

(1955) 05 MAD CK 0012

In the Madras High Court

Case No : Civil Revision Petition No. 672 of 1952 and Appeal Against Order No"s. 214 and 215 of 1952

R. Dasaratha Rao and Others

APPELLANT

Vs

K. Ramaswamy Iyengar and Others

RESPONDENT

Date of Decision : 03-05-1955

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(1), 14(2), 17, 33

Limitation Act, 1963 — Article 158, 170, 176, 178

Registration Act, 1908 — Section 17, 17(1), 17(2), 17(2)(6), 23

Transfer of Supplementary Act, 1929 — Section 10

Citation : (1956) ILR (Mad) 749

Hon'ble Judges : Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : D.R. Krishna Rao, M.S. Ramachandra Rao and M. Krishna Rao, for the Appellant; D. Ramaswami Ayyangar and P.R. Varadarajan, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—I am in agreement with my learned brother that the appeals and revision should be dismissed, but I wish to add a few words with regard to the scope and import of Article 178 of the Limitation Act. Before its amendment by the Arbitration Act X of 1940, the first column of that article was as follows:

Under the same Code for the filing in court of an award in a suit made in any manner referred to arbitration by order of Court or of an award made in any manner referred to arbitration without the intervention of Court.

The period of limitation fixed was six months and the time from which the period began to run as mentioned in the third column was the date of the award. The form in which the article now stands was the result of the amendment by which the period is cut down to ninety days and the terminus a quo is stated to be the date of service of the notice of the making of the award; in column 1 the description of the application reads as "Under the Arbitration Act, 1940, for the

filing in Court of an award". The change with regard to the time from which the period begins to run is significant because originally when once the award is made, if a decree has to be passed in terms of the award, then the application has to be filed within six months thereof. The date of the award is considered to be of prime importance in the matter of filing the application. It seems to me that when the third column specifies the starting point of limitation as the date of service of the notice of the making of the award, this article can be applied only to cases where the party applies to the Court for a decree in terms of the award. Otherwise, it is impossible to find any necessity for the change. It was clear that under the article as it stood originally, the period of limitation was prescribed for an application by the party. Difficulties had arisen on account of the starting point being the date of the award because there had been instances in which the award was signed on a particular date but pronounced later, in which case hardship was caused, because the limitation began to run even from an anterior date to the time when the parties got notice of the award. If, therefore, the unamended article was restricted to cases where the party had to move the court, there is no reason for imputing to the Legislature another intention especially when the language of the third column was altered to mitigate the hardship caused to the parties.

2. In this connection it would be profitable to refer to Article 158 which gives the period of limitation for setting aside an award. The first column is to the following effect:

Under the Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.

The period prescribed is thirty days from the date of service of the notice of filing of the award. There can be no doubt whatever that Article 158 is intended to provide a limitation for an application by the parties. It is, therefore, unnecessary to make a distinction between Article 158 and Article 178 as to the persons to whom it should apply. If Article 158 cannot apply to an arbitrator himself because it is not the business of the arbitrator either to have the award set aside or to get it remitted, I do not see any reason why Article 178 should be construed as fixing a time for the arbitrator to file the award in Court. Such being the case, on a plain construction of the two articles along with their position in the third division of the First Schedule of the Limitation Act, I am of opinion that these two articles provide for applications by parties and not by the arbitrator himself.

3. But it is urged on behalf of the Appellant that Rules 5 and 6 under the Indian Arbitration Act printed at page 244, chapter XIV of the Civil Rules of Practice, volume I, contemplate an application by the arbitrator when he moves the Court for filing the award. The second step in the argument is for filing an award by an arbitrator, if an application is a pre-requisite, then the third division of the first schedule dealing with limitation for applications must apply and such being the case, a request by the arbitrator to file his award in Court must be governed by Article 178. The foundation for this argument is contained in Rules 5 and 6. Rule

5 states that applications u/s 14 of the Act shall be numbered and registered as suits. Rule 6 reads as follows:

When the award or a signed copy of it is filed in Court u/s 14(2) of the Act, the Arbitrator shall send to the Court any depositions or documents which have been taken and proved before him. He shall also file with the petition a copy of the notice given to the parties concerned and an affidavit of service of such notice.

Because in Rule 5 the word "applications" and in Rule 6 the word "petition" are used, it is contended that when an arbitrator puts into court his award, he cannot do so except by means of an application or a petition and if that is so, necessarily the provisions of the third division of first schedule are attracted. I am not inclined to accept this contention. Sub-section (1) of Section 14 lays down that when the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award. This part of the section has, therefore, no application to Rule 5 framed under the Arbitration Act. It is Sub-section (2) that needs consideration. A duty is cast upon the arbitrator at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court, upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, to cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before him, to be filed in Court. Now, if the Legislature had contemplated that every arbitrator or umpire, after the conclusion of the arbitration and the making of the award, should intimate the fact of such making to the Court, then there is no necessity whatever for the elaborate provisions contained in this sub-section. It would have been enough if it was stated that on the making of the award the arbitrator or umpire shall file the award in Court together with any deposition of the documents which may have been taken. In that case, the third column of Article 178 would have been the date of making the award. No such provision has been enacted but the fulfilment of certain conditions are made necessary for the application of Sub-section 2. As already stated they are, that a request should be made by a party to the arbitration agreement or person claiming under that party, or a Court should direct the arbitrator. In all these cases, the arbitrator can insist upon the payment of fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award. It is then and then only that he need file the award in Court. If there is any duty cast upon the arbitrator or the umpire to file the award, then it is understandable how he could do it in case the parties refused to pay him the charges and the fees. The provisions of Sub-section 2 will be rendered impossible of working if Article 178 were to be applicable, for the party who does not want the arbitrator to file the award can desist from payment of the charges. The fact that Rules 5 and 6 speak of applications and petitions does not mean the attraction of Article 176, for an arbitrator or umpire, when he puts a paper in Court, has to intimate to the Court

