

(1958) 07 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous First Appeal No. 15 of 1955

Sheoramprasad Ram Narayanlal Bania

APPELLANT

Vs

Gopalprasad Parmeshwardayal Shukla and Others

RESPONDENT

Date of Decision : 14-07-1958

Acts Referred:

Arbitration Act, 1940 — Section 14, 15, 16, 17, 28

Citation : AIR 1959 MP 102 : (1958) ILR (MP) 570 : (1959) 4 MPLJ 87

Hon'ble Judges : M. Hidayatullah, C.J.;G.P. Bhutt, J

Bench : Division Bench

Advocate : R.J. Bhawe, for the Appellant; R.K. Pande, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Bhutt, J.

This is an appeal of the first defendant, Sheoram Prasad, against the order passed by the Court of Additional District Judge, Rajnandgaon, in Civil Suit No. 86-A of 1954, refusing to set aside an award.

Firm S. S. Gupta Bidi Works, Rajnandgaon, belonged jointly to Mst. Sheodulari, and the first defendant who is her husband's younger brother. Mst. Sheodulari is the wife of the third respondent, Sheogopal and step-mother of the plaintiff Sheokumar, respondent 4. The partnership acquired some Immovable properties at Rajnandgaon and other places. By a registered deed dated 27-7-1945, Mst. Sheodulari transferred her interest in the business and the properties to the plaintiff.

On 1-12-1948, the plaintiff and the first defendant took Radheshyam, defendant 3, as a partner of -/4/- share in the partnership business, the remaining -/12/- share being owned equally by the plaintiff and the first defendant. The immovable properties continued to be owned by the plaintiff and the defendant 1 exclusively.

Disputes having arisen between the plaintiff and defendant 1, they appointed Gajanand Prasad, respondent 2, as an arbitrator by a deed of agreement, dated 5-3-1950. Subsequently they also appointed Gopal Prasad, respondent 1, on 20-3-1950, as an arbitrator and on 29-3-1950, they referred the disputes to both of them for arbitration. The arbitrators gave an award on 17-8-1951, which was registered on 3-9-1951. By the award they settled accounts of the partnership business and divided the immovable properties between the plaintiff and the first defendant.

On 12-11-1951, the first defendant made an application to the lower Court u/s 14 of the Arbitration Act, 1940, for notice to the arbitrators to file the award. He also stated in that application that he challenged the award on various grounds. The grounds, however, were not specified. The application was registered as miscellaneous judicial case No. 10 of 1951. In the meantime, the lower Court was abolished.

Accordingly the application was transferred to the Court of the District Judge, Rajnandgaon, where it was registered as miscellaneous judicial case No. 27 of 1953. Thereafter, the lower Court was restored, and the application was retransferred to it and registered as civil suit No. 88-A of 1954. In that suit, only the present respondents were impleaded as defendants. Radheshyam was not made a party as, according to the first defendant, he had retired from the partnership on or about 3-1-1950.

On 4-12-1951, the plaintiff also made an application to the lower Court under Sections 14 and 17 of the Arbitration Act, in which he prayed for notice to the arbitrators to file the award and for passing a decree in accordance with its terms. The application was registered as civil suit No. 3-A of 1951 and on transfer to the Court of the District Judge, as civil suit No. 2-A of 1953.

When, on the reconstitution of the lower Court, the application was retransferred to it, it was registered as civil suit No. 86-A of 1954. Plaintiff had impleaded Radheyshyam as defendant 2 but he was later given up as no relief was claimed against him. The other defendants were the present appellant (defendant 1) and the two arbitrators (defendants 3 and 4).

Both the applications were consolidated, and evidence was recorded and judgment delivered in the plaintiff's suit (No. 86-A of 1954). The lower Court disallowed the objections raised by defendant 1 and passed a decree in terms of the award. Hence this appeal.

A preliminary objection was raised on behalf of the plaintiff to the maintainability of the appeal on the grounds that have been raised. The contention is that since the lower Court has passed a decree, an appeal u/s 17 of the Arbitration Act cannot lie except on the ground that the decree is in excess of or not in accordance with the award.

The appeal, however, is against the order refusing to set aside an award and is

covered by Clause (vi), Sub-section (1) of Section 39. In the case of a composite order by which a Court refuses to set aside an award and also passes a decree in accordance with its terms, the order refusing to set aside the award and the decree are both appealable, as Sections 17 and 39 are not mutually exclusive.

