

(1961) 02 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 107-D of 1960

Bawa Bir Singh and Others	Vs	APPELLANT
Bawa Maharaj Singh and Others		RESPONDENT

Date of Decision : 16-02-1961

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 16(1), 16(3), 17
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Limitation Act, 1908 — Article 158, 17

Citation : AIR 1961 P&H 355

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Advocate : D.D. Chawla and M.K. Chawla, for the Appellant; R.S. Narula and Mastan Chand, for the Respondent

Final Decision : Dismissed

Judgement

Falshaw, J.—This is an appeal against the order of the lower Court making an arbitration award a rule of the Court and passing a decree according to its terms.

2. The history of the litigation between the parties is long and complicated. As briefly as I can relate it the history runs as follows. A joint family business was carried on by a firm styled Bawa Parduman Singh and Sons by the sons of Parduman Singh, Maharaj Singh and Gurmukh Singh and their sons. Gurmukh Singh retired from the business at the end of 1949 and thereafter the business was turned into a partnership, the partners being Maharaj Singh, his two sons Satya Pal Singh and Randhir Singh and four sons of Gurmukh Singh, namely, Bir Singh, Harbhajan Singh Yoginder Singh and Kulwant Singh, the share of Maharaj Singh being one-fourth and the share of the rest one-eighth each.

3. Disputes arose between them in consequence of which by an agreement dated the 21st of November, 1955, they appointed Dr. Mehar Chand Mahajan, former Chief Justice of India, as arbitrator. The arbitrator delivered his award on the 4th April, 1956, and it was registered on the 27th of April, 1956. Apparently by the

award a sum of about Rs. 1,80,000/- was made payable by the present respondents to the party of the appellants, the two parties consisting on the one side of Maharaj Singh and one of his sons Satya Pal Singh. and on the other side the four sons of Gurmukh Singh and the other son of Maharaj Singh, Randhir Singh.

4. This party applied to the Court on the the 25th of May, 1958, u/s 14(2) of the Arbitration Act for direction to the arbitrator to file his award and for the Court to make it a rule of the Court. This application was resisted by Maharaj Singh and Satya Pal Singh who filed objections under Sections 30 and 33 of the Act alleging inter alia that the award was not properly stamped and was therefore not admissible in evidence, that the arbitrator had gone beyond the scope of the reference in some respects, and that in other respects he had not decided matters in dispute. In connection with the question of stamp duty the award was impounded by the Court and the parties were held liable to pay Rs. 7500/- as deficiency in stamp duty and penalty of Rs. 75000/- by an order dated the 18th of February, 1957. This order was reviewed and the duty and penalty reduced on the 10th of June, 1957, to Rs. 2,395/- and Rs. 23950/- respectively. A re-vision petition against this order was later dismissed by this Court on the 10th of August, 1959.

5. While this matter was being decided one of the present appellants, Harbhajan Singh, either becoming tired of the delay in connection with the filing of the award or thinking that more was to be gained in this way, instituted a suit at Amritsar, which is one of the places where the business of the firm was carried on, on the 7th of January, 1958, for dissolution of partnership and rendition of accounts. In this plaint he mentioned the facts regarding the reference to arbitration and the proceedings pending in the Court at Delhi u/s 14 of the Act but he stated that in spite of repeated requests the defendants had not taken any steps to pay or contribute towards the stamp duty and penalty and consequently, as the present respondents were contending in the arbitration proceedings the award remained inadmissible and ineffective and the relations of the parties as partners still continued. The suit was contested only by Maharaj Singh and Satya Pal Singh, the other defendants supporting the plaintiff, and on the application of the plaintiff a receiver was appointed as regards the firm's business at Delhi, and applications filed by the contesting defendants for stay of the proceedings on the basis of the provisions of Sections 10 and 11, CPC and Section 32 of the Act were dismissed.

6. The appeals of Maharaj Singh and Satya Pal Singh against these orders were dismissed by this Court but both of them carried the matter to the Supreme Court in appeal by special leave. Their appeals were dismissed by the order of the Supreme Court dated the 11th of March, 1960. The decision of the Supreme Court in effect was that so long as Maharaj Singh and Satya Pal Singh were resisting judgment on the award on the ground that it was invalid they could not object to the continuance of the suit of Harbhajan Singh.

