

**(1955) 11 P&H CK 0015**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Letters Patent Appeal No. 2 of 1955**

Gopi Chand

APPELLANT

Vs

Lal Chand

RESPONDENT

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**Date of Decision :** 30-11-1955

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151 , 152  
Judicature Ordinance, 2006 — Section 52  
Limitation (Amendment) Act, 1978 — Article 158, 179, 181  
Patiala Arbitration Act, 2002 — Section 14, 15, 16, 17, 30

**Citation :** AIR 1956 P&H 74

**Hon'ble Judges :** Passey, C.J;Chopra, J

**Bench :** Division Bench

**Advocate :** Dalip Chand, for the Appellant; Puran Chand and Tehal Singh, for the Respondent

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## Judgement

1. This is an appeal u/s 52 of the Judicature Ordinance (10 of 2006) against the judgment of a Single Bench of this Court dismissing a petition for revision brought by the Appellant. The parties to this case are brothers, between whom disputes regarding property are going on for the last three decades. In 1930, they and their brothers got their joint property partitioned through arbitration. Disputes regarding mesne profits of certain properties again arose between Lal Chand and Gopi Chand. This they referred to a sole arbitrator, Shri Pratap Chand, another brother of theirs, by means of an agreement dated 10-5-1937.

Shri Pratap Chand gave his award on 14-11-1937. It was read out to the parties and a copy of it was given to each of them that day. This award was, however, amended by the arbitrator on 28-11-1937 and the amount of mesne profits allowed to Gopi Chand was reduced from Rs. 3700/- to Rs. 1200/-. The amended award was signed by both Lal Chand and Gopi Chand and thus they had due notice of it on 28-11-1937.

The present dispute relates to this award alone. The parties did not institute any

proceedings in Court in connexion with this award for several years, neither to get it set aside nor did to have it make a rule of the Court. On 7-3-1949, that is more than eleven years after the award, Lai Chand Respondent brought an application u/s 33, Patiala Arbitration Act, 2002 Bk. (hereinafter mentioned as the Act), for obtaining a declaration that the award, as amended on 28-11-1937, was invalid and liable to be set aside.

It may be mentioned here that this local Act is almost a verbatim copy of the Arbitration Act, 1940. Sub Judge Patiala, to whom the application was presented, dismissed it with costs holding that it was hopelessly barred by time. The order of the Sub Judge is dated 8-7-1949. As a result of this order, a Memorandum of Costs showing the costs awarded to Gopi Chand was prepared.

On 1-12-1950, Gopi Chand Appellant presented an application u/s 17 of the Act for "enforcement of the award"; obviously meaning thereby for obtaining a judgment of the Court according to the award and followed by a decree. This application was dismissed for default on 24-2-1951.

2. During the pendency of the above application Gopi Chand presented another application on 18-1-1951 stating that, on dismissal of Lal Chand's application u/s 33 for setting aside the award, the Court ought to have drawn up a decree-sheet instead of merely preparing a Memorandum of Costs and prayed that a regular decree-sheet be prepared.

The learned Sub Judge, vide his order dated 22-2-1952, accepted this application and directed a decree-sheet to be prepared. Notice of this application, on the first" day of its hearing, was directed to be given to Lai Chand, but since the requisite fee was not deposited no notice was actually issued or served, and the entire proceedings went on in Lal Chand's absence. Curiously enough, the decree sheet prepared in compliance with the order is not" only contained the verdict of Shri Pratap Chand in the last arbitration but also enumerated I the property that fell to Gopi Chand's share in the earlier award of 1930.

3. Gopi Chand Appellant took out execution: and it was then that Lai Chand came to now of the decree. He took exception to the execution, and also presented a separate application u/s 151 CPC for cancellation of the order dated 22-2-1952, on the ground that it was without Jurisdiction, illegal and obtained on the basis of misrepresentations at his back and without any; notice having been issued to him.

The learned trial Judge accepted this application and set aside his own previous order dated" 22-2-1952, holding that it was invalid and wholly unmentionable. The order is dated 24-6-1952, Gopi Chand came in revision against this order;; which was dismissed. Hence this appeal on at" certificate granted by the learned Judge of this" Court.