Therefore, the fact that a decree has been passed does not preclude an appeal against the order refusing to set aside the award: see *Mt. Ishwar Dei Vs. Chhedu*, A similar view of the earlier law was taken in AIR 1940 386 (Nagpur) in which it was held by late Padhye J., that Schedule 11, Paragraph 21, of the Civil Procedure Code, did not take away the right of appeal given u/s 104 (f) to a person aggrieved by an order filing or refusing to file an award: see also *Jayantilal v. Surendra* AIR 1956 Nag 245.

The appeal against the impugned order is, therefore, competent even though it was followed by a decree. If the order is set aside, the decree which is founded on it would lapse, and consequently it cannot operate as a bar to the appeal against the order.

It was next contended that the first defendant did not file any application challenging the award and accordingly he has no locus stand to contest it. In this connection, it was not disputed that the award was filed in Court on 17-6-1952 in the presence of both the parties. The Court also directed the first defendant to file objections to the award: see the order-sheet, dated 17-6-1952 in miscellaneous judicial case No. 10 of 1951.

Both the parties had, therefore, notice of the filing of the award on 17-6-1952. Accordingly, as held in *Kawalsingh v. Baldeosingh* AIR 1957 Nag 57, to which one of us (Bhutt J.) was a party, time began to run under Article 158, Schedule I, of the Indian Limitation Act, 1908, from 17-6-1952 and an application u/s 33 of the Arbitration Act challenging the award on the grounds specified in Section 30 *ibid* should have been filed within 30 days from that date.

For purposes of this appeal, however, it is not necessary to decide whether the application of the first defendant made u/s 14 on 12-11-1951 before the award was filed, can be treated as an application u/s 33, for we are of the opinion that the application, dated 7-7-1952, which was filed by him for grant of permission to inspect the record can be treated validly as an application u/s 33.

All the grounds of challenge to the award were mentioned in that application although the details thereof were furnished subsequently in the written statement filed by him on 23-8-1952. The absence of details, however, cannot come in the way of the Court treating the application as one falling u/s 33, as the necessary challenge to the award is contained in it.

That application was made within the time prescribed in Article 158, Schedule I, of the Indian Limitation Act, The Lower Court was, therefore, competent to enquire into the validity of the award on the grounds mentioned by the first defendant in his application, dated 7-7-1952, as amplified in his written

statement, dated 23-8-1952.

In the above view, it is not necessary to consider whether Section 5 of the Indian Limitation Act can be availed of by a party to condone the delay in making an application u/s 33 of the Arbitration Act. We may, however, mention that in *Bhaskarrao v. Yeshwantrao*, Civil Revn. No. 96 of 1954, D/- 2-8-1954 (Nag), late Rao J., following the decision in *H. Chandanmull and Co. Vs. Mohambal M. Mehta and Others*, had answered the question in the negative.

A similar view was expressed in AIR 1957 Nag 57 (supra). Since we have held that the application, dated 7-7-1952, of the first defendant, which was made within the period of limitation, falls u/s 33 of the Arbitration Act, we pronounce no opinion on this point.

Before we take up the consideration of the main appeal, we may dispose of a point of law raised on behalf of the first defendant against the right of the plaintiff to obtain a decree in terms of the award. The plaintiff was sent notice of the award by a post-card, Ex. P-14, on 4-9-1951, by the arbitrators.

It was contended that the notice must have reached him in due course on the same day, and, therefore, his application, dated 4-12-1950, u/s 17 of the Arbitration Act, being barred by limitation under Article 178, Schedule I, of the Indian Limitation Act, could not be the basis for passing a decree in terms of the award.

The lower Court relied upon the evidence of the postman Durjansingh (P. W. 1) who stated on oath that he served the post-card, Ex. P-14, on the plaintiff on 6-9-1951 as he could not find him earlier. The first defendant challenged his testimony on a bland statement that he was not on good terms with him but he gave out no facts to support it.

His evidence finds confirmation from the endorsement made by him on the back of the postcard, Ex. P-14, on 5-9-1951, that the plaintiff was not found. A post-card containing notice of the award was also sent to Radheshyam on the same day and it appears from his reply, Ex. 1-D-42, that it was received by him on 7-9-1951.

