

(1932) 03 BOM CK 0019
In the Bombay High Court
Case No : O.C.J. Appeal No. 51 of 1932

Manilal Lallubhai	Vs	APPELLANT
The Bharat Spinning and Weaving Co., Ltd.		RESPONDENT

Date of Decision : 24-03-1932

Acts Referred:

Arbitration Act, 1899 — Section 15

Citation : AIR 1933 Bom 433 : (1933) 35 BOMLR 941 : (1934) ILR (Bom) 162 : 147 Ind. Cas. 587

Hon'ble Judges : Rangnekar, J; John Beaumont, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Beaumont, C.J.—This is an appeal from a decision of Mr. Justice Kania. It arises on a summons taken out in the matter of an arbitration seeking to make the two appellants liable on an award made against a firm.

2. The material facts giving rise to the dispute are that in the year 1925 there was a firm called Vallabhdas Hiralal doing business in piece-goods in Bombay, and the partners in that firm were another firm called Ramniklal Manilal, a man named Hiralal, and a man named Umersi. The partners in the firm of Ramniklal Manilal were the two appellants in the present case and a man named Harakchand. Towards the end of the year 1928 the firm of Vallabhdas Hiralal was dissolved, and a new firm was started, which I will call "the respondent firm", Mulchand Pranjivandas. It is admitted that in that firm Umersi and Harakchand were partners, they having been partners in the old firm, Umersi in his own right and Harakhchand as a partner in the firm of Ramniklal Manilal, and Hiralal was not a partner.

3. The question which arises in these proceedings is whether or not in that new firm the two appellants were partners, either individually or as being partners in the firm of Ramniklal Manilal. After the formation of the respondent firm dealings took place between the respondents in this appeal, namely, the Bharat Spinning

and Weaving Co., Ltd., whom I will refer to as "the plaintiffs", and that firm. All the contracts, which were for substantial amounts, were signed on behalf of the respondent firm by Umersi. Towards the end of the year 1930 the respondent firm seems to have been in financial difficulties and moneys due to the plaintiffs were not paid, The matters in dispute were referred to arbitration, I suppose under the arbitration clauses in the various contracts, and on February 12, 1931, an award was made, under which the respondent firm were held liable to pay to the plaintiffs a sum approximately of Rs. 50,000. Down to the date of that award there is no evidence of any demand having been made by the plaintiffs for payment from the appellants. All demands were made to the respondent firm by its name. On March 2, for the first time the plaintiffs made a demand for payment of the amount found due on the award from the two appellants, and they at once denied their liability, and asserted that they were not partners and never had been partners in the respondent firm. On July 21, 1931, a summons was taken out, purporting to be under Order XXI, Rule 50(2), and it is in respect of the findings of the issues raised on that summons that this appeal is brought.

4. In the first place certain preliminary objections are taken to the form of the proceedings. It is said, first, that there cannot be an award against a firm in the firm name. There is, in my opinion, no substance in that point. If a firm in the firm name enters into a contract containing a clause for submission of disputes to arbitration, I see no reason why the resulting arbitration should not be in the firm name. A more substantial point is that the provisions of Order XXI, Rule 50(2), do not apply to proceedings to enforce an award. On the actual language of that sub-rule there would certainly seem to be force in the objection. The sub-rule provides, so far as material, that where a decree-holder claims to be entitled to cause a decree to be executed against any person as being a partner in the firm, he may apply to the Court which passed the decree for leave to execute the decree, and the Court may either grant leave or order the question of liability to be tried or determined in any manner in which an issue in a suit may be tried or determined. It is said that that rule cannot apply to enforcing an award, because there is no decree-holder and there is no Court which passed the decree. The question, however, cannot be disposed of merely by reference to the language of the sub-rule. Under the Indian Arbitration Act, Section 15, it is provided that an award, on a submission on being filed in the Court according to the foregoing provisions, shall be enforceable as if it were a decree of the Court; and the "Court " is defined in Section 4 of the Act in such a way that for the purpose of these particular proceedings the Court is the High Court. So that what Section 15 provides is not that the award is to become a decree, but that it shall be enforceable as if it were a decree of the High Court. The difficulty is that in Order XXI, which is the Order dealing with execution proceedings, the language is throughout inapplicable to enforcing an award, and it seems to me that we have really to choose between two things, either we must say that Section 15 of the Indian Arbitration Act is of no effect because there are no provisions by which an award can be enforced as if it were a decree, or we must read the relevant

