
(1958) 12 PAT CK 0013

In the Patna High Court

Case No : A.F.O.D. No's. 254 and 307 of 1951

Govt. of India and Another

APPELLANT

Vs

Jamunadhar Rungta and Others

RESPONDENT

Date of Decision : 17-12-1958

Acts Referred:

Arbitration Act, 1940 — Section 2, 32
Contract Act, 1872 — Section 182, 196, 65, 70

Citation : AIR 1960 Patna 19

Hon'ble Judges : S.C. Prasad, J;B.N. Rai, J

Bench : Division Bench

Advocate : Lal Narain Sihna, for the Appellant; B.C. De, for the Respondent

Judgement

S.C. Prasad, J.—These two appeals have been heard together.

2. They are against the same judgment of the Additional Subordinate Judge of Darbhanga. The plaintiffs are the appellants in First Appeal No. 307 of 1951 and defendants 8 and 9, being the defendants 3rd and 4th parties respectively, are the appellants in First Appeal No. 254 of 1951. They are the Governments of India and Bihar in their Departments of Food.

3. The plaintiffs were partners as per deed of partnership dated the 13th July, 1958, and carried on business in partnership under the name and style of Manturam Jamunadhar at Jaynagar in the district of Darbhanga and at Jalalgarh in the district of Purnea as well as under the name and style of Dhurmall Mangturam at Bhaptiahi. The firms are registered ones and their head office was at Jaynagar of which Bhaptiahi and Jalalgarh business were branches, and under the firm "Dhurmall Mangturam" at Bhaptiahi the plaintiffs had a rice mill known as Shree Hanuman Rice Mill, which had started to function from the 23rd April, 1944.

4. Defendant No. 1 has been described in the plaint as Agent to the Government of India. Defendant No. 2 was the Regional Grain Supply Officer of the

Government of Bihar posted during the relevant period at Darbhanga. Defendant No. 6 was his Assistant also posted at Darbhanga. Defendant No. 3 was the Additional District Magistrate during the relevant period at Saharsa under whom defendants 4 and 5 were working as Subdivisional Officer of Supaul and Deputy Collector of Saharsa, respectively. Defendant No. 7 was the then Marketing Inspector of Nirmali.

5. During the year 1944 on account of war conditions there was great scarcity of foodgrains and the Government of India had, therefore, arranged for the procurement of paddy and rice in order to distribute it among the people of different Provinces in India and for that purpose, it was alleged by the plaintiffs, that defendant No. 1 had been appointed Agent by the Government of India on the 11th January, 1944, his functions being to act as Purchasing Agent on behalf of the Government of India in respect of paddy to be procured within territory, of his Highness the Maharaja of Nepal, and, in addition, to be fully responsible for the milling in Bihar of such paddy for the delivery of an equivalent quantity of rice to such recipient administrations, or their representatives, as may be nominated by the Department of Food of the Government of India.

He has, amongst Other things, to make arrangement for parboiling and milling at specified mills of the paddy in respect of which a processing charge was to be paid at a rate per maund approved by the Government of Bihar from time to time. He had also to arrange for the despatch of rice ex-mill to the recipient administrations after having taken the necessary permits in respect of exports to Bengal and other Provinces and obtaining from the latter a clear discharge in respect of weights and quality, it being understood that transportation, and other delivery charges up to the point of loading and despatch were to be borne by the recipient Governments.

In consideration of doing these duties and others, he was to receive 2 annas per maund of paddy purchased by him, the foregoing charge to include weighing, filling into bags and their stitching incurred on paddy at the point of purchase. Defendant No. 1 was also to follow a particular procedure which was to govern the operations of these procedures as laid down by the Government of India in their letter dealing with the maintenance of accounts incurred by the defendant, submitting the bills and the taking of receipts from the recipient administrations. Defendant No. 1 was also paid an advance of Rs. 25,00,000/- by the Government of India, the amount having been placed at his disposal with the Imperial Bank of India at Patna.

This advance was recoverable from defendant No. 1 finally under the orders of the Food Department of the Government of India, either, in cash, or by adjustment against defendant's bills presented towards the end of the operation. Defendant No. 1 accepted these proposals of the Government of India in writing on the 13th January, 1944.

6. It was alleged by the plaintiffs that in the month of January, 1944, defendant

No. 1 came to the Head Office of the plaintiffs at Jaynagar and represented to them that he was an Agent of, and Trade Adviser, to the Government of India, and in that capacity he negotiated, canvassed, and contracted orally with the plaintiffs the terms of the agreement being as follows:--

"(i) That defendant 1st party would supply paddy to the plaintiffs for milling.

(ii) That he would pay the milling charge at the rate of Re. 1/- per maund and cost and incidental charges in bringing the rice to the loading station indicated by him.

(iii) That he would pay the milling charge, cost and incidental charges stated above before taking delivery of the rice.

(iv) That he would take rice at the rate of Rs. 62 per cent of the paddy supplied.

(v) That the rice will be ordinarily deliverable at the mill to defendant No. 1 or his nominee and in case it has to be transported elsewhere all costs arising thereto will be paid by defendant No. 1 and the goods will remain at his own risk" (and the same was finally confirmed at Darbhanga in the presence of the District Magistrate).

7. It was further alleged by the plaintiffs that in, pursuance of that contract, defendant No. 1 supplied to them, from time to time, 31488 maunds of paddy, but in that year of 1944, on account of the late supply of paddy, the plaintiffs could mill only 8277 maunds 20 seers of rice out of which 8180 maunds were delivered to defendant No. 1, in accordance with his directions, between the period from the 6th June, 1944 to 31st August, (1944, this quantity of rice having been sent to Bengal from Nirmali (vide Schedule B of the plaint).

The Mill again began to function from the 20th October, 1944, and by the 10th March. 1945, the plaintiffs, as they stated, had been able to mill the entire remaining quantity of rice of which they informed defendant No. 1 in due course, and according to his instructions, the plaintiffs, as alleged by them, transported 375 bags of rice to Nirmali in October, 1944, which were at first kept in the Railway Godown there, but subsequently they shifted these bags to a hired godown, because defendant No. 1 did not take any steps to take delivery thereof in spite of the information and repeated reminders sent by the plaintiffs to defendant No. 1 for this purpose.

The plaintiffs further averred that out of 375 bags, 10 bags were stolen away sometimes in May or June, 1945, in spite of all possible steps taken by the plaintiffs to guard them. According to them, in accordance with the programme sent by defendant No. 1 the plaintiffs took 2000 bags of rice to Supaul and informed the defendant no. 1 of the same, but in spite of several demands made by the plaintiffs between the 1st December, 1944 to 15th May, 1945 no arrangement was made by defendant No. 1 to take delivery of this quantity of rice with the result that on the 15th May, 1945, when the railway train service at Supaul was stopped due to floods, the plaintiffs were compelled to bring back the

rice to Bhaptiahi because they had no other suitable godown available at Nirmali to stock this huge quantity of rice.