The lower Court was, therefore, justified in accepting the evidence of Durjansingh (P. W. 1) that the post-card, Ex. P-14, was delivered to the plaintiff on 6-9-1951. From that date, the application, dated 4-12-1951, was within time.

However, it appears to us that once the first defendant had moved the Court u/s 14 of the Arbitration Act, it was not necessary for the plaintiff to file another application for the same purpose. Nor indeed was it necessary for him to make any application praying that a decree should be passed in terms of the award.

After an award is filed u/s 14, a party may apply to the Court u/s 15 for its modification or u/s 16 for remitting it to the arbitrators. He may also apply u/s 33 for setting aside the award on any of the grounds mentioned in Section 30.

Where a Court sees no cause to remit the award or to set it aside, it is bound to pass a decree in terms thereof u/s 17.

The jurisdiction of the Court to embody the award in a decree is not, therefore, dependent upon any application by a party that it should be accepted. Its power under Sections 15 to 17 or 30 and 33, is derived from the filing of the award before it u/s 14. Therefore, after the award was filed in the lower Court on the application of the first defendant, it had the jurisdiction to accept the award and pass a decree in terms thereof, even if the plaintiff had made no application for that purpose.

We shall now take up the points that were urged before us as vitiating the award. They may be summarised as below:

- (1) The award included Radheshyam who had retired from the partnership with effect from 3-1- 1950 and was not a party to the reference.
- (2) The arbitrators failed to appoint an umpire.
- (3) The award was made after the statutory period of limitation.
- (4) The arbitrators suppressed some documents and substituted others.
- (5) The award excluded some properties of the partnership and included the property belonging to strangers.
- (6) The enquiry by the arbitrators was incomplete in some respects,
- (7) The enquiry was on occasions made by the arbitrators without notice to the first defendant and behind his back.
- (8) The arbitrators disclosed the award to the plaintiff, and changed and ante-dated it to suit his purpose.

Other pleas raised by defendant 1 before the lower Court were not pressed before us.

Point (1): The proceedings of arbitration show that Radheshyam was examined only as a witness. The award has made accounts between the plaintiff and the first defendant only and has allowed the partnership to continue, giving an option to the first defendant to dissolve it. It is true that the plaintiff has been given a lesser share in the profits on the basis that Radheshyam is also a partner.

That is not, however, a matter for the first defendant to complain of. As the question whether or not Radheshyam continues to be a partner has not been decided in the award and is free to be agitated by the first defendant in an action for dissolution, we hold that Radheshyam has not been made a party to the award.

Points (2) and (3): Section 3 of the Arbitration Act provides that an arbitration agreement, unless a different intention is expressed therein, shall be deemed to

include the provisions set out in the first schedule in so far as they are applicable to the reference. Clause 2 of the first schedule requires the arbitrators, to appoint an umpire, not later than one month from the latest date of their respective appointments, when the reference is made to even number of arbitrators.

Clause 3 provides that the arbitrators shall make their award within 4 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.

As there is no different intention expressed in the arbitration agreements in this case, they shall be deemed to include these two conditions. However, these conditions, when deemed to be included in the arbitration agreements, become only referable to the action of the parties themselves and not to the statute. The parties are, therefore, free to waive or vary these conditions.

The question of the appointment of an umpire has been settled by a Division Bench of this Court in *Tikaram v. Hansrai* 1954 Nag LJ 204 : (AIR 1954 Nag 241), to which one of us (Chief Justice) was a party. It has been held there that the failure of the arbitrators to appoint an umpire does not vitiate the award. The necessity for an umpire arises only when a difference of opinion between the arbitrators cannot be resolved by a majority of votes. Clause 2 of the schedule is obviously intended to meet such contingency.

It cannot, therefore, be deemed to be a condition which must be fulfilled in all cases, even when the arbitrators have not been at variance. As at present advised, we are not inclined to depart from this view. Therefore, we hold that the failure of the arbitrators to appoint an umpire did not vitiate the award.

As regards Clause 3 of the schedule, it was held by one of us (Chief Justice) in *Maroti v. Laxman*, Civil Revn. No. 195 of 1945, D/- 19-12-1946 -- (Nag), that mere delay in giving an award does not automatically take away the authority of the arbitrators. Section 5 of the Arbitration Act provided that unless a contrary intention is expressed in the arbitration agreement, the authority of the appointed arbitrators is not revocable, except with the leave of the Court.

