

(1941) 02 MAD CK 0017
In the Madras High Court

Kallepalli Subbayya

APPELLANT

Vs

Kurra Venkatadri and Others

RESPONDENT

Date of Decision : 04-02-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104(a)

Citation : AIR 1941 Mad 921 : (1941) 54 LW 604 : (1941) 2 MLJ 395

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—The petitioner was the first plaintiff in a suit. The following is the history of the case. On 8th October, 1937, a reference was

made through the Court to arbitration, the time for the award being fixed for the 15th November, 1937. There was much delay and time was finally

extended to the 25th January, 1938. On that day an order was made adjourning the suit to the 11th February. On the 5th March, the Court

passed an order cancelling the reference to arbitration. That is an appealable order u/s 104(a) of the Civil Procedure Code, but no appeal has

been filed against it. On 12th March, 1938, the arbitrators submitted an award notwithstanding the order of the 5th March and on the 25th March,

the lower Court in a brief order cancelled its order of the 5th March, that is, the order cancelling the reference. No civil revision petition was filed

against that order and no further action taken by the petitioner except that on 3rd June, 1938, objections were filed by the petitioner. On 30th July,

1938, the District Munsif passed an order, "Decree in terms of the" award", ruling that the objections of the petitioner were out of time. This civil

revision petition is now directed towards the order of the 30th July, and not against any other order.

2. The position, therefore, is that notwithstanding the order made under Rule 8 of Schedule II an award was made and that later the order under

Rule 8 was cancelled. Whichever way the facts are regarded, there is no doubt that this was a case where the award was made after the issue of

an order by the Court superseding the arbitration. Now Rule 15 states that no award shall be set aside except on the grounds specified in that rule

and one of them is as follows:

The award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit... [Rule 15 (c)].

3. It is true that the award has been made after the issue of the order of the Court superseding the arbitration. But the Court did not proceed with

the suit because it cancelled its order cancelling the reference. What the precise reason for the introduction of the words ""and proceeding with the

suit"" is I confess I have difficulty in appreciating but in those circumstances the remedy of the person aggrieved is to apply to the Court to set aside

the award. There is no provision in the Code for circumstances such as those before me, unless it can be said that they are comprised in the words

or otherwise being invalid"" which occur at the end of Sub-rule (c) to Rule 15. The authorities have been of little assistance. I have been referred to

a judgment of a Full Bench of the High Court of Allahabad, Ibrahim Ali v. Mohsin Ali I.L.R.(1896) All. 422 which dealt with the Code before it

was amended and the words ""or being otherwise invalid"" are not included in the original framing of the section. Section 521 states that no award

shall be set aside except on one of the following grounds:

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit.

4. Rule 15 in Schedule II is much more comprehensive. The learned Judges of the Allahabad High Court say that ""if the power of the arbitrator is

revoked as for example by the Court passing an order superseding the arbitration under Chap. 37, of the Code or the period fixed for making the

award has expired before the award is made, the arbitrators have no longer seisin of the reference, they are functus officio and they cease to have

any more power to make an award than the man in the street and in such a case any award which they made or purported to make would be void

ab initio."" I do not however find that there was any discussion before the

learned Judges of the procedure found in Section 521 which implies that such an award should go through the formality of being set aside. One is tempted to say that an award made by persons who have been superseded must be bad, but in view of the explicit words of Schedule II, I think that I am bound to be against the petitioner in this case on procedural grounds. I think he had many remedies; he could have filed a civil revision petition against the order of the 25th March, 1938. I find it difficult to believe that on an affidavit alleging that such an order had been made, it would not have been possible to have directed the lower Court to send a copy of that order to this Court for revision. I have had a most interesting argument from the counsel on both sides but I have come to the conclusion that even when an award is made by arbitrators whose powers have been revoked, it is not void ab initio but has to be set aside under Rule 15 of Schedule II. I am satisfied that the words "'or being otherwise invalid,'" even if construed on the ejusdem generis principle must apply to a case like this which only differs from the case envisaged in Rule 15 in that the suit is no more to be proceeded with. That being so, no application to set aside the award having been made, I have no alternative except to dismiss this civil revision petition with costs.