In the month of August, 1945, due to high Kosi floods, the rice stocked at Bhaptiahi was damaged resulting in complete loss of 566 hags which were totally swept away by the floods. The rice of 225 bags was slightly damaged and that of 622 bags was damaged to a greater extent than that of the above 225 bags. Defendant No. 1, it is contended by the plaintiffs, in their plaint, was informed of this accident. He then deputed a man to make enquiry and asked the plaintiffs to send a detailed report regarding the damages with a certificate of the officer of the district and also to deliver the entire quantity of rice to his nominee promising to pay for the entire loss.

The nominee of the defendant No. 1 was the Government of Bihar, defendant 4th party. This information was given by defendant No. 1 to the plaintiffs by his letter No. 2520/45 dated the 11th August, 1945, in which he said that the Government of Bihar had been authorised to make payments of the plaintiffs' dues. The defendant No. 1 also asked the plaintiffs by his letter No. 2556/45 dated the 28th August, 1945 to take early steps to deliver the rice to the Regional Grain Supply Officer, defendant No. 2. The plaintiffs, however, protested, because it was, according to the plaintiffs a clever move on behalf of defendant No. 1 to compel and coerce them to make delivery of the rice without payment.

The plaintiffs claimed that they sent a letter to the Government of India, Food Department, which directed defendant no 1 to pay their dues but he refused to make any payment. In the meantime, it is alleged, the Regional Grain Supply Officer, Government of Bihar, posted at Darbhanga, defendant No. 2, the Additional District Magistrate, Saharsa, defendant No. 3, and the Sub-divisional Officer of Supaul, defendant No. 4, all combined together against the plaintiffs at the instance of defendant no, 1 and compelled them by means of threat, undue influence, fraud and misrepresentation to make delivery of the rice lying with them, that is to say. to deliver 7439 maunds 36 seers and 2 chataks of rice to the Subdivisional Officer, Supaul, defendant No. 4, who did not accept 1210 maunds 5 seers and 12 chataks of rice out of this quantity, because, according to him, it was damaged, so that the actual quantity delivered to the Subdivisional Officer was 6229 maunds 30 seers and 6 chataks.

8. The further case of the plaintiffs was that on the 3rd May, 1946 they sent a representation to Hon"ble Minister Incharge of Food of the State of Bihar, defendant 4th party, and also a letter to the Regional Grain Supply Officer, Darbhanga and Monghyr, defendant No. 2, but to their surprise they got a copy of telegram, Memo No. 4700, from defendant No. 2 telling them that he had fixed the 4th June 1946 at 9 a.m. at Monghyr for arbitration to settle the dispute between defendant No. 1 and the plaintiffs, directing the plaintiffs to send their representative to Monghyr, that thereafter by three memos dated 8th June, 29th June and 15th July, 1946 enquiries were made from the plaintiffs if they were prepared to accept the arbitration of the Regional Grain Supply Officer.

9. Before summarising the further case of the plaintiffs, a few facts should be mentioned. Actually defendant No. 2, the Regional Grain Supply Officer, arbitrated between the plaintiffs and defendant No. 1 holding the enquiry on 15th, 16th and 17th of December at Motihari. The plaintiffs were represented by one Shree Thakur Prasad Tewary, pleader (P.W. 8). One of the plaintiffs, Govindram Rungta, was also present. He handed over to the arbitrator a letter addressed to the Regional Grain Supply Officer stating that he had agreed to abide by the decision of the Regional Grain Supply Officer of Darbhanga in respect of the dispute with Lala Gursharan Lal (defendant No. 1) relating to Nepal Paddy given to Bhaptiahi Mill for crushing etc. and that the award shall be binding on him. Shri Rungta signed this letter in his own pen under the date 17-12-46 on which date the arbitrator gave his award according to which the net amount payable to Mill, after final settlement of account came to Rs. 250/- only. The arbitrator also directed that the Mill was to deliver 190 maunds of rice to the Regional Grain Supply Officer of Darbhanga on the account of defendant No. 1, which if not done within a fortnight of the date of award was to make the Mill, that is to say, the plaintiffs, liable to pay to defendant No. 1, the price of the said stock at the rate of Rs. 10/- per maund (vide exhibit B/19-11). It may also be mentioned that according to the defendants in pursuance of this award defendant No. 1 had sent a cheque of Rs. 250/- to the plaintiffs who did not accept it, and the plaintiffs had supplied 155 maunds of rice to defendant No. 1's nominee.

10. The plaintiffs have challenged the legality and the validity of the award and their grounds of challenge, as stated in the plaint, are as below: (1) That the Government without the consent of the plaintiffs appointed defendant No. 2 as arbitrator to decide the questions of the claim and the payments, though this defendant No. 2 was a party to the transaction and was an officer who had direct control over the affairs and as such was holding a position of influence, consequently he was not a proper person to be appointed an arbitrator; (2) that this defendant No. 2 coerced the plaintiffs into taking part in the said proceedings; (3) that he did not examine the parties nor did he maintain any memorandum of the proceeding, on the other hand, he heard defendant No. 1 in absence of the plaintiffs; (4) that the arbitrator did not take any evidence; (5) that he did not give any opportunity to the plaintiffs to explain the accounts, to him and that when it was brought to the notice of the arbitrator on the 15th December, 1946 that the complete account of the plaintiffs' claim was not before him, he asked them to submit supplementary bill on the 17th December, 1947. but before this could be done, he informed the plaintiffs' lawyer by wire that he had already delivered the award; (6) that the award neither had been written nor signed either in the presence of the plaintiffs or their representative nor was it duly communicated to the parties after the award had been delivered; (7) that the award did not decide all the disputes between the parties which was necessary; (8) that the award had been given beyond the time fixed and was, therefore, void and (9) that the same had been repudiated by the Government and that the parties had not agreed to the reference of the dispute to arbitration.

11. The plaintiffs further" alleged that they were asked by express letter No. 373 dated the 31st May. 1947 to deliver 190 maunds oi rice to the Marketing Inspector of Nirmali, defendant No. 7, and the bags of the rice, which they sent in accordance with this letter, were on weighment found to contain 156 maunds and this quantity was delivered to the aforesaid defendant No. 7.