Therefore, even though there may be delay in making the award, the authority of the arbitrators would continue until rescinded by the Court u/s 5. In this connection, Section 28(1) is also pertinent. It gives power to the Court to enlarge, from time to time, the time for making the award, whether the time for making the award has expired or not and "whether the award has been made or not (underlining (here in " ") is ours).

The power of the Court to extend time accordingly continues even after the award is made, and as this power is not restricted to any point of time, it may be exercised even after the award has been filed in Court u/s 14 of the Act. Therefore, apart from the acquiescence of the parties, the Court also can excuse

the delay in making the award after it has been filed before it. This view finds support from *Amar Nath Vs. Uggar Sen and Others*, *Shiv Ram v. Ram Rakha Mal* AIR 1951 Pep 45 and *Narsing Das Hiralal Ltd. and Another Vs. Bisandayal Satyanarain Firm*,

A different view was held in *Kamta Pd. Nigam Vs. Ram Dayal and Others*, on the principle that estoppel is not available against statute. However, as indicated above, the condition laid down in Clause 3, in the absence of anything to the contrary, only becomes a part of an agreement of the parties, which they would be free to waive, if they desire the arbitrators to continue with the reference.

This is also clear from Sub-section (2) of Section 28, under which only a provision in an arbitration agreement whereby the arbitrators may, without reference to the parties, enlarge the time for making the award, is void and of no effect. This implies that the parties are free to enlarge the time for making the award. They can, therefore, by consent or acquiescence, give extended time to the arbitrators to complete the award,

The lower Court has given good reasons for holding that the parties themselves desired the arbitrators to continue the proceedings and make an award, even though the period of 4 months from the date of their entering on the reference, had expired. The first defendant had himself asked the arbitrators by letters, dated 23-6-1951 and 6-8-1951, to complete the proceedings and make an award.

The plaintiff also had sent a letter, dated 26-7-1951, making the same request. The award was not thereafter delayed unduly. Till the time the award was made, the parties had continued taking part in the proceedings. In these circumstances, the validity of the award is not open to challenge. The lower Court was, therefore, right in holding that the award was not vitiated on the ground of delay.

Point (4): This point may be considered under the following heads:

(i) Destruction of order-sheets; According to the first defendant, original order-sheets relating to sheets 74 and 77 of the Arbitration record were destroyed by the arbitrators and others substituted in their place. The witnesses on the point are Ramlal (D. W. 5) and his father Jiwanchand (D. W. 6). Jiwanchand at first stated that Gajanand Prasad, respondent 2, tore the order-sheets and prepared new ones.

Further on he said that both the arbitrators had torn the order-sheets. Still further he said that it was Gopal Prasad, respondent 1, who tore the order-sheets, which fact was denied by him when examined in another case in August 1954. Ramlal's statement that the parties used to sign the order-sheets is not borne out by the other order-sheets whose genuineness is not in dispute,

No motive was ascribed by defendant 1 for the change in the order-sheets. The witnesses are not on good terms with Gajanand Prasad, respondent 2, and appear to support the case of defendant 1 only to satisfy their grudge against him. The lower Court was, therefore, right in disbelieving these witnesses.

(ii) Change of figures in the statement of defendant 1, dated 28-3-1950: It doubtless appears from the written statement of defendant 1, dated 28-8-1950, which is on sheet 3 of the arbitration record, that at first the figures mentioned in it were Rs. 36,000/- and Rs. 60,100/- which were changed into Rs. 3600/- and Rs. 6100/-. The arbitration record shows that defendant 1 wrote his statements and applications with a copying pencil and that no other person used that kind of pencil.

The figures are changed with the same pencil with which the document was written. From the account books of the partnership examined by the arbitrators, it does not appear, that the partnership was at any time possessed of such large sums. In this connection, defendant 1 stated that he had submitted two account sheets showing how these amounts were arrived at.

No such account sheets are in the record of the arbitration proceedings. In his written statement, dated 23-8-1952, he made no mention of the loss of these account sheets; nor is there any such allegation in the additional particulars supplied by him on 15-9-1952; In the witness-box, he tried to explain as D. W. 14 how these figures were arrived at.