4. We have heard learned Counsel for the parties at some length and find no force in the appeal. It is now well settled that the Court not only has the inherent

power but also the duty to correct injustice and set aside its previous illegal and unauthorised judgment or order.. This is exactly what the Sub Judge did in this case by -his order in question. Shri Dalip Chand, learned Counsel for the Appellant, expresses his inability to support the Sub Judge's order dated 22-2-1952. Undoubtedly, it was illegal and passed without jurisdiction.

While dismissing the application of Lai Chand the Court refused to set aside the award, but did nothing further. It did not pronounce judgment according to the award, and no decree therefore followed. A judgment, which is to be written one and pronounced in open Court, contains the reasons for adjudication of the rights of the parties, while in the decree only the final adjudication is to be embodied.

The decree is something distinct from the judgment and is merely the result thereof. The decree follows the judgment and is to be prepared in accordance with it. The decree is to specify clearly the relief granted by, or other determination arrived at in, the judgment. It is simply un-understandable that there can be a decree without a judgment.

5. The adjudication of the Court in this case was that it refused to set aside the award and dismissed Lai Chand's application in that behalf. Since the Court had not proceeded to pronounce judgment according to the award no decree in terms of the award could be prepared. Gopi Chand did not apply, if he could do so, for correction of any mistake in the judgment but simply applied for preparation of a decree-sheet. The Court accepted the prayer and prepared a decree-sheet even without a judgment on which it could be-based.

6. Shri Dalip Chand wants us now to direct " that since the order of the Sub-Judge dated 22-2-1952 has been set aside, Gopi Chand's application dated 18-1-1951 should be reviewed and re-decided by the Sub Judge treating it as an application for correction of a mistake in the judgment dated 8-7-1949. His argument is that u/s 17 of the Act the Court while refusing to set aside the award was bound to pronounce judgment according to the award, and that the Court having omitted to follow the correct procedure the mistake could be corrected on an application u/s 151 or Section 152 Code of Civil Procedure.

In my opinion, the reasoning on either of the points is fallacious and unacceptable. In the first- instance, it would not be permissible for us to allow amendment of the application at this stage or to I direct that it should be treated as something different from what it actually is.

Secondly, even if it be assumed that the Court ought to have proceeded to pronounce judgment according to the award, its failure to do so cannot be regarded as a mistake that could be corrected on an application u/s 151 or Section 152, CPC It was not a clerical or arithmetical mistake in the judgment or order, or an error arising there in from any accidental slip or omission. Nor could the inherent powers of the Court be invoked in the matter.

A wrong or imperfect judgment or order can be corrected in appeal or revision or by means of review "Gopi-Chand could also have applied for filing at the award and its being made a rule of the Court.,-That he once did but the application was dismissed for its non-prosecution. No injustice has been done to him, nor was the order dated 8-7-1949, in any way illegal or without jurisdiction.

7. Lastly, I do not see any force in the contention that the Court in this case, on its refusal to set aside the award, ought to have proceeded to pronounce judgment according to the award. The award was given in November 1937. Gopi Chand and so also Lal Chand had notice of the award, for it was pronounced in their presence and was signed by them. Limitation for filing of an award in Court is ninety days, and the time starts from the date of service of the notice of the making of the award, which in this case was 28-11-1937, (vide Article 1978 Limitation Act).

under Article 158, an application to set aside an award has to be brought within thirty days of the date of service of the notice of filing of the award. If for any reason, Article 178 or Article 158 did not apply the maximum period for such an application could be, three years under the residuary article, viz, Article 181.

Limitation for an application for filing of the award "or to have it set aside had long expired, "When Lal Chand submitted his application on 7-3-1949, for setting aside the award. It was in fact dismissed as barred by time. Section 17 of the Act does not require that even in such a case the Court, on refusing to set aside the award, ought to make the award a rule of the Court and pass a decree in its terms.