as to what he is doing. A letter by him or a stamped petition for an application would be necessary to inform the Court of what he is doing. Without such intimation the Court would not be in a position to know the nature of the records and papers which the arbitrator or the umpire puts before it, especially since the third column of Article 178 refers to the date of service of the notice of making the award, the reference can only be to an application by a person on whom the notice is or has to be served and not to a person whose statutory duty is to serve the notice. All provisions of limitation are intended to prescribe a period for taking steps by a party who has perforce to have recourse to a Court of law for getting relief. The arbitrator is not in that position. His situation is analogous to that of an adjudicator resembling a Court and unless the provisions of the Limitation Act expressly provide a period of limitation for any act to be performed by him, it is unreasonable to impute any intention to the Legislature that an article of the Limitation Act should control his actions. That Article 178 is applicable only to parties and not to arbitrators has been decided already by other High Courts and I would only refer to a few cases.

4. Gentle, J., as he then was, in *Keshrimull and Others Vs. Meghraj Basdeo*, , considered the applicability of the amended Article 178 and held that the amendment made no difference in its effect as the limitation provided by Article 178, just like other articles in the third division, is in respect of applications for acts to be done by parties and is not a period of limitation in respect of the act itself. Therefore, it was open to the arbitrator to put into Court the award even after thirty days, though if the parties require of the arbitrator to do so, the same must be done within ninety days. That being the case, Article 178 does not prevent the actual act of filing the award more than ninety days after notice of it had been given.

5. In a similar strain is a judgment of the Judicial Commissioner of Sind in *John v. Soomar* AIR 1943 Sind 33, where it is held that Article 178 applies only to cases where a party to the arbitration proceedings applies to the Court for filing of an award u/s 14(2) under the implied power given u/s 38. It was further held there that though the rules of the Sind Chief Court prescribe a form in which the application by the arbitrator for filing an award is to be made, still such a form cannot attract the application within the purview of Article 178. To some extent this answers the objection of the learned Counsel for the Appellant that Rules 5 and 6 of the rules framed under the Arbitration Act make it obligatory that Article 178 should be applied to an arbitrator filing the award. *Abdur Rahman, J.*, in *Jai Kishen v. Ram Lal Gupta* AIR 1944 Lah. 398, was of the same opinion that Article 178 would be applicable only when the parties apply to the Court for filing in Court of the award. I may also refer to a bench decision in *Dwarka Das Vs. Pearay Lal and Others*, , which is to the same effect. The learned Judges held that the act of the arbitrator in putting the award in Court is only a ministerial act and if he does not comply with the request of a party to file in Court the award, the party then has to make an application to the Court asking the Court to direct the arbitrator to file the award in Court. Such an application by a party is covered

by Article 178.

6. A case which is directly in point is a judgment of Hidayatula, J., as he then was, reported in *Gendalal v. Mathardas* AIR 1951 Nag. 32, where the learned Judge lays down that Article 170 does not apply to an application made by an arbitrator to file an award and that the rules made by the High Court requiring the arbitrator to file the award in a particular way are only intended to make it convenient to the arbitrator to forward the award but that such rules would not make it compulsory that the award should be filed within the period mentioned in Article 178. The learned Judge observes as follows:

It has been held in a series of cases that Article 178 of the Limitation Act, as substituted by Section 49 and Schedule IV, Arbitration Act, 1940, does not apply to an arbitrator.... It is true that the rules of this Court require the arbitrator to file the award in a particular way, but those rules are merely to make it convenient to the arbitrators to forward their awards. The fact that an application is made is not sufficient to import Article 178, Limitation Act.

7. I am in entire agreement with the views expressed by the learned Judge. It is unnecessary to multiply decisions on this point, but the observations of the learned Judge in *Radha Kishen Vs. Madho Krishna and Another*, , may also be referred to. That the signing of the award is a mere formality is clear from a decision of this Court in *Johara Bibi v. Mohd. Sadak Thambi Marakayar* (1951) 2 M.L.J. 56. I am, therefore, of opinion that there is no bar of limitation so far as the filing of the award into Court is concerned.

Basheer Ahmed Sayeed, J.