As regards Rs. 60,100/- he stated that it included an amount of Rs. 15,000/- as his deposit with the firm, Rs. 8,000/- due on account of his salary, and Rs. 8,000/- due on account of business of the Shivanand Stores belonging to the partnership. He claimed Rs. 20,000/- as interest on his deposit of Rs. 15,000/-. As regards Rs. 36,000/-, he said that it included an amount of Rs. 15,000/- out of a sum of Rs. 20,000/- which the plaintiff's father had spent in construction of a building and Rs. 8,000/- which were payable to Laxmibai but were not paid to her.

On these items, he claimed Rs. 8,000/- as interest. Even taking his statements "ex facie", the amounts specified by him in his written statement, dated 28-3-1950, are not fully explained. His evidence is apparently artificial and fantastic and was, in our judgment, rightly rejected by the lower Court.

(iii) Agreed list of partnership property: The contention of defendant 1 is that the parties had submitted an agreed list of partnership property before the panchas on 9-1-1951, which was removed from the arbitration record. Although he referred to a list of property to be partitioned in his application, dated 29-8-1952, filed in his suit, it was not mentioned that it was a list which was agreed to by both the parties. It was not until he filed an application, dated 15-9-1952, that reference was made to an agreed list.

That list was said to contain Sakharawala house and Amgaonwala plot. The house was purchased by the plaintiff's father in his own name by a registered sale deed, dated 2-7-1949, which he transferred to another son in March or April 1950. It is not shown that the parties had any ancestral property. The property which was referred to arbitrators for partition was acquired by them as partners and did not, therefore, partake of the nature of joint family property.

Therefore, the house presumably belonged to the plaintiff's father exclusively. As regards the plot, defendant 1 had admittedly written a letter in favour of the plaintiff's father that it belonged to him. His explanation that he wrote the letter only to enable the plaintiff's father to defend the suit filed against him by another for its possession does not appear to be satisfactory in the absence of anything to indicate how it could help the defence.

These properties were not, therefore, likely to be agreed to by the plaintiff's father to be partitioned in the arbitration proceedings. The lower Court was, accordingly, right in discarding the contention of defendant 1 that any agreed list of the properties to be partitioned was filed before the arbitrators.

(iv) List of bids offered by the parties: The parties appear to have agreed to bid for the properties so that they could be allotted to the highest bidder towards the dues that he had to realise from the partnership. These bids are contained in sheets 24 to 27 of the arbitration record. At the time defendant 1 was examined in this suit, sheet 24 containing his signature was not found, A certified copy thereof has been filed by the plaintiff and is Ex, P. 16 on record,

The case of defendant 1 is that his signature was taken on that sheet with a view to show that all the properties were auctioned between the parties whereas only one house, contained in sheet 27, was auctioned. (The papers in the arbitration record are numbered from right to left, and thus sheet 24 happens to be the last page of the list). The contention of defendant 1, however, appears to be made up.

Sheet 57 of the arbitration record is the application, dated 28-1-1951, which was filed by defendant 1 for grant of copies of certain documents. Item 3 thereof relates to the list containing the bids offered for the houses. Use of a plural word (houses) negatives the contention that only one house was sold. We, therefore, confirm the finding of the lower Court that the properties were auctioned between the parties as per Ex. P-16.

(v) Statement of defendant I recorded on 14-1-1951: The contention of defendant 1 was that the statement on the reverse of sheet 45 of the arbitration proceedings, which purports to be his deposition recorded on 14-1-1951, was fabricated, and that what was recorded on sheet 44 was all that he had stated on that date. On this point, there is only his own statement which is refused by the arbitrators on oath.

It is true that both on the reverse of sheet 45 and on sheet 44, reference to the same date, namely, 14-1-1951, is made at the top, and also that paragraphs have been numbered anew on the two sheets. Arbitration record was doubtless maintained in a clumsy manner, but that is not necessarily an index of fabrication.

As regards the change in the figure of Rs. 2,494/13/3 to Rs. 3,594/13/3 on sheet 44, the correction is genuine as it is the latter figure that is described in words in the same line. We accordingly confirm the finding of the Court below that the statement of defendant 1 was not changed or fabricated by the arbitrators.