The main grievance of the plaintiffs appears to have been that all these deliveries were made by the plaintiffs to the defendants without any payment having been made by them in spite of repeated demands, so much so that they were told by defendant No. 2 that no payment was to be made and the plaintiffs were to demand payment from defendant No. 1, that by several letters, telegrams and notices they had repeatedly asked the defendants to clear their dues but without any effect. Consequently finding no way out they filed the suit after having served notice u/s 80, Civil Procedure Code, on the defendants.

12. The plaintiffs prayed for the following reliefs:--

"That a decree for Rs. 35730/14/4 against such of the defendants as may be found liable either jointly or severally be passed in favour of the plaintiffs together with interest pendente lite and future, and for a declaration that the award of the Regional Grain Supply Officer was altogether illegal, void and not binding on the plaintiffs and finally for costs."

13. Defendant no, 1 filed a written statement contending, inter alia, that he never went to Jay-nagar and no contract was arrived at with the plaintiffs there. What had happened, according to him, was that he had gone to Darbhanga in the month of January, 1944 where a meeting of the rice mill owners was held by the District Magistrate and arrangements and terms were settled by the Mill-owners including the plaintiffs" representative and a memorandum of those terms was prepared and signed by the District Magistrate.

He further asserted that the actual quantity of paddy, which he had supplied to the plaintiffs, was 31538 maunds and not 31488 maunds as alleged by the plaintiffs, that it was on account of the plaintiffs" fault that the rice contained in 375 bags had to be removed to Nirmali of which delivery could not be taken and, therefore, the responsibility rested on them. Sri Lal denied the allegations made by the plaintiffs regarding the damage to rice by floods in 1945. He also denied the allegation of his collusion with the officials and those of undue influence, coercion, fraud and misrepresentation, contending that he had no hand in the delivery of rice by the plaintiffs to the officials of Bihar Government or anybody else.

He also pleaded that the arbitrator had been appointed with the consent of both parties to settle the dispute and that the arbitrator had proceeded impartially and fairly giving both parties full opportunity to produce evidence, that the award given by the arbitrator was perfectly legal, valid and binding and had been acted upon by the parties. Alternatively, he pleaded that in case the award was declared invalid and not binding on the parties, there should be allowed a set-off

in his favour to the extent of Rs. 65734/3/6 of which he gave the details in the schedule annexed to his written statement.

14. The Government of India, defendant No. 8, in a separate written statement contended that they had nothing to do with the contract in question between defendant No. 1 and the plaintiffs, it being a contract between them independently of the Government. They denied that defendant No. 1 was their Agent for the purpose of milling paddy into rice etc. and that he had contracted with the plaintiffs as such on their behalf. It was said that he had no authority whatsoever to enter into a contract with the plaintiffs as their agents in this matter.

Finally, it was asserted that even if it were held that there was any agreement of agency between defendant No. 1 and the Department of Government, that was a void agreement, because u/s 175 of the Government of India Act of 1935 read with Section 313 of the said Act the contract had not been expressly made on behalf of and in the name of Governor-General of India. It was also pleaded that for the same reasons the contract, if any, between defendant No. 1 and the plaintiffs was also invalid and of no legal force.

15. The Government of Bihar in their separate written statement contended that they were unaware of the contract alleged by the plaintiffs, the terms of which they did not admit, that the plaintiffs had supplied in all 6229 maunds 26 seers and 6 chataks of rice to their Subdivisional Officer posted at Supaul, that the arbitrator had been appointed with the consent of the parties, namely, defendant No. 1 and the plaintiffs, and the award given by him was perfectly legal and valid and had in fact been acted upon by the plaintiffs.

16. The officials of the Bihar Government, namely, defendants 2 to 7, pleaded separately that they had acted in connection with the transactions in question in their official capacities and, therefore, they were not liable personally. Defendant No. 2, said that the award given by him was perfectly legal and valid, having been made by him after having given full opportunity to the parties to adduce evidence before him.

17. The learned Subordinate Judge framed the following issues:--

"(1) Is the suit as framed maintainable?

(2) Have the plaintiffs any cause of action or right to sue?

(3) Is the suit barred by limitation, estoppel, acquiescence and waiver?

(4) What were the terms of contract between the plaintiffs and defendant No. 1?

(5) Was defendant No. 1 an agent of the Government of India defendant 3rd party, and was he authorised by that Government to enter into the alleged contract?

(6) Is the award given by defendant No. 2 legal, valid and binding on the

plaintiffs?

(7) Are the plaintiffs entitled to get the amount claimed? If so, from which of defendants?

(8) To what relief, if any, are the plaintiffs entitled?"

18. The learned Subordinate Judge found as regards issues Nos. 4 and 5 that the terms of the contract between the defendant No. 1 and the plaintiffs were those mentioned in the memorandum (Exhibit A-1) which were, inter alia, that the paddy will be distributed to the Mills by arrangement between the North Bihar Mill-owners Association and the representative of the Trade Adviser (defendant No. 1), that the Mills will take delivery of the paddy from the Nepal market on weighment and be responsible for it thereafter and will help the Trade Adviser (defendant No. 1) in getting it transported from the purchasing centres of the market, that the Trade Adviser will pay cartage and all incidental charges for the delivery of the paddy to the mill gates, will take 62 per cent rice for the paddy supplied and will pay Rs. 1/- per maund as milling charges on rice and shall also be liable to rent at the rates fixed by the Regional Grain Supply Officer for any period in excess of one month for which the rice would remain in the mill, pending delivery.

19. The learned Subordinate Judge found in respect of issue No. 5 that defendant No. 1 had been appointed an agent by the Government of India not only for purchasing paddy but also for getting the paddy milled into rice, that even if it were assumed that the agency did not extend beyond purchasing paddy in Nepal, he, nevertheless, subsequently became the agent of the Government of India by ratification in respect of the milling of the paddy procured.

He was also of the opinion that the plaintiffs and their representatives baa been led into the honest belief that Mr. Lal, defendant No. 1, had authority on behalf of the Government of India to enter into the contract in respect of the milling of the patldy procured from Nepal. Upon this reasoning he came to the conclusion that the contract between the plaintiffs and defendant No. 1 was binding upon Government of India.