7. It would appear that on this decision of the Supreme Court Maharaj Singh and Satya Pal Singh took stock of the position and quickly came to the conclusion that if they were faced with the choice of either accepting the award or allowing the suit of Harbhajan Singh to continue against them to the point of decision, the acceptance of the award was the lesser of the two evils, and in these circumstances it seems that they very quickly paid the amount of stamp duty and penalty payable on the award and obtained the order of the Collector dated the 23rd of March, 1960, to the effect that the deficiency had been made good, and then, in the beginning of April, filed separate applications in the lower Court.

Maharaj Singh filed his application under Order I Rule 10 and Section 151 of the Code of Civil Procedure. His case was that the award had now been received back by the Court from the Collector certified duly stamped, that he withdraws his objections u/s 30 and his petition u/s 33 of the Arbitration Act, and he prayed that the award might be made a rule of the Court after transposing him as an applicant in the application u/s 14 on the ground that the original applicants had abandoned the award and were intentionally delaying the proceedings. In his application Satya Pal Singh merely withdrew his objections under Sections 30 and 33 and he also prayed that the award be made a rule of the Court.

8. This manoeuvre of Maharaj Singh and Satya Pal Singh had the effect of making the other party completely change their position, and before even filing their replies to the applications of Maharaj Singh and Satya Pal Singh they filed an application u/s 19 of the Arbitration Act in which they stated that they had already abandoned the award and wished to withdraw their application u/s 14(2) of the Act, and they prayed that accordingly by reason of their abandonment of the award it should be declared null and void and their original application dismissed. In their application they set out the history of the litigation which led to the above decision of the Supreme Court.

9. In their replies opposing the applications of Maharaj Singh and Satya Pal Singh they stated that after these two had withdrawn their objections they themselves, withdrew their application, which they claim to be entitled to do under Order XXIII Rule I of the Code of Civil Procedure. They also more or less raised the plea of estoppel by saying that since Maharaj Singh and Satya Pal Singh had pleaded that the award was invalid and inadmissible they were debarred from asking a judgment on the award.

10. The decision of the Lower Court may be summed up as being that the application u/s 19 of the Arbitration Act did not lie, that although the provisions of Order XXIII Rule 1 were applicable to an application u/s 14 of the Arbitration Act the appellants could not be permitted to withdraw the application after Maharaj Singh had applied to be transposed as a petitioner and Satya Pal Singh had withdrawn his objections to the award, that Maharaj Singh was entitled to be transposed in the circumstances, that the appellants could not be permitted to put forward the objections originally raised by Maharaj Singh and Satya Pal Singh to the validity of the award as their objections were by that time barred by

time, and that therefore the award should be made a rule of the Court and a decree passed upon it.

11. The first point with which I propose to deal relates to the appellants' application u/s 19 of the Arbitration Act which provides that where an award has become void under Sub-section (3) of Section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred. The appellants sought an order under this Section simply on the ground that they had abandoned the award and neither of the conditions mentioned in Section 19 exists. There was no question of the award having been set aside at that stage, and the only other contingency is the award having become void u/s 16(3).

Section 16 deals with the power of the Court to remit an award for reconsideration under certain conditions and Sub-section (3) provides that an award remitted under Sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed. Since the award had not been remitted, this sub-section also does not apply and it was right-ly held that in the circumstances no application u/s 19 lay.

12. The next matter for consideration is the inter-Connected questions whether at the stage when the appellants applied to withdraw the application u/s 14(2) under the provisions of Order XXIII Rule 1 C. P. C. they could be permitted to do so and whether Maharaj Singh could and ought to have been transposed as an applicant.

13. There is no doubt that at first sight Order XXIII Rule 1(1) gives an unqualified right to the plaintiff to withdraw his suit or abandon part of his claim, but according to the view of the Courts this right is not as unqualified as it appears to be at any rate in matters relating to partition, and there is no doubt that disputes regarding rendition of partnership accounts are more or less on the same footing as suits for partition. It appears to me to be extremely doubtful whether a plaintiff in such a suit or an applicant u/s 14(2) of the Arbitration Act relating to partnership accounts can be permitted to withdraw the suit or application altogether after an application has been made by one of the previous defendants or respondents to be transposed.