8. The Revision Petition No. 672 of 1952, arises out of the order passed by the learned Principal Subordinate Judge of Salem in Original Petition No. 13 of 1949, filed by the Petitioners u/s 14, Clause (2) of the Indian Arbitration Act. Civil Miscellaneous Appeal No. 214 of 1952, arises out of an order passed by the same learned Principal Subordinate Judge of Salem in Interlocutory Application No. 1059 of 1949 in Original Petition No. 13 of 1949, preferred u/s 33 of the Indian Arbitration Act, by the fourth Respondent in the original petition. Civil Miscellaneous Appeal No. 215 of 1952, arises out of a similar order of the learned Principal Subordinate Judge of Salem in Interlocutory Application No. 554 of 1949, in Original Petition No. 13 of 1949, filed u/s 33 of the Indian Arbitration Act by the third Respondent in the said original petition.

9. The main order of the learned Principal Subordinate Judge was passed in Original Petition No. 13 of 1949, and the reasons set out in the said order were adopted by the learned Subordinate Judge for disposing of the other two applications filed u/s 33 of the Indian Arbitration Act. Since the civil revision petition and the civil miscellaneous appeals arise out of the same common order, they have also been argued before us together and we propose to deal with them also in a common judgment.

10. The Petitioners in Original Petition No. 13 of 1949, on the file of the learned Principal Subordinate Judge of Salem, were respectively the umpire and four arbitrators appointed by the Respondents in the said original petition--all members of a joint Hindu family--requesting the umpire and the arbitrators under an agreement, dated 28th January 1948, to divide their joint family properties, and pronounce an award. Among the arbitrators, the first and the second arbitrators are both Advocates practising at Krishnagiri. The other three arbitrators were in no way connected with the joint family of the Respondents.

11. Though the agreement referring the matter to arbitration was executed on 28th January 1948, the arbitrators actually entered upon their duties on 12th February 1948. The award by the arbitrators was pronounced on 28th May 1948. It was engrossed on a stamp paper on 19th June 1948, and after certain proceedings before the Registrar of Assurances, it was finally registered long after 19th June 1948, but within the period prescribed by the Registration Act. It may be mentioned that the award pronounced by the arbitrators relates only to the division of the immovable properties belonging to the joint family of the Respondents, though" the original reference included the division of movables as well. Pending the arbitration, it transpires that the movable properties were divided among the members without the intervention of the arbitrators and that is why the arbitration confined itself to a division of the immovable properties of the joint family.

12. After the award was registered, the first Respondent wrote a letter, exhibit A-5, on 8th January 1940 to the umpire to file the award in Court. Thereupon, the arbitrators filed the original petition in Original Petition No. 13 of 1949, under Section 14, Clause 2 of the Arbitration Act for filing in Court the award passed by them. The third and the fourth Respondents raised objections to the original petition and also filed respectively Interlocutory Application Nos. 554 of 1949 and 1050 of 1940, for setting aside the award. Objections to the original petition as well as the applications to set aside the award were all considered by the learned Principal Subordinate Judge, and by his orders in the original petition as well as the applications the learned Principal Subordinate Judge rejected the contentions of the Respondents, allowed the application of the arbitrators and directed a decree to be passed in terms of the award with costs. Respondents 2 to 4 in the original petition have preferred Civil Revision Petition No. 672 of 1952. Respondents 3 and 4 have preferred respectively Civil Miscellaneous Appeal Nos. 215 and 214 of 1952.

13. Respondents 1 to 4 constituted a joint Hindu family, the first Respondent being the uncle and Respondents 2 to 4 being his nephews. Respondents 2 and 3 are the sons of Ramaswami Rao, deceased, one of the brothers of the first Respondent. Respondent 4 is also the son of another deceased brother of the first Respondent. Having agreed to enter into a partition of the movable and immovable properties belonging to the joint family, all the four Respondents executed an agreement on 28th January 1948, in favour of the five arbitrators,

the first of whom was appointed the umpire. The recitals of the agreement stated that the first Respondent in the original petition was to get an exclusive one-fourth share for himself in his individual capacity in consideration of his having, by his own exertions, use of intelligence and ability, augmented the family assets and a further one-fourth share for himself, his sons and the family represented by him, that the second Respondent was to get a one-fourth share for himself and his family, that the third Respondent was to get a similar one-fourth share for himself and his family, that the fourth Respondent was to get a one-fourth share for himself and his family and that after the partition they should live as members of divided families. The said agreement further recited that the four Respondents bound themselves to abide by the award passed unanimously or by a majority of the panchayatdars. It is stated that the immovable properties to be divided among the Respondents consisted of nanja and punja lands and houses worth over two lakhs of rupees. The movable properties, which also were originally intended to be divided through the intervention of the panchayat, but which were not so divided for the reason as already stated, were divided between the Respondents amicably and they were taken out of the purview of the panchayat. It is also stated that the umpire was a longstanding Advocate of the family of the Respondents and that the Respondents had complete confidence in him. Similarly, the second of the panchayatdars was also an Advocate of the family of the Respondents in whom the Respondents had confidence, and they are said to be acquainted fully with the affairs of the family and the details of properties owned by it. That appears to be the reason why apart from other things they were chosen along with three others to act as arbitrators.

