

(1927) 07 CAL CK 0004
In the Calcutta High Court

Belvedere Jute Mills Ltd., Chaitram Sagormull

APPELLANT

Vs

Hardwarimull and Co.

RESPONDENT

Date of Decision : 15-07-1927

Acts Referred:

Arbitration Act, 1940 — Section 15
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16
Limitation Act, 1963 — Article 181, 183

Citation : AIR 1927 Cal 853

Hon'ble Judges : Rankin, C.J.; Mitter, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case, an award was made on the 3rd August 1923 and it was filed in the High Court under the provisions of the Indian Arbitration Act on the 31st August 1923. There was an assignment on the part of the company in whose favour the award was made to the present respondents on the 15th December 1926. In January 1927, the respondents filed a tabular statement and proceeded to issue notices in execution under Rule 16, Order 21, Civil P.C. These having been served, the matter came on for hearing before Mr. Justice Gregory on the 26th of April 1927 and it was objected that the application in execution was time barred because Article 181, Schedule 1, Limitation Act, applied, there being no other article which applied. The learned Judge has held that Article 183, Limitation Act, is applicable and that is the question before us.

2. There can be no doubt that the terms of Section 15, Arbitration Act, do not mean that an award shall be or shall be deemed to be a decree and Mr. B.K. Ghosh on behalf of the respondents concedes that completely. Indeed, it was clearly laid down by the Privy Council in the case of *E.D. Sassoon & Co. v. Ramdutt Ramkisan* AIR 1922 P.C. 374 and it has been laid down many times. The words of Section 15 are these:

An award on a submission on being filed in the Court in accordance with the foregoing provisions shall unless the Court remits it to the reconsideration of the

arbitrators or umpire or sets it aside be enforceable as if it were a decree of the Court.

3. So there can be no doubt that it is not only to be enforceable as if it were a decree in general but, having been filed in a particular Court, it is to be enforceable as if it were a decree of that Court.

4. Now, we have been pressed to hold that this provision refers only to the procedure or manner in which an award is to be enforced by execution; and with reference to the case of *In re A Bankruptcy Notice* [1907] 1 K.B. 478 it is important to observe that Section 12, English Arbitration Act, 1889, states in express terms:

An award or a submission may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order to the same effect.

5. Under the wording of the English section, it seems to me to be reasonably clear that there could be no successful contention that Section 12, Act of 1889 is addressed in any way to a question of limitation. It is important to notice that the draftsman of the Indian-statute having the language of the English statute before him has expressed himself much more widely. The words are

be enforceable as if it were a decree of the Court.

6. It is quite true that, even so, it is by no means clear whether the language used in Section 15 is intended to be taken not only as regards manner in the largest sense of that word but also as regards time for the purposes of limitation. It has been pointed to us that similar wide language is to be found in Section 42, Civil P.C., where it says that

that Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

7. Now, in India we know that the period of limitation is one thing for a decree passed by a mofussil Court and another thing for a decree passed by a Chartered High Court. It is to be observed with reference to Section 42 that the section deals with powers of the Court executing it and only with those powers, so that there cannot be very much doubt that the question of limitation is excluded from the purview of that section. The question of limitation is not merely a question of power. The matter is one of very great importance and it is, I think, to be noticed not merely that the Indian Statute uses wider language than the English Statute but it makes no special provision for limitation. It seems to me, in these circumstances, that, if one looks at the question of limitation from the point of view of the different alternatives, there can be one inference only and that is that the words employed by the legislature in the Sub-section of Section 15, Indian Arbitration Act, were intended to go to the question of limitation as well as to the question of procedure. The Court has been reminded that questions of limitation are regarded for purposes of International law as questions of procedure.

8. In the decrees of civil Courts other than Chartered High Courts the provisions of the Limitation Act are very elaborate. These are provisions whereby within the time limited by Section 48 of the Code applications in execution can be made so long as they are made within three years of each other: and in the same way with regard to decrees of Chartered High Courts not only is there a limit of twelve years but there are elaborate arrangements for the extension of that period by payment of interest, acknowledgment and so forth. It is further to be observed that on the question of limitation, under Article 182 there are elaborate arrangements, for dealing with the case where the decree has been passed against more persons than one and one of these persons is in a different position to the others. Now, we have to consider the construction of Section 15, Indian Arbitration Act, with a view to choose between two alternatives : one is the view that a decree for purposes of limitation will be governed by Article 182 or 183 according to as it is filed in a Chartered High Court or not and the other is the view that whatever happens to a decree it can only be enforceable within a period of three years prescribed by Article 181 for applications for which no period of limitation is provided elsewhere in this schedule or by Section 48, Civil P.C., It seems to me, looking at the absence of all provisions in the Indian Arbitration Act with reference to limitation, looking to the fact that the language of the English Act has been deliberately widened and to the fact that the question of the time limit for execution is a question of enforceability of the decree, as Article 183 itself shows, that the correct view is that Section 15 does cover the question of time within which the execution of a decree may be had. I, therefore, think that in this case the period of limitation is twelve years. This decision is in accordance with the view taken by a single Judge, Mr. Justice Harrison of the Lahore High Court, in the case of Pokhardas v. Radha Kissen AIR 1924 Lah. 544.

9. In this view, the appeal fails and must be dismissed with costs.

10. This judgment governs appeal 65 of 1927 which is also dismissed with costs.

Mitter, J.

11. I agree.