20. He repelled the argument on behalf of the Government-defendants based on Sections 175 and 313 of the Government of India Act, 1935 observing that the Government had not produced the notification dated the 16th July 1943, which according to the averment made in the plaint contained the directions of and authorisations by the Govern-or-General as required by the aforesaid sections of the Government of India Act, 1935 and also because the letter (Exhibit B/13-11) (letter No. D/150 dated 11-44) from the Director General of Food, New Delhi, to Gurusharan Lall, Esqr. Agent to the Government of India (defendant No. 1) containing the terms of his appointment already mentioned in the beginning of the judgment, left no room for doubt in the mind of the learned Subordinate Judge that Shri Lal had full authority on behalf of the Government of India to enter into the contract in question which was perfectly legal and valid. The

learned Subordinate Judge also relied upon Section 226 of the Indian Contract Act which provides that a contract entered into through an agent and obligations arising from acts done by an agent may be enforced in the same manner and will have the same legal consequence as if the contract had been entered into and the acts done by the principal in person, and observed that he had, therefore, no doubt that the Government of India was bound by this contract.

The learned Subordinate Judge held, on issues Nos. 6 and 7 dealing with the legality and validity of the award, with the amount to which the plaintiffs were entitled and with the liability of the defendants, that the actual quantity of the paddy which had been delivered to the plaintiffs was 33288 and not 35388 maunds. He accepted the story of theft of 25 maunds of rice exempting the plaintiffs from any responsibility in this regard. But he disbelieved the story of damage caused by floods holding that it had not been proved that any such damage had been caused to the rice which had been kept in the Mill godown by the floods.

He, however, allowed to the plaintiffs, loss caused to all grains by natural process in handling them in the shape of dryage and in their transport, at the rate of 5 per cent and came to the conclusion that out of 19522 maunds 22 seers of rice which the plaintiffs were liable to deliver to defendant No. 1, 2088 maunds 24 seers and 14 chataks remained with the plaintiffs, 23 maunds were lost by theft and 561 maunds were lost by natural process of dryage etc., and that the balance had been delivered by the plaintiffs to the defendants.

21. As regards the claim of the plaintiffs under different items it was admitted before the learned Subordinate Judge by the lawyer for the defendants that they were entitled to milling, delivery, stacking and incidental charges. The other claims, such as maintenance charges, godown rent, labour charges etc. were not seriously disputed before him. Consequently the learned Subordinate Judge accepted the plaintiffs' claim under those items in Schedule E of the plaint as correct.

22. The learned Subordinate Judge rejected the claim of set-off by defendant No. 1 in respect of Rs. 65734/3/6 as per account given by him in Schedule B of his written statement, but an equitable set-off in respect of the price of the rice which the plaintiffs had not delivered was allowed by him to this defendant. He directed that the price in respect of 2088 maunds 24 seers and 14 chataks of rice which had not been delivered by the plaintiffs, calculated at the Gazette rate published in December, 1946, shall be deducted from the total claim of the plaintiffs who shall be entitled to the balance less Rs. 11184/- already paid as advance besides compensation as set out in the relevant schedule of the plaint.

23. On the point as to which of the defendants was liable, the learned Subordinate Judge held that defendants 1 and 8 were clearly liable, and that so far as defendants 2 to 7, namely, the officials of the Bihar Government, were concerned, they were not personally liable. As regards the Government of Bihar,

the learned Subordinate Judge held that the Government was liable for the claims in respect of items Nos. 18, 19 and 20 of Schedule E of the plaint which related to the amounts spent by the plaintiffs in connection with the cartage in respect of the rice delivered by them to the officials of the Bihar Government.

24. On the point of the validity and the legality of the award, the learned Subordinate Judge held that the objections raised by the plaintiffs in the plaint, had no substance in them. He rejected them all as not having been proved by the plaintiffs. He, therefore, held that the award was legal, valid and binding on the plaintiffs.

25. It had also been contended before him that the claim covered by items 18, 19 and 20 of Schedule E of "the plaint had not been the subject-matter of the arbitration and as the Governments of India and Bihar were not parties to the arbitration they were liable to pay these amounts to the plaintiffs, it having been admitted before him that the claim of the plaintiffs in respect of these items were not barred by limitation. He accepted this contention and held the two Governments liable For these items with compensation thereon at the rate of 6 per cent p. a.

26. It appears from the judgment of the learned Subordinate Judge that no defect in the frame of the suit was pointed out to him, nor were the issues relating to limitation, estoppel, acquiescence and waiver pressed. Accordingly he decreed the suit in part directing that the decretal dues were to be paid by defendants 8 and 9 within three months from the date of the judgment. He awarded costs to the defendant No. 1.

27. Mr. B. C. De, the learned Counsel for the appellants, raised the following points before us:--

(1) That the finding of the learned Subordinate Judge on the point of damage caused to the rice by floods was incorrect, (2) that the reference to arbitration was invalid having not been done according to law and (3) that the award of the arbitrator, having not been made the rule of the court of law, could not operate as bar to the suit, which was substantially based on the original title of the plaintiffs to claim recovery of the amount mentioned in Schedule E of the plaint in pursuance of the contract between them and the defendant No. 1.

28. Mr. Lalnarain Sinha, the Counsel for defendants 8 and 9, Government of India and Government of Bihar, respectively, who are the appellants in F. A. No. 254 of 1951, raised the following points (1) that the award in question could not be collaterally ignored by the plaintiffs whose rights had merged in that award. (2) that having regard to the bar under Sections 32 and 33 of the Indian Arbitration Act, the present suit was not maintainable in so far as its object and effect were to set aside or vary or otherwise affect the arbitration agreement and the award, (3) that upon the allegations made in the plaint itself no cause of action had been disclosed against the Government of Bihar, (4) that no valid contract of agency had been constituted between defendant No. 1 and Government of India

because of the absence of a document according to Section 175 of the Government of India Act of 1935, (5) that the deliveries which had been made by the plaintiffs to the other defendants had been done in their capacity as mere nominees of defendant No. 1 and, therefore, the plaintiffs could not claim anything from those defendants personally, (6) that the suit was not maintainable against the Governments, because it ought to have been filed against the Dominion of India and the Province of Bihar and not against the Government of India and the Government of Bihar in their Departments of Food, (7) that defendant No. 1 was not an agent of the Government of India, but was an independent contractor, the contract between him and the plaintiffs having not been entered into by him for and on behalf of "the Government of India, and (8) that part of the claim of the plaintiffs was barred by limitation under Article 16 of the Indian Limitation Act, the cause of action in respect thereof having arisen in favour of the plaintiffs at Jaynagar on the 26th February, 1944.