14. Mr. D.R. Krishna Rao, appearing on behalf of the Petitioners in the civil revision petition and the Appellants in the civil miscellaneous appeals, has raised various grounds for setting aside the orders of the learned Principal Subordinate Judge in Original Petition No. 13 of 1949 and Interlocutory Application Nos. 554 of 1949 and 1059 of 1949. His first point was, when the arbitrators approached the Court with the original petition for filing the award pronounced by them, there was no valid award in terms of which any decree could be passed. Against the validity of the award he pressed two or three points. The first was that the award was passed beyond the period of limitation prescribed under Rule 3 of the first schedule to the Indian Arbitration Act. That rule is to the effect that the arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. In this case the arbitration agreement was entered into on 28th January 1948. The arbitrators entered upon their work on 12th February 1948. On 13th February 1948, the first Respondent in the original petition, Narayana Rao, filed a list of immovable properties which was accepted by the other Respondents in the original petition as correct. On 25th May 1948, exhibit A-1 which is a list of the immovable properties allotted to each of the Respondents

was prepared by the arbitrators. On 28th May 1948, exhibit A-2 the award was pronounced. On the same day, exhibit A-3 was drawn up, which contains the proceedings of the meetings held by the arbitrators. It was signed by Respondents 1 and 4 and all the arbitrators. On 19th June 1948, exhibit A-4 the award was engrossed on stamp papers and was signed by all the arbitrators as also the Respondents and registered. This was the award that was actually filed in Court. If exhibit A-2 is considered to be the award pronounced by the arbitrators, the contention of Mr. Krishna Rao, that it is out of time, cannot have much force, for, it will be within the four months period prescribed under Rule 3 of the first schedule to the Arbitration Act, calculated either from the date of the agreement of reference, namely, 28th January 1948, or from the date from which the arbitrators entered upon the reference, namely, 12th February 1948. But Mr. Krishna Rao would argue that exhibit A-2 cannot be considered to be the award, for, in the first instance, according to him, it was not signed by one of the arbitrators, that it was in the next instance not stamped and not registered and therefore inadmissible in evidence. It is true that exhibit A-2 is signed only by four of the arbitrators out of the five. u/s 14, Clause (1) of the Arbitration Act, when the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award. But in view of the agreement in the reference to the arbitrators that the award might be pronounced by all the arbitrators or by a majority of them, the failure of one of the arbitrators to sign the award does not seem to affect the validity of the award. It is not contended, however, by the learned Counsel for the Petitioners and Appellants that the arbitrator, who did not sign the award, did not take part in the proceedings of the arbitrators, which resulted in the award. On the other hand, it is admitted by both parties that all the five arbitrators took part in the arbitration proceedings and the award is the result of their deliberations on the reference and the division of the immovable properties sought by the Respondents to the original petition. We do not think, therefore, there is much point in this technical objection by the learned Counsel to the validity of the award. In *Johara Bibi v. Mohd. Sadak Thambi Marakayar* (1951) 2 M.L.J. 56, it was held that the signing of the award was only a formality after it had been made and pronounced, and where an arbitrator who had taken part in the arbitration proceedings throughout along with the other arbitrators and had been a party to the decision and pronouncement of the award, refused to sign the award after it had been engrossed, it could not be a valid ground to set aside the award which had been validly given. We further held that what was crucial in the matter of arbitration proceedings was the making of the award and not the formality of signing the same after it had been made, and mere non-signing of the award by one of the arbitrators who had been throughout a party to the making of the award would not vitiate the award. The ruling in this decision, in our view, applies to the facts of the present case and we do not think there is much point in the argument advanced by the learned Counsel for the Petitioners and Appellants.

15. Mr. Krishna Rao invited our attention to a decision in *J. Kuppuswami Chetty Vs. B.V. Anantharamier and Another*, where a Bench of this Court has held that,

Where the reference is to two or more named arbitrators all the arbitrators must act together. If one of them declines to act during the arbitration proceedings and the award is made by the remaining arbitrators after consideration of the whole matters in dispute the award is invalid and cannot stand even though there might be a provision in the arbitration agreement that the majority view should prevail.

We do not think that this decision has any application to the facts of the present case, for, as we have already observed there is nothing on the record to show that any one of the arbitrators declined to act during the arbitration proceedings or that the award was made by the remaining arbitrators to the exclusion of one who declined to act.

16. Similarly in our view the non-stamping and the nonregistration of the award, exhibit A-2, pronounced on 28th May 1948, is not of much consequence, in view of the fact that the award was actually engrossed on stamp papers on 19th June 1948, as found in exhibit A-4, which was finally registered, after passing through certain vicissitudes on 10th December 1948. The contention of Mr. Krishna Rao in regard to exhibit A-4 is that, if exhibit A-4 is to be treated as the award, though stamped and registered, it is out of time for the reason that it was made clearly four months after the arbitrators entered on the reference. A reading of the recitals in exhibit A-4 discloses that exhibit A-4 was really not pronounced in the date on which it purports to be written. The recitals therein make it quite clear that the award was actually pronounced on 28th May 1948, and that what is sought to be done under exhibit A-4 was merely the transcription of exhibit A-2 on stamp papers for the purpose of registration after obtaining the signatures of the parties to the award. For in the document, dated 19th June 1948, which is exhibit A-4, a clear reference is made only to the award pronounced on 28th May 1948, and there is no reference to any other award. Much less does exhibit A-4 purport to be an award pronounced on 19th June 1948. All that the document, exhibit A-4, indicates is that the award pronounced on 28th May 1948, is written up on 19th June 1948, on stamp papers purchased subsequent to the pronouncement of the award. In these circumstances, we do not think that exhibit A-4 could be considered to be award in this case. It is only a transcription of the real award, dated 28th May 1948, for purposes of registration.