As a result of the above findings, we hold that the arbitrators did not suppress or substitute any documents.

Point (5): The property that is alleged to be left out of the award is the biscuit factory which carried on by the partnership. The accounts that were made up to 1-12-1948, when Radheshyam was taken as a partner, show that the biscuit factory was closed and the accounts thereof were duly adjusted. There was, therefore, no mistake on the part of the arbitrators in leaving that factory out of account.

The property of the strangers, which is said to be included in the award, is a plot at Basant-pur. The arbitrators found that although it was purchased in the name of the mother of defendant 1 and plaintiff's father, the sale was benami and the property really belonged to the parties. This finding is not open to challenge as it is founded on proper jurisdiction. We hold that no property of the partnership was left out of the award and no property belonging to strangers was included in it.

Point (6): The charge on this point is that the enquiry as regards the Shivanand Stores and biscuit factory was not complete. We have already considered the case of the biscuit factory in another connection under point (5) above. As observed by the Lower Court in paragraph 97 of the judgment defendant 1 never complained during the course of the arbitration proceedings that he was not given an opportunity to prove his case regarding either of these concerns.

On the other hand, he expressed regret in his letter, dated 26-6-1951, that the award was not delivered till then. Thereafter, on the demand of the arbitrators, he deposited Rs. 25/- on 2-8-1951 as his share of the costs of the stamp papers for scribing the award. This he would not have done, if he had any complaint about the inadequacy of the enquiry. We, therefore, confirm the finding of the lower Court that the enquiry was not incomplete.

Point (7): The complaint of defendant on this point is that the arbitrators recorded the statement of Radheshyam on 9-1-1951 and of Ramlal on 19-1-1951, and held enquiries at Gondia and Khaga (U. P.), without his knowledge and in his absence. We shall take these points separately.

(i) Statement of Radheshyam: The order-sheet of the arbitration record shows that there were two sittings on 9-1-1951. In the evening sitting the account books were examined and the statement of Radheshyam was recorded. The order-sheet shows that this was done in the presence of the parties. The contention of defendant 1 is that there was no afternoon sitting and Radheshyam was not examined in his presence.

His further contention is that Radheshyam was given some intoxicant without his knowledge and was made to sign the statement under threat of violence. Radheshyam has supported this version in the witness-box. However, the fact that he did not make it a point of complaint on 11-1-1951 when he filed an

amended statement and was cross-examined by the parties, belies his testimony. The previous order-sheets show that initially defendant 1 had undertaken to produce Radheshyam. On his failure to do so, the plaintiff's father agreed to bring him.

In the morning sitting of 9-1-1951 in which defendant 1 was present, he informed the arbitrators that Radheshyam would not come unless called by them. This was why the sitting was adjourned to the evening when Radheshyam was called by the arbitrators. In these circumstances, we see no reason to doubt the testimony of the arbitrators that defendant 1 had knowledge of the adjourned hearing and was then present.

(ii) Statement of Ramlal: The statement of Ramlal was recorded on 19-1-1951 and as defendant 1 was absent, the proceedings were adjourned to 27-1-1951 to enable him to cross-examine the witness. The order-sheet of the latter date shows that defendant 1 did not want to cross-examine him. The case was adjourned to 19-1-1951 on 14-1-1951 when both the parties were present as evidenced by the order-sheet of that date.

If defendant had no knowledge of the hearing on 19-1-1951, he would have raised an objection to the proceedings of that date on 27-1-1951 when he was present. We, therefore, see no reason to doubt the testimony of the arbitrators that defendant 1 had knowledge of the hearing on 19-1-1951. Therefore, his absence on that date does not vitiate the proceedings.

(iii) Enquiry at Gondia: The inquiry at Gondia was held by the arbitrators on 10-1-1951. The enquiry was made in connection with the business of bidis, which defendant 1 carried on at that place. That was done because on 8-1-1951, the plaintiff's father made an application to the arbitrators requesting them to make an enquiry in connection with the business which defendant 1 was carrying on secretly at Gondia.

The order-sheet of 11-1-1951 shows that report of the enquiry was exhibited by the arbitrators in the presence of the parties. Subsequently, when defendant 1 was examined on 12-1-1951, he was questioned about his business at Gondia and also whether he sent manufactured bidis to U. P. for sale.