29. As to the first point raised by Mr. B. C. De, I find no substance in it. (His Lordship on a consideration of the evidence held that there had been no damage to the rice stacked in the godown by flood water, and proceeded :)

30-33. Before taking up the second point raised by Mr. B. C. De, the learned Counsel for the appellants, I would like to dispose of one of the important points raised by Mr. Lalnarain Sinha, the learned Counsel of defendants 8 and 9 (appellants in F. A. No. 254 of 1951). His contention was that neither these two defendants nor the other defendants who are the servants of defendant No. 9, Government of Bihar, could be held at all liable, because defendant No. 1 was not an agent of the Government of India for the purpose of getting the paddy milled into rice, for, to that extent he was merely an independent contractor, having been appointed agent by the Government of India only for the purpose of purchasing paddy in the Nepal Territory. I think, there is considerable force in this contention of Mr. Sinha. Having regard to the contents of the letter of appointment by which defendant No. 1 was appointed the purchasing agent, the contents whereof in substance have been summarised in the earlier part of the judgment, indicating that defendant No. 1 was appointed an agent only for the purpose of purchasing paddy, the only reasonable conclusion can, in my view, be that he was not appointed by the Government of India agent for the purpose of getting the paddy milled into rice. In this connection the learned Subordinate Judge has taken into consideration the letter which is Exhibit B13-11 dated the 11th January... 1944, the portions relevant for the present purpose being that defendant No. 1 was to function as purchasing agent in respect of the paddy to be procured within the territory of the Maharaja of Nepal and in addition, he was to have full responsibility for the milling in Bihar of such paddy and also for the delivery of an equivalent quantity of rice to such recipient administrations or their representatives as may be nominated by the Department of Food of Government of India. In my opinion the reasonable interpretation of these terms read with the letter of acceptance (Exhibit B14-11) is that defendant No. 1 had been appointed as an agent of the Central Government only for the limited

purpose of purchasing paddy and not for the milling of such paddy in Bihar and delivery of an equivalent quantity of rice to that Government. For these two matters he had independently undertaken the responsibility of getting the paddy milled at specified mills in Bihar. The milling of "the paddy into rice was his sole and independent concern. The mere fact that the milling was to be done by specified mills could not be taken as constituting defendant No. 1 as an agent of Government of India in that respect, defendant No. 1 being completely responsible to get the paddy milled into rice according to his choice at anyone of those specified mills, upon which choice there was no limitation put by the Government of India. It is also important to note in this connection that it was the responsibility of defendant No. 1 to deliver certain percentage of the rice out of the total quantity of paddy to be feed from time to time by the Bihar Government. It followed by necessary implication that if it were to so happen that the total quantity of rice obtained came to be less than the required percentage, it was for defendant No. 1 to make up the deficiency. He could not have said in that contingency that he was merely an agent of the Government or India and, therefore, he was not bound to make up the deficiency and that the Government of India was to take the actual quantity of rice obtained by the milling of the paddy. The point which I am making can very well be illustrated by taking an example. Suppose the Government supply the building materials to a person asking him to make certain structures directing him to employ masons for the purpose of those constructions out of the list of masons maintained by the Government, it cannot be said that any agreement or contract between that person and the masons would be taken to have been entered into by that contractor as an agent of the Government for that purpose, and would bind the latter. I do not find any material difference between this concrete case and the present one. I have, therefore, no doubt in my mind that defendant No. 1 was only a contractor for the purpose of getting the paddy milled into rice. Any contract between him and the plaintiffs cannot be deemed to have been entered into by him as an agent of the Government of India.

34. The learned Subordinate Judge has referred to the fact of Government's ratification of the acts of defendant No. 1 constituting him an agent of the Government of India, also to the fact that the contract was binding upon the Government because the plaintiffs had been led to believe that defendant No. 1 had authority to act as agent of Government of India and was entering into the transactions with them on that footing. In view of the above position, no question of ratification does really arise, there being nothing in the contract between the plaintiff's and defendant No. 1, or in their subsequent conduct to indicate that the latter purported to act on behalf of the Government of India.

Only those unauthorised acts of any person can be ratified which have been performed by that person avowedly for or on account of another person (principal) and not when an act has been done on one's own account. Nobody can adopt another's act. as his own, which had not been purportedly done on his behalf by that another person, (*Shidheshwar v. Bamchandrarao* ILR 6 Bom 463 ,

Kaghavachari v. Pakkiri Mahomed Rowther 30 Mad LJ 497: (AIR 1917 Mad 250] and Kalyani Achi Vs. K.N.S.P.R.M. Ramanatham Chettiar and Others,).

35. I do not think there is sufficient justification for the views expressed by the court below on the evidence. Having regard to the long correspondence which had taken place between the parties, namely, the plaintiffs-appellants and the officers of the Government of India and Government of Bihar, as evidenced by series of letters printed in the paper book on behalf of both parties, it seems, clear to me that it was defendant No. 1. who was treated by the plaintiffs to be responsible for all matters in respect of the transactions between the parties including the payment of the plaintiffs-appellants' dues.

Apart from this, coming to the oral evidence, I find, referring to the evidence of P. W. 5, who is an employee of the plaintiffs and who was present when the contract between the plaintiffs and defendant No. 1 had been finalised at the meeting, held by the District Magistrate in Darbhanga in February. 1944 as evidenced by Exhibit A-1, that he stated that he had seen defendant No. 1 for the first time in that meeting. Neither he nor any mill-owner had asked defendant No. 1 in that meeting to "show that he was an agent of the Government of India, and that he had any authority to enter into a contract on behalf of that Government.

D. W. 1, Badri Narayan, who was a servant of defendant No. 1, stated that defendant No. 1 had written authority for entering into agreements on behalf of the Government of India, but he admitted that he had not held that authority. His evidence further shows that it was the letter of appointment already referred to above, which contained the functions which defendant No. 1 was to perform. He further stated that the Government of India had been informed of this agreement by a letter and a copy of that letter had been maintained by defendant No. 1, but that also had not been produced in this suit. It also appears from the evidence of this witness that the office of defendant No. 1 maintained papers and correspondence in connection with the paddy purchase agreement and milling, but no papers were produced to show that defendant No. 1 had at any time represented to the plaintiffs-appellants that he was acting as an agent of the Government of India in respect of the milling of the paddy into rice and that the Government of India had been informed of this fact which they had accepted.

I am, therefore, satisfied that the learned Subordinate Judge's view that the plaintiffs-appellants had been led into the bona fide belief that defendant No. 1 was acting as an agent of Government of India is not correct. There is nothing to support this theory and the plaintiffs-appellants cannot derive any advantage from it to bind defendants 8 and 9 on that score. In conclusion, therefore, I hold that defendant No. 1 was an independent contractor in respect of the milling of paddy into rice and that any contract between him on one side and the plaintiffs-appellants on the other was not brought about by the former as an agent of the Government of India, and, therefore, that Government was not bound by this

contract.