17. If exhibit A-2 is to be considered to be the real award, Mr. Krishna Rao urges that its non-registration seriously affects its validity and admissibility and has invited our attention to a series of decisions which required the award to be stamped and registered, when it deals with the rights of parties to immovable properties. In *Dewaram Tewari Vs. Harinarain Tewari and Others*, , it has been held that u/s 49 Registration Act an award, which is compulsorily registrable, if not registered, cannot be received in evidence of any transaction affecting such property and that the Court cannot, therefore, enforce such an award in

proceedings under the Arbitration Act. It was further held that an award made without the intervention of the Court was no longer exempt from registration and if it amounted to a non-testamentary instrument purporting to create, declare, assign, etc., any interest of the value of over Rs. 100 in immovable property, it must be compulsorily registered u/s 17(2) of the Registration Act. To similar effect is the decision in Yanadamma v. Venkateswarlu AIR 1947 Mad. 168. There, a Bench of this Court has held that if the nature of the contract between the parties is such that it actually declares or creates or assigns any interest in immovable property, the award just like any other contract having that effect must be registered. So also in Anandi Lal v. Keshavdeo AIR 1949 Cal. 549, 552, Gentle, J., held at page 557, that if an award purports to create, declare or extinguish the right, title or interest of the respective parties in the properties and fall as within Section 17(1)(b) of the Registration Act, it should be registered. In Jitendra Nath De and Another Vs. Nagendra Nath De, , a Bench of the Calcutta High Court held that a private award falls within the class of documents specified in Section 17(1)(b) of the Registration Act and that by the amendment of Section 17, Registration Act, by Section 10 of Transfer of Supplementary Act, 1929, the exception contained in Section 17(2)(6) having been removed, a private award, if it satisfied the requirements as to value, is compulsorily registrable. But so far as the award in the present case is concerned, it cannot be argued that the award has not been stamped or registered, for in our opinion the award pronounced on 28th May 1948, and later engrossed on stamp papers has been actually registered as required by the Registration Act, Therefore, there is no more room for any contention that the award pronounced on 28th May 1948, remained unregistered. As we have already observed what is contained in exhibit A-4 and registered is none other than the award pronounced on 28th May 1948.

18. As against this, Mr. Krishna Rao contended that after the award, as contained in exhibit A-2, was pronounced by the arbitrators they became functus officio and the document, exhibit A-4, which came into existence was without authority and jurisdiction and, therefore, was not a valid award to be filed in Court. The proposition that when once the award has been pronounced, the arbitrators, having done what they were called upon to do under the submission, become functus officio thereafter, in regard to the reference, cannot be disputed. But there remain certain ministerial acts such as the engrossing of the award on stamp paper and getting the award so engrossed registered which acts cannot be put on the same footing as proceedings in connection with the pronouncement of the award. If the arbitrators are to be deemed to have become functus officio even with regard to the carrying out of such ministerial acts, then the resultant situation would be extremely untenable, as the arbitrators in such a case would be precluded from doing anything by way of even formal acts required in connection with the award pronounced. Even the question of giving notice to the parties of the award or the filing of the award in Court may also be said to be acts done at a stage when the arbitrators have become functus officio, if the

argument is pushed to its logical conclusion. Therefore, the contention of Mr. Krishna Rao, the learned Counsel for the Appellants, that after the award was pronounced on 28th May 1948, the arbitrators were not entitled to act in any manner even with reference to the formalities required in connection with the award pronounced, does not appeal to us. Mr. Krishna Rao has relied upon a decision reported in *Chhati Lal Vs. Ram Chariter Sahu and Others*, , to show that once the arbitrators have issued an award they become *functus officio*, and they have no jurisdiction subsequently to re-write the original award. The decision referred to above went more upon the fact that the award was not registered as required by Section 23 of the Registration Act within the period of four months prescribed, than upon the fact that it was an award re-written. Having considered very carefully the observations made by Wort, J., in the case relied upon by the learned Counsel for the Appellants, we do not think that the copying of the original award on stamp paper with a view to engross the same can be considered to be a re-writing of the award. The reproduction of the original award pronounced on 28th May 1948, cannot be considered to be an act to which the doctrine of *functus officio* could apply. If the award is re-written in the sense that there are substantial changes or material alterations made, then certainly the doctrine of *functus officio* would apply and the arbitrators would be precluded from resorting to such a re-writing of the award already pronounced. Mr. Krishna Rao, however, attempted to show that the award engrossed on 19th June 1948, on stamp paper and registered subsequently was not a mere copy of the original award, but that it was re-written in the sense that it contained material changes, corrections and alterations, and he desired us to compare the original award as contained in exhibit A-2 and the registered award as contained in exhibit A-4. On such comparison, we did notice in exhibit A-2 that there were alterations and interpolations and in several places the matter originally written had been struck out. Mr. Krishna Rao urged in view of these facts, that exhibit A-4 must be deemed to be a re-writing of exhibit A-2. But the comparison of the actual matter contained in exhibit A-2 with all the alterations and changes made therein does not appear to any extent to be different from the matter contained in exhibit A-4. The latter is a verbatim copy of the former. There is also nothing in the evidence to show that the alterations, changes and the striking out portions of exhibit A-2 did not exist at the time when the award contained in exhibit A-2 was pronounced and were introduced later. On the other hand, it seems to us that once the award was reduced to writing as in exhibit A-2, these changes, alterations and striking out must have been resorted to before the award was actually pronounced. If there was evidence to show that these alterations came into existence at the time when exhibit A-4 was being written up on stamp paper, there would have been some substance in the contention put forward by the learned Counsel for the Appellants. But that is not the case here by any means.

