
(1956) 10 AHC CK 0024
In the Allahabad High Court
Case No : Civil Revision No. 1276 of 1951

Ram Bharosey

APPELLANT

Vs

Pearey Lal and Another

RESPONDENT

Date of Decision : 23-10-1956

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(1), 14(2), 25, 41
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 5

Citation : AIR 1957 All 265 : (1957) 27 AWR 177

Hon'ble Judges : Agarwala, J

Bench : Single Bench

Advocate : Dulare Lal Misra, for the Appellant; K.C. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is an application in revision and arises in the following circumstances. The opposite parties Pearey Lal and another filed a suit for the ejectment of the defendant applicant from a shop.

2. The trial court decreed the suit. The applicant filed an appeal in the lower appellate court.

During the pendency of the appeal, the parties agreed to refer the matter in dispute to arbitration through the agency of the Court. The Court referred the dispute to an arbitrator on 10th April 1951. The arbitrator made an award and filed it in court on the 30th April 1951. The Court ordered the parties to file objections, if any, by the 30th May, 1951. On the 30th May, 1951 no objections were filed as no notice was actually issued to the parties. When the Court noted this fact, it adjourned the case and directed that notice-on respondent be issued by means of the service of a card, and as appears from the order-sheet, the signature of the counsel for the defendant-applicant was obtained there and then, on the margin of the ordersheet, thereby showing that the counsel for the applicant was informed of the order of the Court. 23rd July was fixed for dealing

with the objections. No objections were filed on the 23rd July and the case was adjourned to 31st July, on which date the Court passed a decree in terms of the award. Against this order the applicant has come up to this Court in revision and two contentions have been raised on his behalf, "

(1) that the award was invalid because the arbitrator did not give any notice to the parties as required by clause (1) of section 14 of the Arbitration Act, and

(2) that the proceedings in the court below were illegal and irregular, inasmuch as the Court did not serve notice on the parties. It is contended that service of notice on the counsel of the applicant did not meet the requirement of Clause (2) of Section 14 of the Indian Arbitration Act.

3. Section 14 of the Arbitration Act runs as follows:--

"(1) 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.

(2) 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, and the Court shall thereupon give notice to the parties of the filing of the award."

4. On behalf of the opposite parties it was urged that Clause (1) of Section 14 does not apply to an arbitration made through the agency of the Court. This contention does not appear to be correct as Section 25 of the Act lays down that the provisions of the other Chapters shall (including Chapter II , in which Section 14 appears) so far as they can be made applicable, be applied to arbitrations in suits. I, therefore, think that Clause (1) of Section 14 applies even to arbitrations in pending suits. But this does not dispose of the matter.

5. It is true that in the present case the arbitrators did not give notice to the parties of the making and the signing of the award. But the arbitrators after making and signing the award filed it in Court. The validity of the award does not depend upon the notice of the same being given to the parties. When an award is duly made, signed and filed in Court it is a valid document

6. In *Asad-ul-lah v. Muhammad Nur*, ILR 27 All 459 (A) it was held that "for the making of an award it is enough that the arbitrators act together and finally make up their minds and express their decision in writing. This writing must be authenticated by their signatures. The award is thus made and signed and is complete and final so far as the arbitrators are concerned." The same view was expressed in *Janardhan Prasad v. Chandra-shekhar* AIR 1951 Nag 198 (B) where it was held that

"an award is final if it is made in time and that submission, delivery, or filing in time is not essential to maintain its validityThe provision for giving 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 the award is for the purpose of limitation under Article 178, Limitation Act, entitling either party to apply to the Court for the filing in Court of the Award."

If notice is ultimately given by the Court under Clause (2) the parties have full opportunity of filing objections to the validity of the award. Omission of notice by the arbitrators under Clause (1) of Section 14 is, therefore, immaterial.

7. The provisions relating to the service of I notice to the parties as provided for in Clause (2) of Section 14 is complied with when notice is served upon a counsel of a party. Section 41(a) of the Arbitration Act makes the provisions of the CPC applicable to all proceedings before the Court under the Arbitration Act. Order 3, rule 5 of the CPC lays down that any process served on the pleader of any party Or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person. Service of notice on the counsel is, therefore, service on the party himself.

8. The learned counsel drew my attention to Section 42 of the Arbitration Act Which lays down the mode of service of notice under the Act by a party Or arbitrator and not by the Court. This section may apply to notice referred to in Clause (1) of Section 14 , but it can have no application to the notice Which is to be given by the Court under Clause (2) of Section 14 . This view finds support from the decisions of various Courts in (Srimati) Saroj Bala and Others Vs. Jatindra Nath Bose and Others, Bholanath Roy Vs. Bata Krishna Roy and Others, and Valchand Dipchand Vs. Gulba Laxman,

9. A, contrary view was, however, expressed by the Sind High Court in Holaram Verhomal V. Governor General of India in Council AIR 1947 Sind 145 (F). The attention of the Court was not drawn to any of the above cases. The Court relied on certain observations made in Chatarohuj Das v. Ganesh Ram ILR All 474 (G). That was a case in which no notice was issued at all, but the party concerned came to know of the making of the award in some other manner. It was held that the decree passed upon an award filed in Court without notice to a party may be set aside in revision and that the party's knowledge about the making of the award was immaterial. In the present case notice was actually given to the counsel for the applicant. That case is, therefore, clearly distinguishable.

10. There is , therefore, no force in the petition and it is dismissed with costs.

11. The stay order is discharged.