Dewan Singh vs Champat Singh & Ors on 17 October, 1969

Equivalent citations: 1970 AIR 967, 1970 SCR (2) 903, AIR 1970 SUPREME COURT 967

Author: K.S. Hegde

Bench: K.S. Hegde, J.C. Shah

PETITIONER:
DEWAN SINGH

Vs.

RESPONDENT:
CHAMPAT SINGH & ORS.

DATE OF JUDGMENT:
17/10/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.

CITATION:
1970 AIR 967 1970 SCR (2) 903
1969 SCC (3) 447
CITATOR INFO :
R 1988 SC1340 (7)
R 1988 SC2054 (8)

ACT:
Limitation Act (9 of 1908), Art. 158-Limitation for setting aside award-Commencement of-Decide in 'Whatever Manner' he may think-Whether enables arbitrator to import personal knowledge-High Court exercising revisional powers-Discretion of Supreme Court to interfere in appeal by special leave under Art. 136.

HEADNOTE:
Disputes between the appellant and the first respondent were referred to five arbitrators as per the agreement entered into between the parties. The agreement provided that the decision could be derived at by the arbitrators 'in whatever manner' they think. The arbitrators made their award, on

the basis of their personal knowledge. The appellant filed a suit for passing a decree in terms of the award on November 1, 1955. Though the respondents had notice of the suit, they had no notice of the filing of the award into court. The respondent filed his written statement on February 3, 1956, challenging the validity of the award on certain grounds. While the first appellate court held that the arbitration agreement empowered the arbitrators to import their personal knowledge, the High Court, in revision held that it did not so empower, that the award was vitiated by legal misconduct, and that the objection to the award by the respondent was not barred by time.

In appeal to this Court,

HELD: (1) Article 158 of the Limitation Act, 1908, gives to the party 30 days time for applying to set aside an award from the date of the service of the notice of filing of the award. Since there was no such notice, the objection by the respondent was within time. [905 G-H]

(2) Parties to an agreement of reference may include in it such clauses as they think fit, except those prohibited by law, but the phrase 'in whatever manner' they think does not mean that the arbitrators can decide the disputes on the basis of their personal knowledge. Further, arbitrators must act in accordance with the principles of natural justice, and inform the parties to the submission about the nature of their personal knowledge but in the present case, it was not done so. L906 F-G; 907 A-B, C-E]

Chandris v. Isbrandtsen Moller Co. Inc., [1951] K. B. 240, referred to.

(3) The decision of the High Court being eminently just, this Court will not interfere with it under Art. 136 of the Constitution, assuming that the High Court, in exercise of its revisional powers, could not have corrected the first appellate court's interpretation.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1369 of 1966.

Appeal by special leave from the judgment and order dated September 11, 1962 of the Allahabad High Court in Civil Revision No. 653 of 1959.

G. N. Dikshit, O. P. Saini and Lakshmi Chand Tyagi, for the appellant.

J. P. Goyal and S. N. Singh, for the respondents. The Judgment of the Court was delivered by Hegde, J. This appeal by special leave arises from an arbi- tration proceeding. The appellant, the 1st respondent and one Sukh Lal who died during the pendency of these proceedings referred their disputes to five arbitrators as per the written agreement executed by them on September 9, 1955. Arbitrators made their award on October 11, 1955. They duly served on the parties to the arbitration

agreement, notice of making and significant award. The award was thereafter registered. On November 1, 1955 the appellant filed a suit in the court of Munsiff Hawali Meerut praying that the award in question be made a rule of the court and decree passed in accordance with the same. It is said that the notice taken in that suit could not be personally served on the defendants as they refused to accept the same. That fact was reported to the court by the process server as per his report dated 19-11-1955. Thereafter the defendants filed their written statement on February 3, 1956 wherein they challenged validity of the award on various grounds. They contended that the award was vitiated because of misconduct on the part of the arbitrators inasmuch as the arbitrators decided the disputes referred to them primarily on the basis of their personal knowedge. They also contended that the arbitration agreement was obtained from them by exercise of undue influence. Their further contention was that the subject matter of the dispute could not under law be referred to, arbitration in view of the provisions of U.P. Act 1 of 1951. It was also contended by them that the suit was barred by time.

The trial court accepted the contention of the defendants that the arbitrators were guilty of misconduct. Dealing with the issue of undue influence, it came to the conclusion that the arbitration agreement was not executed by the defendants according to their free will. But it held that the plea of undue influence was not made out. It upheld the contention of the defendants that the subject matter of the dispute could not have been referred to arbitration in view of the provisions of U.P. Act I of 1951.

In appeal the learned Civil Judge reversed the decree of the trial court. While agreeing with the trial court that the arbitrators had used their personal knowledge in deciding the disputes referred to them, that court held that under the terms of the agreement, it was open to the arbitrators to decide the disputes in question on the basis of their personal knowledge. Dealing with the question of the arbitrators' competence to decide the dispute, that court held that the question whether the dispute came within the scope of U.P. Act 1 of 1951 or not is a question of law and the same could have been referred to arbitration. It went further and held that as the defendants had not taken their objection. to the award within the time prescribed, the same could not have been entertained by the trial court.