19. The learned Counsel for the Appellants also contended that there was difference between the schedules attached to exhibit A-2 and those attached to

exhibit A-4, but he could not succeed in showing to us where exactly the difference existed. As has been held in *Parshottamdas Narottamdas Patel Vs. Kekhushru Bapuji*, .

Where an award is passed, the writing out of it on a stamp paper, which would be necessary before it could be filed in court, is merely a ministerial Act,

we think that in this case what has happened is merely the writing out of the award pronounced on stamp paper and nothing more. If there was any substitution by the arbitrators of the award pronounced on 28th May 1948, by another award either in whole or in part, then certainly the award which came into existence in a substitution of the previous one would not be valid, for, the authority of the arbitrators ceases at the time when they make the award, and no action of the parties either by way of consent or otherwise could give the arbitrators powers to make a second award and such a second award would be absolutely void. No such thing has happened in the case before us. We are unable to hold with the learned Counsel for the Appellants that the award now in question is void on any of the grounds so far urged by him.

20. Taking his stand on the view that exhibit A-4 is the award, the learned Counsel for the Appellants urged that since the document bears the date 19th June 1948, it must be considered to have come into existence after the arbitrators had become *functus officio*, they not having pronounced their award within four months from the date on which they entered on the reference, namely, 12th February 1948. Mr. Krishna Rao relied upon a decision in *Ramnath Narendranath Vs. Nanjee Shamjee and Co.*, , in support of his contention. But as we have already stated that in this case exhibit A was merely a copy of exhibit A-2, which was the award pronounced on 28th May 1948, that is within the four months period from the date of the arbitrators entering upon the reference, we do not think that the decision relied upon by the learned Counsel is of much assistance to him.

21. A more substantial point, however, was raised by the learned Counsel for the Appellants in regard to the validity of the award, when he urged that under Article 178 of the Limitation Act the award should have been filed within ninety days after notice was served on the parties of the making of the award. Article 178, occurring in the first schedule, third division, under the heading "application" states that for an application under the Arbitration Act, 1940, for filing in Court of an award, the period of limitation is ninety days, which runs from the date of service of notice of the making of the award. The contention of Mr. Krishna Rao is that in this case, the award having been made on 28th May 1948, and the same having been signed by all the parties on 19th June 1948, it should be deemed that the parties had notice of the making of the award either on 28th May 1948 or on 19th June 1948. The award, therefore, according to him, having actually been filed in Court by the arbitrators on 10th January 1949, when the Original Petition No. 13 of 1949, itself was filed, is clearly beyond ninety days prescribed by Article 178 of the Limitation Act. Therefore, Mr. Krishna

Rao argues that an award filed by the arbitrators or any other party beyond the period of limitation cannot form the basis of any decree, in so far as Article 178 of the Limitation Act in the first schedule does not specify in terms the party by whom the application is to be made for the filing of the award in Court. The argument prima facie would appear to be plausible, but a careful scrutiny of the article with reference to what is contained in the third column thereof makes it clear that the application to which the article applies is not the application by arbitrators or umpire, but the application of the party making the reference to arbitration, on whom notice of the making of the award by the arbitrators had to be served. For, if it were otherwise, the third column of the article would not have stated that the ninety days should be reckoned from the date of the service of notice of the making of the award. It must be borne in mind, that the provisions contained in the Arbitration Act do not lay down that it is compulsory or obligatory on the part of the arbitrators to file the award in Court. All that the Act makes incumbent upon the arbitrators is to pronounce the award and sign it and give notice of the making of the award to the parties to the reference. u/s 14(1), after the award has been pronounced and after it has been signed and notice has been given in writing to the parties of the making and signing of the award and also the amount of fees and charges payable in respect of the arbitration and award, there is nothing more which the arbitrators are called upon to do under the Arbitration Act. If the award is to be filed in Court, then, as provided for in Section 14(2) of the Arbitration Act, the arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party, or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court. In this case, one of the parties to the reference did give notice to the umpire to file the award into Court on 8th January 1949, by exhibit A-5. But this requisition is not an application to the Court that could be said to fall within the scope of Article 178 of the first schedule to the Limitation Act. In fact, no limitation is prescribed for any of the parties requesting the umpire or the arbitrators to file the award into Court. Article 178 of the Limitation Act, in our view, applies only to applications made to the Court by the party who desires that the award should be filed. In this case, it is not any one of the parties that has made the application to the Court, but actually the application is by the umpire or arbitrators to file the award in Court. If the article were to apply to the application of the arbitrators, then the third column to the article loses meaning and significance. It is not clear why the arbitrators should be burdened with the extra responsibility of filing the award with a specified period after giving notice of the making the award. The arbitrators or umpire are by no means interested in taking the award to Court unless required to do so u/s 14(2) of the Arbitration Act. It stands to reason that it is the look-out of the parties to the reference to see that the award becomes a decree of Court and it is they who could apply for such a thing being done, and it is this which they