provisions of Order XXI as covering an award, by treating "decree" as including an award which has become enforceable as a decree, and by treating "the Court which passed the decree" as referring to the Court whose decree the award is to be treated as being for the purpose of execution, that is in this particular case the High Court. I say that because under Rule 10 of Order XXI, which is the rule under which execution is ordinarily started, it is provided that if the holder of a decree desires to execute it, he shall apply to the Court which passed it; and unless we read that rule in the case of an award, in the sense I have suggested, there are no provisions for enforcing an award which has become enforceable as a decree. I am not prepared to hold that Section 15 of the Indian Arbitration Act is really a dead letter. The same construction would have to be adopted under Rule 16 of Order XXI, and indeed that construction has been adopted by the Calcutta High Court in the case of *Louis Dreyfus & Co. v. Purusottum Das Narain Das* ILR (1919) Cal. 29 If that construction is adopted under rules 10 and 16, I see no reason why a similar construction should not be adopted under Rule 50(2), and why we should not read Rule 50(2) as meaning that where the holder of an award, which has become enforceable as a decree, claims to be entitled to cause the award to be executed, he shall apply to the High Court, as the Court referred to in Section 15 of the Indian Arbitration Act. I think, therefore, that the preliminary objection must be overruled.

5. Then another preliminary point was taken, namely, that under Rule 373 of the High Court Rules applications under the Indian Arbitration Act have to be made by petition and the application here was by summons. But the answer to that is that under Rule 80, Clause (o), application for leave under Order XXI, Rule 50(2), may be disposed of by a Judge in Chambers; and if that rule applies to enforcing an award, then Rule 80, Clause (o), must apply to an application for enforcing an award. The summons in the present case is clearly in the wrong form. It is entitled as it should be "In the matter of the Indian Arbitration Act and in the matter of an arbitration between the Bharat Spinning and Weaving Co., Ltd., and the firm of Mulchand Pranjiwandas and Award dated February 12, 1931"; and then it is expressed to be between the Bharat Spinning and Weaving Co., Ltd., as petitioners and Mulchand Pranjiwandas as respondents. If there are to be parties to the summons at all, they ought to be called plaintiffs and defendants. But, in my opinion, it is not necessary that a summons under the Indian Arbitration Act should be inter partes; but it must be an originating summons, since there are no pending proceedings. The summons must, therefore, be amended by turning it into an originating summons and striking out the reference to petitioners and respondents. I think, therefore, the learned Judge was right in dismissing the preliminary objections and hearing the evidence on the merits. [The rest of the judgment is not material to this report.]

Rangnekar, J.

6. [His Lordship, after stating facts and discussing evidence, proceeded:] I shall now refer briefly to the preliminary points raised by Mr. Billimoria on behalf of the

appellants. The first of them is that an award cannot be made against a firm in the firm name. But if a firm as such is a party to a reference and the submission is signed by the firm in the firm name, I see no objection to the award on the reference being made in the firm name. Apart from other authorities this is the view which is taken by the Calcutta High Court, and I respectfully agree with it.

7. The next contention is that the provisions of Order XXI, Rule 50, do not apply to an award made under the Indian Arbitration Act, The argument is that an award is not a decree and therefore there is "no decree-holder" and "no Court which passed the decree." Undoubtedly the language of Order XXI, Rule 50, seems to lend support to the argument, but I think we must read the provisions of the Code with the Indian Arbitration Act. Section 15 of the Indian Arbitration Act provides that an award on a submission on being filed in the Court under the Act shall be enforceable as if it were a decree. Section 11(2) provides that the arbitrators at the request of a party to a submission or any person claiming under him and on payment of fees and charges and costs of filing &c., shall cause the award to be filed in Court. Section 4 of the Act defines "the Court" in the Presidency towns to be the High Court. The Indian Arbitration Act does not lay down any separate or special procedure for enforcing an award made under the provisions of the Act, and unless one can turn to the Civil Procedure Code, it is difficult to see how an award can be enforced otherwise than perhaps by a suit. The plain meaning of the provisions of the Indian Arbitration Act to which I have referred seems to me to be that an award under the Indian Arbitration Act on being filed in the High Court can be enforced, that is executed, as if it were a decree of the High Court. The procedure for enforcing a decree of the High Court is contained in Order XXI of the Code, and the principal rule of that order is Rule 10. It provides that if the holder of a decree desires to execute it, he shall apply to the Court which passed it. It is not disputed that in the case of an award under the Indian Arbitration Act against an individual the award can be enforced in accordance with the provisions of Order XXI of the Code. That being the case, and reading the relevant provisions of the Act and the provisions of Order XXI, I think it must be held that in such a case the party applying to enforce an award is "the holder of a decree," and the High Court in this particular case is the "Court which passed the decree." The result of holding otherwise would be to make Section 15 of the Indian Arbitration Act for all practical purposes a dead letter, prevent the parties from enforcing their rights summarily, and thus defeat the very object for which the law of arbitration is enacted. I think, therefore, this contention must also be overruled.

8. Then there remains the third contention that the respondents ought to have proceeded by a petition under the Indian Arbitration Act and not by summons. But under Rule 80 of our Rules an application for leave under Order XXI should be made by a summons, and therefore there is, in my opinion, no substance in this contention.

9. In the result, I agree that the appeal must be allowed.