It is defendant No. 1 alone who must be held liable for the dues of the plaintiffs-appellants. It follows as necessary corollaries that the other defendants cannot be held liable for the claim of the plaintiffs-appellants made against them in the plaint. It seems unnecessary in this view of the matter to determine the correctness or otherwise of the contentions of Mr. Lalnarain Sinha, Counsel for defendants 8 & 9, in respect of the validity of the contract between the Government of India and defendant No. 1 and between the latter and the plaintiffs-appellants and want of cause of action against Government of Bihar.

It also follows that the plaintiffs cannot claim any decree against those defendants who were officials serving under the Government of Bihar during the relevant time and had to deal with the delivery of the rice. No decree can be passed against them even in their official capacity.

36. I would, however, like to refer to one thing hinted at by Mr. B. C. dC during the course of his arguments that these defendants were liable under Sections 65 and 70 of the Indian Contract Act. He relied upon the ruling reported in *Ishwar Dayal Vs. Badri Lal*, . The position, however, being what has been found above no question of the application of the principles, underlying the aforesaid two sections of the Indian Contract Act, docs really arise in this case.

The authority relied upon by Mr. B. C. De is besides the point having regard to the facts of that case which were materially different from those of the present case. Here it has been found that there was no binding contract between the plaintiffs and defendants 8 and 9. Consequently these sections of the Contract Act have no room for application in this case.

37. According to Section 65 of the Indian Contract Act when an agreement is discovered to be void or when a contract becomes void any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it. Now, the facts of the present case are that according to the agreement between defendant No. 1 and the plaintiffs-appellants the latter were to deliver the rice to defendant No. 1 or his nominees as and when required by him. Rice had been milled by the plaintiffs-appellants out of the paddy supplied to them by defendant No. 1 which he had purchased with the money supplied to him by the Government of India.

In those circumstances, if the plaintiffs delivered the rice to the other defendants, officials of the Government of Bihar, strictly speaking, it cannot be said that they had received any advantage under such agreement or contract. Whatever advantage had been received had been done by defendant No. 1, who had nominated these persons for receiving the rice on his behalf, and the plaintiffs-appellants had done nothing except that they had carried out their part of the contract, which was to deliver rice to whomsoever defendant No. 1 wanted them to do so. No question of application of Section 65 of the Indian Contract Act as between the plaintiffs and defendants. 8 and 9 can, therefore, arise in these

circumstances.

38. The case cited by Mr. B. C. De shows that there had been a contract between the Military Engineer of the Government of India in the Military Department and the plaintiff. The former was empowered by the Government of India to enter into an agreement to the extent of Rs. 20000/-and further the plaintiff had supplied bed-strads according to that agreement after having got them prepared at his own costs. It is clear beyond any doubt that the facts of the present case are wholly different from that case in material particulars.

39. Section 70 of the Indian Contract Act does not also come into play in this case upon the facts found and in view of the position that the contract in question between the plaintiffs-appellants and defendant No. 1 with which neither of the two Governments had anything to do, and the supply of the rice had been made by the plaintiffs-appellants to the other defendants at the instance of defendant No. 1, these officers having received the rice merely as his nominees, so that the real position was that the delivery of rice had actually been made to defendant No. 1 in pursuance of the contract between him and the plaintiffs-appellants, and not to these other defendants.

40. The arguments of Mr. Lalnarain Sinha regarding the defect in the frame of the suit and limitation cannot be entertained at this stage because these points do not appear to have been raised in the memorandum of appeal filed by the two Governments, defendants 8 and 9, nor in the lower court either at the time of the argument or when those defendants had filed their written statements in which no such specific pleas appear to have been raised. On the contrary, as already mentioned the question of defect in the frame of the suit and the question of limitation had not been pressed before the learned Subordinate Judge.

In a general way of course in paragraph 11 of the memorandum of appeal it has been stated that the suit was barred by limitation, but there is no ground in the memorandum of appeal of these defendants 8 and 9 in the specific form as it was put before us in the argument, namely, that the part of the claim was barred by limitation under Article 62 of the Indian Limitation Act.

41. It now remains to consider the most important matter in controversy between the parties, namely, the validity and the legality of the reference to arbitration and of the award given by the arbitrator, defendant No. 2, on the 17th December, 1946. The first contention of Mr. B. C. De on behalf of the plaintiffs-appellants was that the reference was not valid because it had not been made according to law, having not been done in writing between the parties as required by Section 2(a) of the Indian Arbitration Act which defines arbitration agreement as meaning a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

It has, however, been pointed out in several cases one of which is the case of Jugal Kishore Rameshwardas Vs. Mrs. Goolbai Hormusji, that though an

agreement of reference to arbitration must be in writing it need not be signed by the parties. What was necessary was that the terms must be reduced to writing and the fact that the parties had agreed to the reference should be established. That I think appears to have been done in this case.

The learned Subordinate Judge has found so for very good reasons. It has been pointed out by him that on behalf of defendant No. 1 Badrinarain had agreed in writing to the reference to defendant No. 2 as arbitrator to settle all disputes between defendant No. 1 and the plaintiffs-appellants. It has not been challenged before us nor does it appear to have been done before the lower court that Badrinarain had this power to enter into the agreement on behalf of defendant No. 1. As to the plaintiffs-appellants, P. W. 9, Sitapat Das, their servant appears to have given this consent on their behalf in writing by letter dated the 21st July, 1946 (Exhibit B-2-11).

Sitapat Das admitted having done so but he qualified it by saying that he had done so without his master's consent. This is inconsistent with the fact that one of the plaintiffs Govind Rungta was present along with one lawyer, Mr. Tewary, during the arbitration proceeding at Motihari, with the statements made by P. W. 8 that he had been taken to Motihari by the plaintiffs to represent them in that proceeding and with the fact that Govind Rungta himself on the 17th December, 1948 wrote a letter agreeing to the reference (see also Exhibit F(1) notice on behalf of the plaintiffs" lawyer Mr. D. N. Sen to defendant No. 1 Mr. Lal particularly, Exhibit 7Z (5a) letter of Shri Tiwari P. W. 8 on behalf of the plaintiffs to defendant No. 2 and Clause VI of paragraph 36 of the plaint).

42. It has been proved by one of the witnesses for the defence that this agreement was taken from Rungta on the 17th December 1946 and also from him (this witness) because the previous agreement in writing had been misplaced and was not available in the office of the arbitrator (vide D. W. 1 Badri Narain). Apart from this, there is the evidence of the arbitrator himself (D. W. 6), his Assistant (D. W. 4) and the clerk of his office (D. W. 5), all proving clearly that the arbitration had been done after the parties had agreed in writing to refer the dispute to D. W. 6, the arbitrator.