As regards his business at Gondia, he admitted that two labels of the partnership, bearing No. 5, were used by him for bidis manufactured by him at that place. He, however, refused to answer the question whether he was sending bidis for sale to U. P. These were the only facts which were found by the arbitrators in the enquiry, and they were duly put to defendant 1 to enable him to have his say.

There is, therefore, no question of prejudice to defendant 1, even if he had no intimation of the date of the enquiry. However, it appears to us on the face of the case that he had the necessary intimation. We have already held above that defendant 1 was present at the hearing on 9-1-1951. On that date, the

proceedings were adjourned to 11-1-1951 for the cross-examination of Radheshyam.

Obviously this date was chosen to enable the arbitrators to go to Gondia on 10-1-1951. Had defendant 1 no information that the arbitrators were going to Gondia on that date, he would have questioned their report when it was exhibited on 11-1-1951.

In these circumstances, we accept the testimony of the arbitrators that he was given the necessary information about the date of the enquiry. For like reasons, we also accept the evidence of the plaintiff's father that defendant 1 had sent his nephew Ramautar to Gondia to watch the enquiry.

(iv) Enquiry at Khaga (U. P.): This enquiry was made by Gajanand Prasad, respondent 2, on 3-4-1951 at Khaga from Jamuna Prasad (D. W. 7) and Kamkrishna (D. W. 9). The sheet on, which their statements were recorded bears their signatures. Their explanation that they were made to affix their signatures on a blank sheet cannot be accepted when Gajanand Prasad had no authority over them.

The question is whether the arbitrators held the enquiry without notice to defendant 1. There is on sheet 58 of the arbitration record an application that the plaintiff's father had made for an enquiry as regards the sale of bidis manufactured by defendant 1 at Gondia. It is in connection with that application that a reference in the order-sheet of 28-1-1951 was made to "Tiwariji" (Gajanand Prasad) as the person selected by the parties to hold the enquiry.

On that date, defendant 1 also had made an application for grant of copies of certain documents and an order regarding it was recorded in the same order-sheet. There is subsequently a note in the order-sheet of 1-4-1951 that the parties were informed to accompany the arbitrators for enquiry as that was the date on which they had agreed to go to U. P.

In these circumstances, it is too much to contend that defendant 1 was not aware of what happened even after Gajanand Prasad and the plaintiff's father left for U. P., which would have normally put him on enquiry. There is, therefore, no reason to doubt the testimony of the arbitrators that defendant 1 was given due notice of the enquiry.

In view of the above findings, we hold that no proceedings were taken by the arbitrators without notice to defendant 1.

Point (8): This point has been considered by the lower Court in paras 93 to 96 of the judgment. As observed by the learned Judge, there is no evidence from which it may be inferred that the award was disclosed to the plaintiff, and changed and ante-dated thereafter. In fact, defendant 1 had himself received a letter of intimation of the award from the arbitrators on or about 18-1-1951.

His letter to the arbitrators on 21-8-1951 that the award should not be delivered was accordingly not only meaningless but was obviously intended to create evidence for the stand that he had thought of taking against the award. We hold that the award was not disclosed to the plaintiff, or changed or ante-dated, as alleged.

This disposes of the specific points that were urged by the learned counsel for the appellant (defendant 1). He, however, contended that apart from any other considerations, the award is liable to be set aside as it is manifestly one sided, constituting legal misconduct on the part of the arbitrators. No such plea was raised in the lower Court, nor were the arbitrators asked any questions to explain any part of the award.

Before us also, nothing was shown in the award, for which there could not be any possible explanation. The broad pattern of the award is that the arbitrators determined the capital investments made by the parties in the business, and in the case of the plaintiff, also the amount of his share of the profits accruing upon the date of the reference.

For the total amount thus found, due to the plaintiff, they allotted to him certain Immovable properties of the partnership at the highest value put upon them by the parties. As regards his share of future profits, they determined a round sum to be paid to him by defendant 1 annually. The conduct of the business and other assets remained with defendant 1 with an option to dissolve the partnership when he liked.

This does not mean, as was contended, that defendant 1 was denied all share of the profits and properties of the partnership. The award, therefore, is not shown to be patently partial to the plaintiff and cannot be assailed on that ground.

The result is that the appeal fails and is dismissed with costs.