extinguish any right in immovable property and, therefore, does not fall within the mischief of Section 17(1)(b) of the Registration Act and is, therefore, not compulsorily registrable.

29. Similarly in an unreported decision of the Supreme Court in the case of Sheonarain Lal v. Rameshwari Devi (supra) the award in question had five clauses of which first clause provided payment of Rs. 500/- by Prabhu Chand to Sheonarain Lal the second directs Sheonarain Lal to return some rents to Prabhu Chand; the third directs Sheonarain Lal to pay Rs. 2400/- as compensation to Prabhu Chand; The fourth directs Sheonarain Lal to pay Rs. 1400/- as compensation to Prabhu Chand. Their lordships were of the opinion that none of the four clauses of the award purports or operates to create, declare, assign, limit or extinguish any right, title or interest in the immovable properties. The fifth clause was taken note of, which is as follows:

Shri Sheo Narain Lal and his heirs should execute as early as possible a registered document in respect of the shop let out on rent to Beli Sao. Sukhdeo Prasad, in favour of Shri Prabhu Chand for which Shri Prabhu Chand will have to pay nothing as consideration. He will pay only costs of stamp etc.

Interpreting this fifth clause, their Lordships were of the view that the same does not purport or operate to create, declare, assign limit or extinguish any right, title or interest in any immovable property. The award merely provides that some right in the shop should be created in the future by means of a document to be executed by Sheonarain Lal and his heirs. That document when executed would certainly operate to create a right in favour of Prabhu Chand in immovable properties and extinguish the right of Sheonarain Lal and his heirs in the same properties. In the said decision, it was noticed that the arbitrators mentioned that the document should be registered, as admittedly, the value of that property would be more than Rs. 100/-. Their Lordships found it difficult to see how the fact that such a document that might be executed in consequence of the directions in the award, would operate to create or extinguish a right in immovable properties, justifies the Court to say that the award itself purports or operates to create or extinguish such a right. The award does not itself create or extinguish any right, title or interest in the immovable properties rather it creates a right to obtain another document which will, when executed, create or extinguish such right on immovable properties and so is a document falling within Clause 5 of Section 17(2) of the Registration Act. Under these

circumstances, their Lordships held that the award in those circumstances was not required to be registered.

30. In the instant case also the facts are almost similar inasmuch as the arbitrators through their award neither created or extinguished any right to the parties rather on the request made by the parties, allotted their respective shares. The desire of the party that after the award a proper deed of partition would be executed and registered between them inconformity with the award, is a sufficient indication that the award itself has not created or extinguished anyright, title and interest over the property. It is the deed of partition which will be executed on the basis of the award, will create and extinguish some right, title and interest over the property in question and that document is required to be registered as required u/s 17 of the Registration Act.

31. The facts of the case in Ratan Lal Sharma (supra) relied by Mr. Prasad, is quite distinguishable. Considering the facts of the case, it was held that the award did not transfer the share of the respondent, to the appellant in the expressed words nor such is the necessary intendment of the award. On the other hand, it expressly made an exclusive allotment of the partnership assets including the factory and liabilities to the appellant. Further it made the appellant absolutely entitled to the same, in consideration of a certain sum plus half of the amount of certain sum to the respondent and the appellant's renouncement of the right to share in respect of the said business was to be made over to the appellant. Interpreting the award their Lordships was of the view that such award compulsorily registrable.

32. On the other hand, in the instant appeal, no such absolute ownership has been created by the arbitrators. The aforesaid decision in the case of Sheonarain Lal (supra) again relied by their Lordships in the case of Capt. (Now Major) Ashok Kshyap Vs. Sudha Vasisht and Another, , where it has been held that the award, which merely provides that some right could be created in future by means of a document to be executed, was not compulsorily registrable.

33. No other point has been raised on behalf of the appellant which can justify interference by this Court with the impugned order of the learned Court below.

34. In the result, I find no merit in this appeal and the same is dismissed. However, no order as to costs. The interim order dated 16.8.95 is vacated.