have to do within the prescribed period. In so far as there is no time prescribed for an application by the arbitrators to file the award in Court, either expressly or otherwise, in our view, Article 178 cannot apply to the present application, namely, Original Petition No. 13 of 1949. It may be that the arbitrators have taken out this application at the instance of one of the parties, but this fact will not make any difference to the application of the article to the case. What is contemplated under Article 178 of the Limitation Act is not an application by the arbitrators, for, as we have already observed, there is no obligation on the arbitrators under the Arbitration Act to file the award in Court suo motu with or without any application. After they have pronounced the award, they could do some ministerial acts to put the award in proper shape such as engrossing on stamp paper and issuing copies of the same to the parties concerned or sending it to the Registrar's Office at the instance of the parties if the award requires registration. We do not, therefore, think that the present original petition can be said to be one which falls within the scope of Article 178 of the Limitation Act, and in our view, the bar of limitation does not apply to the original petition filed by the arbitrators.

22. Learned Counsel for the Appellants invited our attention to Rules 1, 5 and 6 of the rules framed by our High Court under the Arbitration Act. Rule 1 says that all applications shall be made by petitions, Rule 5 says that applications to be filed shall be numbered and registered as suits, and, Rule 6 says that the arbitrator shall file with the petition a copy of the notice, etc. It is the contention of the learned Counsel for the Appellants that these rules contemplate that while the umpire or arbitrators seek to file an award, whether it be suo motu or at the instance of the party to the reference, they should do so by means of an application or petition, and, that being so, it would be an application under the Arbitration Act and attract to itself the provision of Article 178 of the Limitation Act. There can be little doubt that these rules framed by the High Court lay down the procedure to be followed in regard to applications made under the Arbitration Act. But, the mere fact that these rules required that the filing of the award should be by means of an application or petition and that such application or petition is one made under the Arbitration Act, would not by itself be sufficient to say that the application of the arbitrator to the Court to receive the award for the purpose of filing the same would be governed by Article 178 of the Limitation Act. If that were so, it is difficult to see what bearing the provision in column 3 set out against Article 178 has on such an application. Column 3 states that the time shall be reckoned from the date of service of the notice of the making of the award on the parties. If it were really the intention of the Legislature that a period of limitation should also operate in the case of awards to be filed by the umpire or arbitrator into Court either suo motu or at the instance of parties, there is no reason why it should not have made it clear that the filing in Court of the award and the connected records, etc., by the arbitrator or umpire should be within ninety days from the making of the award or from the date of the notice of the making of the award to the parties to the reference. The application

contemplated, in our view, in Article 178 cannot have, therefore, any reference to the arbitrators as such but only to the parties to the reference, and, that being the case, the application or petition made by the arbitrator to the Court for receiving the award and the connected papers along with the award will not be a petition or application that the Legislature had in view when it enacted Article 178 of the Limitation Act. As already observed, when the Arbitration Act itself has not made it the concern of the arbitrators to file the award unless Section 14(2) of the Act is put into effect, it is too much to say that a mere application or petition that is presented to Court by the arbitrators, to receive the award which they are called upon to file in Court, either at the instance of the parties or under the directions of the Court, is an application which should be made within ninety days from the date of the service of the notice of the making of the award. Even as the making of the award and the service of the notice of such making has only reference to the parties, the application for the filing of the award in Court must also have a reference only to the parties who are interested in seeing that the award is brought to Court and is made a decree of the Court. We do not, therefore, think that there is much substance in the contention of the learned Counsel for the Appellants that rules, because they state that the filing of the award should be by means of a petition or application, attract to itself the provisions of Article 178 when such an application or affidavit is made by the arbitrators who are not interested in the award any more after they have once pronounced and notified to the parties. It makes little difference to the arbitrators whether the award is filed within ninety days after notice to the parties or within three years after such notice to the parties. As soon as the award is pronounced and notice is issued to the parties to the reference, the arbitrators are no more concerned with the same, except when they are called upon either to do some ministerial act or to comply with orders of the Court or requests of parties to the reference in connection with the award.

23. How far Article 178 of the Limitation Act applies to the filing of the award in Court by the arbitrators or umpires has been considered in *Jayantilal Jamnadas v. Chhaganlal Nathoobai* ILR (1946) Bom. 113. Though the observations made by Chagla, J., as he then was, in that decision were with particular reference to the provisions of Rules 373 and 375 of the Bombay High Court Rules framed under the Arbitration Act, we entirely agree with his view that Article 178 of the Limitation Act does not apply to the filing of the award by the arbitrator or umpire at the request of one of the parties to the arbitration agreement. We agree with him also when he says that it is only when a party to the arbitration agreement applies to the Court to direct the arbitrator to file the award and the arbitrator in pursuance of the order of the Court files the award that Article 178 applies, and, if the application to the Court by the party to the reference is beyond ninety days of the service of the notice on the party, then the application would be barred by limitation. To similar effect are the decisions in *Keshrimull and Others Vs. Meghraj Basdeo*, , *John v. Soomar* AIR 1943 Sind 33 and *Robarts v. Harrison* (1881) ILR 7 Cal. 333. It has been held in all these cases referred to

above that Article 178 applies only to the party to the reference who applies for the award to be brought into Court and not to the arbitrators or umpire who may comply either with the request of the party or with the direction of the Court.