D. W. 6 has clearly stated that Exhibit H-1 the arbitration agreement signed by the plaintiff, Govind Rungta, on the 17th December, 1946 had been presented to him on behalf of the plaintiffs. I am not prepared to believe Shri Sitapat Dass and Shri Govind Rungta. I think the learned Subordinate Judge has rightly held that there was a valid reference of dispute to the arbitrator. The terms are clear from the two letters (Exhibits H-1 and H1-1). The entire dispute between the Plaintiffs and the defendant No. 1 was referred to the arbitrator. There is, therefore, no force in this argument of Mr. B. C. De, the learned Counsel for the plaintiffs-appellants. Indeed he did not appear to be very serious on this point.

43. What, however, he contended very strenuously on behalf of the plaintiffs-appellants was based on Sections 32 and 33 of the Indian Arbitration Act of

1940. He contended that in the present suit the plaintiffs had no doubt prayed for declaration that the award was illegal and invalid, but even if this relief was not open to them in view of the aforesaid two sections of the Indian Arbitration Act of 1940, it was clear beyond any doubt, especially in view of the case reported in *Sia Kishori Kuer and Others Vs. Bhairvi Nandan Sinha and Another*, , that the defendants were not entitled to put forward this award, which had not been made a rule of the court of law, as a bar to the claim of the plaintiffs-appellants, which was really based on their original title, to recover the amounts due to them from the defendants, on the basis of the contract arrived at between the parties. In reply, Mr. Lalnarain Sinha has contended that the authority relied upon by Mr. B. C. De was not available to him in this case, because the facts of that case were materially different from those of the present case, and that the observations made in that case were more or less obiter dicta or at best should be confined to the facts of that case, not taking them as laying down general principles of law on this matter.

44. The matter is not free from difficulty. I have given my anxious consideration to this aspect of the case and have come to the conclusion that the contentions of Mr. Lalnarain Sinha should be upheld. The two sections of the Indian Arbitration Act of 1940 are as follows:--

"32. Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

"33. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the court and the court shall decide the question on affidavits :

Provided that where the court deems it just and expedient it may set down the application for hearing or other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit."

45. It is significant to find that Section 32, the proper section to consider in this case, bars a suit involving decision upon the existence, effect or validity of an arbitration agreement or award and in addition it completely prohibits any proceeding or any action otherwise than as provided in this Act, the effect of which is to set aside, amend, modify or in any way affect an award or an arbitration agreement. The words "in any way affect" are in my opinion very significant and clearly cover the claim of the plaintiffs based on the original contract. The plaintiffs, in my opinion, were not entitled to bring this suit and claim decree for the amount mentioned in the plaint on the basis of the original contract for that would clearly affect the award in question the existence whereof has been clearly proved and the validity of which could not be questioned by the

plaintiffs-appellants in this suit.

46. In the case cited by *Sia Kishori Kuer and Others Vs. Bhairvi Nandan Sinha and Another*, the facts were that a partition suit had been filed by the plaintiffs of that suit in spite of the fact that there was an award of an arbitrator, one of the terms of the award being that the plaintiffs should pay to the defendants a sum of Rs. 2000/- within 6 months as compensation for expenditure incurred by the defendants in excess of their proper share for construction of the building after the earthquake of 1934 out of their own funds, the plaintiffs would be entitled to a half share in the property with the right of joint ownership and possession, failing which it would vest exclusively in the defendants.

The plaintiffs filed their suit alleging that they had sent Rs. 2000/- by money order to the defendants but they had refused to take the money. Upon these facts they prayed that a decree for partition to the extent of the plaintiffs' share in the property should be passed and they should be allowed to deposit Rs. 2000/- in the court according to the terms of the award to the credit of the defendants. Before the trial court neither the deed of arbitration of reference nor the award made by the arbitrator had been put in evidence and the Subordinate Judge, who tried the suit, observed that although the plaint had been mainly based on the award, the plaintiffs had not sought relief on that basis.

He, therefore, refrained from investigating the validity of the reference and the award. In the defence the question raised by the defendants was against the validity of the award on several grounds. In the High Court for the first time it was urged that the suit being one for enforcing the award, it was not maintainable and that the award in question was a bar to it. In these circumstances I think that the observations made by Reuben, C. J. in that case to the effect that an award would become operative only when it was made a rule of court were more or less obiter dicta being not strictly necessary for the decision of the matters in dispute in that case. Moreover, I think in the peculiar circumstances of that case even if these observations be taken to have been necessary for the decision of the matter, it is clear that those observations were made with special reference to the peculiar facts and circumstances of that case itself. In the present case the validity of the award had been originally challenged by the plaintiffs, but it was after some discussion accepted before us that it was not open to them to do so in the present suit. If that was so, it is not clear to me how the plaintiffs could claim decree on the basis of the original contract when such a decree could not but have the effect of affecting the award in question thereby contradicting the express provision of Section 32 of the Indian Arbitration Act.

47. In the case cited by *Mr. B. C. De* several cases were referred to including some of this High Court itself, namely, *Ramautar Lal Vs. Emperor*, and *Jagdish Mahton and Others Vs. Sundar Mahton and Others*, in which there are observations to the effect that an award required registration u/s 17 of the Indian Registration Act, if it deals with an interest in immovable property,

because for the passing of title in the event of the parties accepting the award and acting upon it, without making it a rule of the court of law, registration of an award was necessary under the law.

48. There is also a reference in *Sia Kishori Kuer and Others Vs. Bhairvi Nandan Sinha and Another*, to a case of Madras High Court reported in *Moolchand Jothajee Vs. Rashid Jamshed Sons and Co.*, for a proposition that a suit could not lie to enforce an award.

49. The point, which has been raised here, had, on the other hand, arisen directly in the following cases in somewhat similar circumstances.

50. In the case reported in *Pamudurthi Suryanarayana Reddi and Others Vs. Pamudurthi Venkata Reddi and Others*, it was held that

"a party to an award was not precluded by the provisions of the Arbitration Act from putting forward an award which had been fully performed by him but which had not been filed u/s 14 of the Act and according to which a judgment was not pronounced or a decree given u/s 17, in answer to the other party's claim which was the subject-matter of the reference and the award."

In this case the scope of Section 32 of the Indian Arbitration Act was also considered and it was observed that notwithstanding its apparently wider language, it had to be read only as precluding a suit praying for the relief for which an application was provided u/s 33 of the Act. The above Madras case *Moolchand Jothajee Vs. Rashid Jamshed Sons and Co.*, was referred to and explained besides the cases of other High Courts. This case was followed in the case reported in *Sayyaparaju Surayya Vs. Nekkanti Anandayya and Others*, , where it was observed that neither Sections 31 to 33 nor any other provision of the Act precluded a defendant from putting forward an award which had been fully performed by him but which had not been made a rule of the court of law in answer to the plaintiffs' claim which was the subject-matter of the reference and the award.