The first case referred to by the lower Court is V.E.A.R.M. Annamalai Chettiar Vs. Koothappudayar and Others, in which it has been, held that in partition suits the power of the plaintiff to withdraw has been limited to this extent that it can be exercised only till a right in the defendant in the continuance of the suit or its determination in a particular way has been legally created, e.g., by a preliminary decree or a compromise or agreement or award. This principle is applicable not only to partition suits but to all suits. A similar view was taken in Tukaram Mahadu Tandel Vs. Ramchandra Mahadu Tandel, in which it was held that when in a partition suit a defendant has by a compromise with the plaintiff acquired

rights which otherwise could not have existed, it is not open to the plaintiff who has consented to the compromise afterwards to annul its effect by withdrawing the suit

14. The learned counsel for the appellants has been unable to cite a single case in which a suit or application has been permitted to be withdrawn during the pendency of an application for transposition and in my opinion it was rightly held that the appellants could not totally withdraw the application u/s 14(2), although admittedly nothing could stop them from withdrawing altogether from the proceedings and leaving the field open and clear of opposition to the respondents.

It may be reprehensible on the part of the respondents that, after opposing the filing of the award and maintaining that the award was invalid and inadmissible, they also opposed the continuance of the suit by one of the appellants which was brought as an alternative remedy, but once they were defeated in that position, as they were by the decision of the Supreme Court, I do not consider that there is any doubt whatever that it was open to them to consider the position and decide which of the lines of the opposition it was preferable to withdraw.

Indeed this was the course they were bound to adopt and I consider that they were fully entitled to come to the Court and withdraw their opposition to the filing of the award and also to apply for one of them to be transposed from the position of respondent to applicant. In fact I consider that it was a very wise and prudent step on their part, and any sympathy which One might have felt with the appellants at being out-maneuvered in this manner is dispelled completely by their attitude in attempting to contest the filing of the award by attacking its validity on the same grounds on which it was formerly attacked by the opposite party.

15. At the same time, while the respondents are not in any way estopped from abandoning their opposition to the award and pressing for its being made a rule of the Court the bar of limitation is raised when the appellants want to raise, four years after the award was filed in Court, the same objections to its validity as had been raised by the respondents, the period of limitation for filing objections to an award being only 30 days from the date of service of notice of filing the award, which in fact was filed at their own instance.

It was argued that once Maharaj Singh was transposed as an applicant the appellants ought to have been automatically transposed as respondents and allowed to raise objections to the award, however belated. This, however, in my opinion, does not represent the true state of affairs, since the transposition of a respondent to the position of an applicant does not by any means have the automatic effect of placing the original applicants in the position of respondents to the application. As I have indicated above I consider that all that the appellants could do was to withdraw from the application if they wished to do so, leaving the field clear for the other party, but not terminating the proceedings on the application.

18. It may be mentioned that the appellant's had also filed an application u/s 16 of the Act for the remission of the award to the arbitrator for reconsideration on a point originally raised by the respondents, but this application, like that relating to the other objections sought to be raised by the appellants was hopelessly barred by time, and in my opinion the request made to the lower Court suo motu to remit the award was rightly rejected at the time and in the circumstances in which it was made.

17. The only other point raised was that lower Court wrongly invoked the provisions of Section 17 of the Act in justifying the making of the award a rule of the Court. Section 17 reads:-

"Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."

Two cases were cited on behalf of the appellants, first is Balwant Singh Vs. Ram Charan Singh, In that case an appeal had been filed in the High Court against an order dismissing an application u/s 33 of the Act. The opposite party filed cross-objections in which apparently it was claimed that an order making the award a rule of the Court u/s 17 should automatically have followed the dismissal of the petition u/s 33 for setting aside the award, and it was held that the proceedings u/s 33 were different from the proceedings under Sections 14, 15, 16 and 17 of the Act and that the lower Court was not bound to pronounce a judgment in accordance with the award merely because it was dismissing the application u/s 33.

This view was followed in Gopi Chand v. Lal Chand, AIR 1956 Pepsu 74, and there is no question about its correctness but it does not help the case of the appellants in any way. The lower Court has no doubt mentioned Section 17 and taken the view that it could make the award a rule of the Court under this section, and in my opinion it could since the words "or such application having been made, after refusing it" clearly refer to an application u/s 33, and all that has been held in these cases is that the Court is not bound to make the award a rule of the Court following the dismissal of such objections. In any case once Maharaj Singh had been transposed as an applicant In the application u/s 14(2) the order making that award a rule of the Court and basing decree on it was clearly passed on the application u/s 14(2) and not merely on the basis of Section 17.

18. The result is that I dismiss the appeal with costs.