
(1955) 12 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 5D of 1952

Prem Nath L. Harsaran Dass and Another

APPELLANT

Vs

Om Parkash L. Ram Kishen Dass Aggarwal

RESPONDENT

Date of Decision : 22-12-1955

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : AIR 1956 P&H 187

Hon'ble Judges : Bhandari, C.J.;Falshaw, J

Bench : Division Bench

Advocate : Khushi Ram, for the Appellant; A.N. Grover, for the Respondent

Final Decision : Dismissed

Judgement

Bhandari, C.J.—This appeal raises the question whether the learned Single Judge was justified in setting aside the award and directing that the matters in controversy between the parties should be adjudicated upon by a Court of law.

2. Certain disputes which had arisen between Prem Nath, Dwarka Das and Om Parkash, who were partners in a firm carrying on business in Delhi, were referred to the arbitration of Lala Karori Mal, father-in-law of Prem Nath. The arbitrator gave his award in due course and Prem Nath and Dwarka Das in whose favour the award was given applied that this award be made a rule of the Court.

Om Parkash challenged the validity of the award on various grounds but his objections were overruled by the trial Court and a decree was passed in accordance with the terms of the award. The learned Single Judge before whom the appeal came up for consideration held that the arbitrator had not maintained any records of the proceedings which took place on 17-11-1949, that the award was vitiated by the fact that both Prem Nath and Dwarka Das were closely related to the arbitrator and that the arbitrator did not afford the parties a reasonable opportunity of being heard before the award was given on 25-11-1949.

He accordingly allowed the appeal and set aside the order of the trial Court. Prem Nath and Dwarka Das are dissatisfied with this order and have come to this Court in appeal under Clause 10 of the Letters Patent.

3. It is a well-known proposition of law that although an arbitrator is allowed considerable latitude in the procedure adopted by him at the hearing it is essential that he should afford the parties a reasonable opportunity of being heard and of presenting their case. If he makes an award without complying with this essential requirement he does so at the peril of his award being declared invalid and inoperative in the eye of law.

4. The parties in the present case were not! afforded a reasonable opportunity of being heard before the award was given and consequently the award could not be made the foundation of a decree. It is common ground that the case came up for consideration before the arbitrator on the 3-10-1949. On that day Dwarka Das was absent but Prem Nath appeared in person and Om Parkash appeared with Mr. Daya Krishan Advocate.

The arbitrator did not order ex parte proceedings against Dwarka Das even though he was absent, but he adjourned the case to the 30th October, and later to the 17th November. The records of the proceedings which took place on the 17th November are not available for perusal as none were prepared. Two contradictory versions have been presented in regard to the proceedings which took place on this date. According to one version both Prem Nath and Dwarka Das were present before the arbitrator but Om Parkash was not and the arbitrator was accordingly compelled to direct that ex parte proceedings be taken against Om Parkash. Ex Parte proceedings were taken against him and an ex parte award was given on 25-11-1949.

According to the other version neither Prem Nath nor Dwarka Das appeared before the arbitrator on the 17th November but Om Parkash appeared along with his counsel, Mr. Ram Kishan D. W. 1. The arbitrator told them, that as neither Prem Nath nor Dwarka Das was present that day the case would be taken up for consideration on another date intimation whereof would be sent to the parties concerned in due course.

The learned Single Judge came to the conclusion, that although the arbitrator had informed the parties that the case would be taken up on another date intimation of which would be sent to the parties in due course, he proceeded to make an ex parte award in the absence of the parties and without affording them an opportunity of being heard. This is a finding of fact with which I should be extremely reluctant to) disagree in a Letters Patent Appeal.

5. Assuming for the sake of argument that Om Parkash did not appear before the arbitrator on the 17th November and that the version-, given by him to the contrary is not worthy of belief, even then it seems to me that it was his duty to inform Om Parkash that he intended to proceed with the reference at a specified time & place whether Om Parkash attended or not. If this notice had been issued

and if he had failed to secure the attendance of Om Parkash, then and then alone was the arbitrator at liberty to proceed ex parte against him (Russell on Arbitration, 15th Edition, page 144).

6. For these reasons I would uphold the order of the learned Single Judge and dismiss the appeal with costs.

Falshaw, J.

7. I agree.