The same High Court in a case reported in *Rajamanickam Pillai and Others Vs. Swaminatha Pillai (died) and Others*, also expressed the same view following the previous two cases. The case of *Moolchand Jothajee Vs. Rashid Jamshed Sons and Co.*, was also referred to and reviewed in this Madras case of 1952. The views expressed in the previous two Madras cases were reiterated observing that the language of Section 32 of the Indian Arbitration Act did not contemplate that any defence set up by any defendant to a claim which ignored the existence or the validity of an award was not competent because that section only laid down the positive rule that no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement and did not shut out the possibility of a defence being raised when a suit was brought by one of the parties to the arbitration agreement or award, that there existed an award between the parties which was binding on both and also raising the plea that such an award had been acted upon and accepted by the parties see also

This view clearly proceeds upon the sound consideration that otherwise Section 32 of the Indian Arbitration Act is likely to become a dead letter and can easily be circumvented by any party not satisfied with the award by merely keeping mum for the prescribed time and then bringing a suit on the original title ignoring the award altogether without leaving any remedy to the other party to put forward the award following the arbitration agreement between him and the other party even if the former had been made after complying with all that was necessary in a judicial proceeding and even though the parties had accepted it and acted upon it. I do not think that such a contingency could have been contemplated by the Legislature when it had enacted Section 32 of the Indian Arbitration Act in such wide terms.

51. It may not be out of place to refer to the light in which proceeding before arbitrators and their award have been taken and the sanctity which has been attached to them by the courts. I think it would be presumptuous on my part to endeavour to put this position in my language rather than quoting in extenso the observations of their Lordships of the Supreme Court in a case in which the question had arisen whether an appeal lay from an award of an arbitrator appointed by Government Civil Appeals Nos. 224 and 225 of 1954 Hanskumar Kishanchand Vs. The Union of India (UOI), . The observations no doubt were made in a different context but they are, in my view, opposite to the instant situation because of the general principles laid down therein in respect of the manner in which such matters should be dealt with. The observations are as follows:--

"When parties enter into an agreement to have their dispute settled by arbitration, its effect is to take the lis out of the hands of the ordinary Courts of the land and to entrust it to the decision of what has been termed a private tribunal. Such an agreement is riot hit by s. 28 of the Contract Act as being in restraint of legal proceedings because Section 21 of the Specific Relief Act expressly provides that "save as provided by the Arbitration Act, 1940, no contract to refer present Or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit".

There is a similar provision in Section 28 of the Contract Act which is applicable where the Arbitration Act is not in force. Where an arbitration is held in pursuance of such an agreement and that results in a decision, that decision takes the place of an adjudication by the ordinary courts, and the rights of the parties are thereafter" regulated by it. It is true that under the law the courts have the authority to set aside the awards made by arbitrators on certain grounds such as that they are on matters not referred to arbitration, or that the arbitrators had misconducted themselves, or that there are errors apparent on the face of the award.

But where the award is not open to any such objection, the Court has to pass a decree in terms of the award, and u/s 17 of the Arbitration Act, an appeal lies against such a decree only on the ground that it is in excess of or not otherwise in accordance with the award. In other words, it is the decision of the arbitrator where it is not set aside that operates as the real adjudication binding on the parties, and it is with a view to its enforcement that the Court is authorised to pass a decree in terms thereof."

52. Mr. B. C. De contended that allowing a defendant to raise the plea of bar would necessarily involve the determination of the question of the validity of the award which the plaintiff would almost always raise in every such case, but this would go directly counter to the express terms of the section in question and no such question could be investigated and determined in a suit, a fortiori, therefore, the defendant could not be allowed to set up the award as a bar to the plaintiff's claim in any suit based on his original title despite the existence of an award to the contrary.

53. This argument appears prima facie quite plausible but on close examination it is found to be faulty in so far as it ignores the consideration that where, as here, it is brought to the notice of the Court in a particular suit by admission or otherwise, that the subject-matter of the dispute had been adjudicated upon by an arbitrator or arbitrators acting in pursuance of an agreement between the parties and an award determining the dispute had been given, it becomes, in my view, the duty of the Court under the Indian Arbitration Act, to stay its hands and refuse to give any relief to the plaintiff in that suit irrespective of the fact whether or not such a plea has been or could be raised in defence, and irrespective also of the fact whether or not any party has taken any steps to file the award in Court. This step will be particularly called for in those cases where, as here, the parties have accepted the award and have acted upon it and the prescribed period for challenging the validity of the award has elapsed which will mean that the validity of the award was no longer to challenge.

53a. In the present case the trial court has pointed out several facts emerging from the evidence showing that the defendant No. 1 had sent the amount of Rs. 250/- according to this award to the plaintiffs by a cheque (vide Ext. A (50)-1) (this was of course, refused by the plaintiffs) and the latter had delivered 155 out of 190 maunds of rice (vide Exts. 7Z-61, A (50)-1. and the evidence of P.W. 12, D.W. 1, paragraph 34 of the plaint). These facts indicate that the parties had accepted the award and had acted upon it.

54. The true legal position may, therefore, be formulated as follows:

(1) An arbitration agreement or an award can neither be challenged nor enforced by a suit.

(2) No proceeding or action may be taken which shall affect in any way an arbitration agreement or award otherwise than as provided in the Indian Arbitration Act, 1940.

(3) The existence of an arbitration agreement, or, award may be set up as a bar in defence to a suit based on the original cause of action arising out of rights and titles which formed the subject-matter of such an agreement or award.

(4) Even if no such defence has been taken but at any stage of a suit before a court of law I it comes to its notice that the subject-matter or the suit has been adjudicated upon by arbitration in pursuance of an agreement between the parties according to law and the parties have accepted the award and have acted upon it, or, the prescribed period of challenging the award has elapsed, it is the duty of such a court to refuse to give any relief to the plaintiff or plaintiffs of such a suit.

55. Applying the above principles to the facts of this case it is clear that the claim of the plaintiffs based on the original contract between the parties cannot be entertained.

56. The result, therefore, is that the appeal of the plaintiffs (F. A. 307 of 1951) is dismissed with costs to the contesting respondents. The other appeal being First Appeal No. 254 of 1951 is allowed, and the judgment and decree passed by the court below are set aside and the suit is dismissed. There shall be no order for costs in this appeal.

Rai, J.

57. I agree.