
(1926) 12 MAD CK 0039
In the Madras High Court

Timmasetti Sanjivappa and Others

APPELLANT

Vs

Pinnu Venkatanarappa

RESPONDENT

Date of Decision : 16-12-1926

Acts Referred:

Limitation Act, 1963 — Article 158

Citation : AIR 1927 Mad 436 : (1927) 52 MLJ 357

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—I am satisfied in this case that the learned District Munsif, dismissed the application of the defendants objecting to

the award on the ground that it was barred by the law of limitation without any reference even to the actual article of the Limitation Act applicable

or the wording of it. This is what he states:

The award was submitted on 8--12--1924 and this application is made to-day

2. and then, because the application to set aside the award was made on grounds of corruption, misconduct, etc., he comes to the conclusion that

the application must be made within ten days after the award is submitted, to the Court under Article 158 of the Limitation Act, and says:

This petition comes in too late and so is dismissed."" The present Article 158 of the Limitation Act is in these terms:

Under the Code of Civil Procedure, 1908, to set aside an award, ten days,.

3. and in the third column it is provided that the ten days should be computed from when the award is filed in Court and notice of the filing has

been given to the parties. The former Article 158 is:

Under the Code of Civil Procedure, 1908, to set aside an award, ten days, from,

when the award is submitted to the Court.

4. Having regard to the language used by the learned District Munsif in his order, particularly the expression ""after the award is submitted to the

Court,"" I have not the slightest doubt that the learned District Munsif was referring to the Articles of the Limitation Act as it stood before the

amendment which was made I believe in or about 1919 or 1920 and did not even refer to the article as amended and as it stood on the date on

which the application of the order was made. It has been strenuously contended by Mr. Ghandrasekhara Aiyar for the respondent that having

regard to the fact that it is provided that there should be no appeal against the judgment directing a decree to be passed in terms of the award

except when the order of the Court goes beyond the terms of the award, the present petitioner has no right to come to this Court by way of a civil

revision petition to have such order revised and set aside. It has been argued that even when the Lower Court has proceeded on a wrong view of

the law, that mere fact is no ground for interference of this Court in revision. Assuming it to be so, I am not inclined merely to regard as an error in

the decision of a question of law the omission of the Lower Court to have advertence to the proper Article of the Limitation Act, as it stood

amended on the particular date. If the Lower Court had considered the terms of the article and for some reason concluded that having regard to

the terms thereof the application for setting aside the award was barred by limitation, it may be that this Court may refuse to interfere. But this is

not such a case. The Lower Court has not even considered the question and therefore I cannot regard it merely as a case where the Lower Court

in considering a question has come to a wrong decision. I am therefore satisfied that this is a case in which this Court should properly interfere and

set aside the order. No doubt the petitioner has nowhere stated that he was served with the notice of the award on a date computing from which

his application would not be barred by the law of limitation. I have a sort of an idea that the petitioners' advisers were also probably labouring

under the same mistake as the learned District Munsif. However that may be, as it is clear that the Lower Court has not had advertence even to the

proper article of the Limitation Act in deciding this question and as there are no materials before me on which I can now say whether or not having

regard to the terms of the Article the application is or is not barred by the law of limitation, it is necessary that the case should be sent back to the

Lower Court for being disposed of according to law. If the Lower Court should come to the conclusion that having regard to the date on which the

notice, if any, has been served of the filing of the award on the petitioner the application is barred by the law of limitation, then it may deal with it

accordingly. But if it is not barred by the law of limitation, then of course it will go on to hear the application on the merits and dispose of the same

according to law.

5. The learned vakil for the petitioner also argues that the award is on the face of It wrong, because only three out of five arbitrators have

purported to act in the matter of the arbitration. As against this, Mr. Chandrasekhara Aiyar has argued that the whole of the hearing was

conducted by or before all the five arbitrators and that it was only when it became clear to the two arbitrators who were siding with the defendants

and dissenting from the other arbitrators that the award of the majority was likely to be the other way that they purported to have nothing-more to

do with the further proceedings in arbitration. This would also therefore be a matter for the Lower Court to consider in deciding on the application.

If the Lower Court should come to the conclusion that the case before the arbitrators was not really heard by all the arbitrators appointed, then of

course it follows that there may be material on which the Court may find the award to be bad on its face. But if, on the other hand, what the two

dissenting arbitrators did was merely to render infructuous the contemplated award by the majority of the arbitrators, then the Court will not set

aside the award merely on that ground but consider the other grounds on which, if any, the application is based.

6. Costs of this petition will abide and follow the result.