24. In *Dwarka Das Vs. Pearay Lal and Others*, , a Bench of the Allahabad High Court has also held that Article 178 does not apply to the arbitrator himself filing the award at the instance of a party but that it applies only to an application to the Court made by a party to the reference for directing the arbitrator to file the award. At page 236 the Bench has observed as follows:

It is clear that a party must ask the arbitrator himself to file the award in Court. If the arbitrator agrees, he will file it in Court. In that case the arbitrator need not make any application to the Court. He may merely file the award in Court, and just intimated to the Court that he is doing so. Such an intimation will not be an application as contemplated under Article 178, Limitation Act, for filing the award in Court. The arbitrator merely does a ministerial act in filing the award in Court. If, however, the arbitrator does not comply with the request of a party to file the award in Court, the party then has to make an application to the Court asking the Court to order the arbitrator to file the award in Court. Such an application by the party to the Court is covered by Article 178, Limitation Act. This a party can do within ninety days of the service of the notice given by the arbitrator that he has made an award. If the party fails to make such an application within the period prescribed, his remedy is lost unless he can persuade the arbitrator to file the award in court at his own instance.

25. In *Gendalal v. Mathardas* AIR 1951 Nag. 32, it has been held by Hidayatullah, J., confirming the earlier decisions of that Court referred to at page 33, column 1 of the report that Article 178 of the Limitation Act, as substituted by Section 49 and Schedule IV of the Arbitration Act, 1940, does not apply to an arbitrator. The learned Judge also observed that the rules of the Nagpur High Court framed under the Arbitration Act required the arbitrator to file the award in a particular way, and, that those rules are merely to make it convenient to the arbitrators to forward their awards. The fact that an application is made is not sufficient to import Article 178, Limitation Act.

26. In *Radha Kishen Vs. Madho Krishna and Another*, , another Bench of the Allahabad High Court held that Article 178 of the Limitation Act applies to applications made u/s 14 of the Act and not to those u/s 17. The distinction was drawn that u/s 14 the arbitrator is called upon to file the award whereas u/s 17 the prayer is that the award may be made a rule of the Court and a judgment and decree may be pronounced accordingly.

27. We have no hesitation in agreeing respectfully with the decisions cited above, and, in our opinion, Article 178 of the Limitation Act does not apply to a case where the arbitrators take out an application to file the award in Court.

28. A further point was taken by the learned Counsel for the Appellants as to the validity of the award in that the arbitrators exceeded their jurisdiction when they

gave a decision in regard to the immovable properties which did not belong to the joint family but belonged to the wife of the first party to the reference. His point was that the arbitrators were not called upon under the terms of the reference to decide whether certain properties which have been excluded from the scope of the award belonged actually to Krishna Bai, the wife of the first party to the reference and not to the joint family. It is true that this was not specifically referred to the arbitrators in the agreement of reference, but it cannot at the same time be contended with any force, that the arbitrators were going beyond their jurisdiction when they were deciding as to which properties belonged to the joint family and which did not. When the division was to be made of the joint family properties, it will be too much to say that if the arbitrators decided that certain properties did not belong to the joint family but belonged to an individual, they were acting beyond the scope of their jurisdiction as arbitrators called upon to make a division of the joint family properties. There is also the further point that cannot be lost sight of in this connection, for when the list of joint family properties was given by the first of the parties to the reference, i.e., the husband of Krishna Bai, he has specifically stated in his statement before the arbitrators that certain properties which are said to be worth about a lakh of rupees did not belong to the joint family but belonged actually to Krishna Bai. This statement was endorsed and accepted to be correct by the Appellants before us in this appeal. Though the statement of the Appellants endorsing the statement of Narayana Rao, the first of the parties to the reference, has not been actually exhibited, still our attention has been called to that statement which was exhibited in a collateral criminal proceeding. However that be, we are not inclined to agree with the learned Counsel for the Appellants that the arbitrators were wrong in excluding from the scope of the award, the properties which were agreed by all the parties to the reference to belong to Krishna Bai. We, however, do not want to say further in this regard as it is not our desire to prejudice the rights of the Appellants, if any, to take any proceedings to establish that the properties which have been excluded from the scope of the award as belonging to Krishna Bai, the wife of Narayana Rao, did not belong to her. Nor is it necessary for us at this stage to express any view with regard to the binding nature of exhibit A-4 signed by all the parties to the reference, stamped and registered as a document having the effect of a partition amongst the members of the family. This point does not arise in the revision petition or the appeals that are now before us.

29. In the result we confirm the decree and judgment of the learned Subordinate Judge, and dismiss the civil revision petition as well as the two appeals. In the circumstances of the case we do not think that we shall award costs to the Respondents.