The High Court in revision differed from the appellate court on all the points mentioned above. It came to the conclusion that the arbitration agreement did not specifically empower the arbitrators to decide the disputes referred to them on the basis of their personal knowledge; they having utilized their personal knowledge in deciding the disputes, they were guilty of legal misconduct and consequently the award made by them is vitiated. It also came to the conclusion that the disputes in question could not have been referred to arbitration in view of the provisions of U.P. Act 1 of 1951. It overruled the decision of the appellate court that the defendants had not taken their objections to the award within the prescribed time. We may at this stage mention that the contention that the suit was barred by time was not pressed before the trial court or in any other court.

There is no basis for the finding of the appellate court that the objection taken by the defendants to the award was barred by time. As seen earlier, the suit to make the award a rule of the court was brought by one of the parties to the arbitration agreement and not by any arbitrator. The plaint filed does not disclose that the award given had been produced along with it. There was some controversy

as _to whether that award was produced along with the plaint. There is no need to go into that question as we shall presently see. It is not said that along with the plaint copy, a copy of the award had been sent to the defendants. Nor is it said that notice of the suit sent to the defendants mentioned the fact that the award had been filed into court along with the plaint. Art. 158 of the Limitation Act, 1908 gives to party 30 days time for applying to set aside an award or get an award remitted for reconsideration from the date of the service of the notice of filing of the award. There is absolutely no proof in this case that a notice of the filing of the award into court had ever been given to the defendants. Hence the objections taken by the defendants to the award could not have been rejected on the round of limitation. Now coming to the question of misconduct on the part of the arbitrators, that allegation is founded on the fact that the arbitrators decided the disputes referred to them on the basis of their personal knowledge. That allegation has been accepted as true both by the trial court as well as the appellate court. In fact the award says :

> "We gave our consideration to the entire dispute which is in full knowledge of us, the panchas".

Therefore there is hardly any room to contest the allegation that the arbitrators had decided the disputes referred to them primarily ,on the basis of their personal knowledge. Under these circumstances all that we have to see is whether the appellate court was right in concluding that under the arbitration agreement, the arbitrators had been empowered to decide the disputes referred to them on the basis of their personal knowledge.

The material portion of the arbitration agreement which is in Hindi translated into English reads thus :

> "All the panchas and Sarpanchas are residents of village Keli Pargana Sarawa. The power is given to them that the said Panchas and Sarpanch, whatever decision, in whatever manner will give in relation to our land described below, whatever land may be given to any party or whatever party may be decided to be the tenant of the entire land, whatever compensation they may decide to be given to any party, whatever decision they will give that will be final and acceptable and they will have the right to inform us of their decision, unanimous or of majority and get the same registered and we will fully comply with their decision."

This agreement does not empower the arbitrators either specifically or by necessary implication to decide the disputes referred to them on the basis of their personal knowledge. The recital in that agreement that the arbitrators may decide the disputes referred to them in "whatever manner" they think does not mean that they can decide those disputes on the basis of their personal knowledge. The proceedings before the arbitrators are quasi-judicial proceedings. They must be conducted in accordance with the principles of natural justice. The parties to the submission may be in the dark as regards the personal knowledge of the arbitrators. There may be misconceptions or wrong assumptions in the mind of the arbitrators. If the parties are not given opportunity to correct those misconceptions or wrong assumptions, ,-rave injustice may result. It is no body's case that the parties to the submission were informed about the nature of the personal knowledge, the arbitrators

had and that they were given opportunity to correct any misconception or wrong assumption. Further in the present case there were as many as five arbitrators. It is not known whether the, award was made on the basis of the personal knowledge of all of them or only some of them. Arbitration is a reference of a dispute for hearing in a judicial manner. It is true that parties to an agreement of reference may include in it such clauses as they think fit unless prohibited by law. It is normally an implied term of an arbitration agreement that the arbitrators must decide the dispute in accordance with the ordinary law-see Chandris v. Isbrandtsen Moller Co. Inc(1). That rule can be departed from only if specifically provided for in the submission. The appellate, court, in our opinion, has misread the arbitration agreement and hence it erroneously came to the conclusion that the arbitrators had been empowered to decide the dispute on the basis of their personal knowledge. It was contended on behalf of the appellant that in exercise of its powers under s. 115 of the Code of Civil Procedure, the High Court could not have corrected the erroneous interpretation placed by the appellate court as to the scope of the arbitration agreement. We have not thought it necessary to go into that question as, in our opinion, the decision reached by the High Court is an eminently just one. Hence we do not feel called upon in exercise of our discretionary power under Art. 136 of the Constitution to interfere with the decision of the High Court. In view of our above conclusion, there is no need to go into the question whether the subject matter of the disputes could have been referred to arbitration.

In the result this appeal fails and the same is dismissed with cost.

Appeal dismissed.

V.P.S. (1) 11951] K.B. 249.