8. The facts in A.R. Savkur Vs. Amritlal Kalidas and Others, the only authority relied upon by Shri Dalip Chand, were altogether different. The award in that case was made and published on 21-6-1952. It was filed in Court, and the notice of the filing of the award, was served on the Appellant on 6-10-1952. The Appellant presented a petition on 9-1-53 for a declaration that the award dated 21-6-1952 was null and void and was not binding on the Appellant. The Court held that the petition made more than -thirty days after service of the notice of the filing of the award was beyond time, and therefore dismissed the petition.

In appeal, it was urged that the application was not for setting aside the award on any of the grounds mentioned in Section 30, Arbitration Act but for a declaration that the award was invalid and that while Article 158 provided a limitation of thirty days for an application to set aside an award, the - residuary Article 181 providing three years limitation would apply to the latter kind of application, as it was one u/s 33 of the Act to seek a declaration that the award was invalid on the ground that there had been no proper and valid reference. Refuting the argument Chagla C. J. observed-

What we are concerned with is whether the Arbitration Act contemplates only an application to-set aside an award to which Article 158 applies, Or whether "the Arbitration Act contemplates two Different types of applications, one to set aside

an Award and the other to have a declaration that the award is, invalid. In our opinion, for the reasons \_already stated, the only application contemplated by the Arbitration Act is an application u/s 33, and whether the award is challenged on the grounds mentioned in Section 30 .or on the grounds mentioned in Section 33, the application has got to be made u/s 33." It has to be decided u/s 33 and the award has got to be set aside never mind how the challenge is made to the award, and once the application has been made to set aside an award u/s 33, Section 17 comes into operation and .the. Court is bound to pass a judgment in terms of the award if that application to set aside the award is refused or if the application to set aside the award is not made within the time mentioned in Article 158, Limitation Act.

The last part of the observation, has to be read in the light of the facts of the case, and cannot be regarded as an authority for holding that in every case, even where the time for filing of the award has long expired, the Court, while rejecting an application for setting aside the award as time barred, is bound to-pass a judgment in terms of the award.

9. In my view, Section 17 of the Act has to be; read with the sections that precede and fall under the same chapter. An application u/s 33 which is placed in a different chapter, is an independent proceeding and rejection of an application under it does not necessarily attract the provisions of Section 17.

10. In *Balwant Singh v. Ram Charan Singh* 1944 All 183 (AIR v. 31) (B), the facts were almost similar. The parties in that case referred certain disputes to an arbitrator. On 30-4-1941, the arbitrator delivered a copy of the award to each of the parties. On 22-5-1941 the arbitrator registered this award. On 23-5-1941 the Appellant Balwant Singh filed an objection u/s 33, Arbitration Act and his grounds were that the award was materially different from the award dated 30-4-1941.

The Court dismissed the application. In the appeal filed against this order, which was dismissed, the Respondent had filed a cross objection and his contention was that the learned trial Judge having dismissed the application u/s 33, Arbitration Act he was bound u/s 17 of the same Act to pronounce judgment according to award, and it was therefore urged that a judgment in accordance with the award be pronounced and that a decree should follow. The cross-objection was dismissed with "the following observation:

Having carefully considered the various sections of the Act and the scheme of the Act we are of opinion that Sections 14, 15, 16 and 17 must be read together. If a party has filed an application u/s 33, Arbitration Act challenging the existence or validity of an award we do not think that the procedure laid down in Sections 14, 15 and 16 of the Act is made immediately applicable. To our mind, the contention of the learned Counsel for the Appellant that the proceedings u/s 33 are entirely different from the proceedings under Sections 14, 15, 16 and 17 of the Act is sound and 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 filed by the other side, specially when it had not been moved to pass any such order by the Respondent. To our mind, Section 33, Arbitration Act, was enacted to provide a speedy remedy to a party objecting to a reference or an award and instead of having to file a separate suit for the purpose he can now merely move an application which has to be generally decided on affidavits.

11. I am in respectful agreement with this view and would, therefore, hold that the Court was not called upon to pronounce judgment according to the award while rejecting Lal Chand's application for setting aside the award.

12. In the result, the appeal fails and is dismissed with costs.