
(1981) 07 PAT CK 0008
In the Patna High Court
Case No : Civil Revision No. 467 of 1978

Ram Lakhan Mahto

APPELLANT

Vs

Mukhdeo Mahto and Others

RESPONDENT

Date of Decision : 16-07-1981

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 17
Contract Act, 1872 — Section 186
Limitation (Amendment) Act, 1940 — Section 14
Limitation Act, 1963 — Article 119

Citation : AIR 1982 Patna 19 : (1982) 30 BLJR 30

Hon'ble Judges : Uday Sinha, J; Harilal Agrawal, J

Bench : Division Bench

Advocate : Shreedeva Narayan and Chandra Shekhar Prasad Singh, for the Appellant; Yogesh Chandra Verma and Gopal Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Harilal Agrawal, J.—This is an application by the defendant against whom an award has been made a rule of the Court at the instance of the original plaintiff who died during the pendency of the case in the lower appellate Court and was substituted by the present opposite parties.

2. Both the parties are descendants from a common ancestor and when a dispute cropped up between them for division of the landed properties, they entered into an arbitration agreement on 30th June, 1962, for getting the dispute resolved by four named arbitrators. The arbitration agreement was also registered. The arbitrators entered upon the reference on 15th July, 1962, and then after taking evidence, gave their award on 18th April, 1963, which was also scribed , on stamp-paper on 3rd July, 1963 and registered on the same day. There has been some difference between the parties as to whether on 18th April, 1963, when the decision of the arbitrators was announced, it was already drawn up on a paper or not but, however, in view of the questions that have been raised before us, this fact has no relevancy. Baldeo Mahto, the ancestor of the opposite parties, then

filed a title suit, being No. 164 of 1963, in the Court of Munsif I at Buxar along with the registered award itself with a prayer that a decree may be passed in terms of the award. The plaint which contains only six paragraphs and seems to have been drafted in the mofassil, stated that it has been agreed between the parties that the award could be filed in Court in terms of Section 14(2) of the Arbitration Act for making it a rule of the Court and, accordingly, the award was being filed. The defendant-petitioner appeared on 30th January, 1964. He filed a petition for time to file written statement which was ultimately filed on 4th March, 1964, taking various pleas, namely, (i) the arbitrators have misconducted themselves; (ii) the suit as framed was not maintainable because the award in question had not been filed in terms of the requirements of Section 14(2) i. e. by the arbitrators; and, (iii) the suit was barred by limitation, i e., under Article 178 of the old Limitation Act corresponding to Article 119 of the new Limitation Act. The trial Court overruled the defendant on all the questions and came to the following conclusions-

- (i) The defendant failed to prove his case of misconduct on the part of the arbitrators;
- (ii) There was no defect in filing of the suit; and,
- (iii) The delay in filing the suit was fit to be condoned.

3. The defendant then took the matter in appeal to the District Judge, Arrah, which was disposed of by the Third Additional Subordinate Judge, who dismissed the appeal. He has, however, held that the title suit filed by the plaintiff was competent and must be deemed to be a suit u/s 17 of the Arbitration Act for which proposition he placed reliance upon a Bench decision of this Court in *Makeshwar Misra v. Laliteshwar Prasad Singh* 1967 BLJR 757. Although he recorded a finding that there was no sufficient evidence to hold any misconduct on the part of the arbitrators, he did not permit the defendant to raise other pleas on the ground that the written statement was filed beyond the prescribed time and, therefore, it was inadmissible, being time-barred. The defendant has, accordingly, filed the present application.

4. This application was earlier heard by a learned single Judge of this Court and as it appeared to him that there were some conflicting decisions, he referred the matter to a Division Bench and, accordingly, it has been placed before us.

5. Mr. Shreedeva Narayan, appearing in support of this application, has emphatically contended that the title suit as framed and constituted was not maintainable in view of the fact that the award had not been filed by the arbitrators and the plaintiff had not made out any case that he filed the same under their authority. Before I consider to discuss this argument it would be useful to quote Sub-section (2) of Section 14 of the Arbitration Act which reads thus :--

"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". From a perusal of the above provision it is obvious that although the initial obligation is on the arbitrators or the umpire to file the award either at the request of any party to the arbitration agreement or any person claiming under such a party or, if so directed by the Court, the provision contemplates that the arbitrators can also "cause the award or a signed copy of it.....to be filed in Court".

6. Mr. Narayan has placed reliance upon two decisions of this Court, the earliest being the case of Ram Narayan Rai and Others Vs. Lalji Rai and Others, . This was a single Judge case and the position there was entirely different inasmuch as the award in question was sent to Court by post and none of the arbitrators took responsibility for saying as to who caused the award to be sent to Court; the award was accordingly held to be not properly placed before the Court and, as such, could not be acted upon by the Court. The proposition that an award can be filed by one of the parties itself under the authority of the arbitrators is not res integra and this Court itself in two Bench decisions has maintained this view, one of them being the case of the Union of India v. Binod Behari Singh 1977 Pat LJR 309, relied upon by Mr. Narayan himself; and the other being the case of Makeshwar Misra v. Laliteshwar Prasad Singh 1967 BLJR 757. I would not like to discuss either of the cases in any detail as the Supreme Court has also maintained this view in the case of Kumbha Mawji Vs. Union of India (UOI), where, in unequivocal term, it was observed that u/s 14(2) the actual filing by the umpire is not essential and it is sufficient if the umpire causes the award to be filed. We have, therefore, to see as to whether on the facts and in the circumstances it can be held that the plaintiff, Baldeo Mahto, could be said to have the necessary authority in this regard. In the Supreme Court decision, Just referred to above, the position was that the umpire had handed over plain Copies of the award to both parties. On the evidence that was produced by the parties, the learned Judges of the High Court were of the opinion that the authority of the umpire empowering the appellant to file the original awards into Court on his behalf had not been made out on the evidence in the case. The learned Judges of the High Court had come to this conclusion on taking into account that the umpire as a person of commonsense could not be supposed to have, authorised both the parties to file the awards into Court on his behalf. The Supreme Court expressly recorded its agreement with this reasoning.

7. I have discussed the facts of the case before the Supreme Court in some detail to emphasise the fact that the proposition laid down on the facts of the case was dependent upon the above circumstance. The circumstance in the case before us, on the other hand, is just to the contrary. Here, apart from the averment in the plaint to the effect that the parties had agreed that steps should

be taken for filing the award in the Court in accordance with the provisions laid down in Section 14(2) of the Act, the award which was a registered one, was handed over to one of the parties, namely, the plaintiff and this circumstance appears to me to be a pointer to the implied authority of the arbitrators to the plaintiff to file the same in Court on their behalf or at least under their authority for making the same a rule of the Court. The authority may be express or implied is well-known and this is also provided u/s 186 of the Indian Contract Act. Therefore, it is not necessary to search for any written authority in this case.

8. A Division Bench of the Allahabad High Court in the case of Hazi Rahmetulla Vs. Chaudhari Vidya Bhusan, , faced with a somewhat similar situation, held that it was open to the Court before which an award is filed to act on the award u/s 17 in the sense of making a decree on the basis of it when the award is filed through the hand of one of the parties and it is not necessary that the award must have come before it as a result of specific proceedings as provided by Section 14, being taken. It was further observed that it was not essential for the party filing the award to allege specifically that it was filing the award under the authority of the arbitrator, inasmuch as the question whether a party to arbitration had the authority of the umpire or the arbitrator to file an award in Court as his agent on his behalf is a question of fact and is to be determined on the evidence and circumstances of each particular case. In Makeshwar Misra's case 1967 BLJR 757 (supra) A. B. N. Sinha, J. who delivered the judgment for the Bench, also took a somewhat similar view and held that in such a situation the award must be deemed to have been filed not u/s 14(2) but under Sec. 17 of the Act and the Court was competent to act upon the same.

9. It is not necessary for me to conclusively decide the question as to whether the filing of an award can be treated as having been filed u/s 17 of the Act, as was held by this Court in the case of Makeshwar Misra 1967 BLJR 757 (supra), since I have got some reservations on this account. However, as I have already observed earlier that the plaintiffs must be deemed in the circumstances mentioned above to have the necessary authority of the arbitrators for filing the award, their plaint must be deemed to be u/s 14(2) of the Act.

In this connection I may also refer to a Bench decision in Umrao Singh and Co., Mahanagar, Lucknow (U.P.) Vs. The State of Madhya Pradesh and Others, where the plaintiff had filed the award along with his application with following averments in paragraph 8 thereof :--

"That the original award received by the petitioner from the arbitrators for filing here in this Court is submitted herewith".

It was held that on these averments the authority of the arbitrators to file the award in Court was implicit.

The fact that the arbitrators had handed the award to the plaintiffs of this case is not in dispute and two of the arbitrators who examined themselves as P. Ws. 5 and 7, were not even confronted in this regard. I, therefore, do not find any

substance in the first contention advanced by the learned counsel.

On examining the various decisions as well, mentioned above, I do not find any apparent conflict in them as said by the learned single Judge.

10. The other question which was also argued with some emphasis by Mr. Narayan was that the suit was barred by limitation. This argument is based upon Article 119 of the new Limitation Act. There is no substance in this argument either, for the simple reason that the period of 30 days prescribed under this Article is in that case where the purpose is for "filing in Court of an award". Then the period of 30 days is to run from "the date of service of the notice of the making of the award". The argument was that inasmuch as on the date on which the suit was filed, more than 30 days had already elapsed from the service of the notice of the making of the award, it was time barred. The argument is entirely misconceived and untenable for the simple reason that this Article of the Limitation Act would apply only to such a proceeding in which a prayer is made for filing of the award and not where the award is already filed. Similar view has been taken by A. B. N. Sinha, J., in the above noted decision where it was said that if the award is already filed along with the plaint then there is no question for a direction to the umpire or the arbitrators for filing the award and, therefore, the limitation fixed for such a suit with such a relief was not attracted.

11. Some arguments were also advanced by Mr. Narayan that the suit was not maintainable in view of Sec. 32 of the Arbitration Act. No such argument was advanced in either of the Courts below nor do I find any merit in the same inasmuch as complexion of the bar provided u/s 32 of the Arbitration Act is entirely different and I reject this argument also as being entirely misconceived and erroneous.

12. The result of the discussions is that this application fails and is accordingly dismissed. In the circumstances of the case, however, I would make no order as to costs.

Uday Sinha, J.

13. I agree.