Madan Lal vs Sunderlal & Another on 9 March, 1967

Equivalent citations: 1967 AIR 1233, 1967 SCR (3) 147

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, R.S. Bachawat, V. Ramaswami

PETITIONER:
MADAN LAL

Vs.

RESPONDENT:
SUNDERLAL & ANOTHER

DATE OF JUDGMENT:
09/03/1967

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
BACHAWAT, R.S.
RAMASWAMI, V.

CITATION:
1967 AIR 1233 1967 SCR (3) 147
CITATOR INFO :
R 1974 SC 968 (51)

ACT:
Arbitration Act 10 of 1940--S. 30, objection on filing award--containing grounds for setting it aside-Whether Art. 158 Limitation Act applicable.

HEADNOTE:
An arbitration award in respect of certain disputes between the appellant and the respondents was filed in Court and notice of the filing served on the appellant on September 30, 1957. 'Me appellant filed an objection on November 3, 1957 attacking the validity of the award on various grounds. The respondents contended before the trial Court that the objection was in the nature of an application to set aside the award and contained grounds which fell under s. 30 of the Arbitration Act 10 of 1940; therefore, as the objection was filed more than 30 days after notice was served on the appellant., it was barred by limitation under Art. 158 of

the Limitation Act No. 9 of 1908. The trial Court upheld the appellant's objection and an appeal to the High Court was dismissed.
On appeal to this Court,
HELD:Dismissing the appeal,
The Arbitration Act contemplates making of an application to set aside an award on grounds mentioned in s. 30. This application must be made within 30 days of the date of service of notice as provided in Art. 158 of the Limitation Act. An objection petition in the nature of a written-statement may in appropriate cases be treated as such application provided it is filed within the period of limitation prescribed. Even if the court has the power to set aside an award suo motu that power cannot be used to set aside an award on grounds falling under s. 30, if taken in a petition filed more than 30 days after the service of notice, for in that case the limitation provided would be completely negatived. [151 E, G-H; 152 D-E]
Hastimal Dalichand Bora v. Hiralal Motichand Mutha, A.I.R. (1954) Bom. 243, Saha & Co. v. Ishar Singh v. Kripal Singh, A.I.R (1956) Cal. 321 and Mohan Das v. Kessumal, A.I.R. (1955) Ajm. 47, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 990 of 1964. Appeal from the judgment and decree dated April 15, 1963 of the Allahabad High Court, Lucknow Bench in First Appeal from Order No. 30 of 1960.

B. C. Misra and C. P. Lal, for the appellant. P. K. Chatterjee, for respondent No. 1.

S. P. Sinha and P. K. Chatterjee, for respondent No. 2.

The Judgment of the Court was delivered by Wanchoo, J. This is an appeal on a certificate granted by the Allahabad High Court and arises in the following circumstances. On May 20, 1965, an agreement was entered into between the appellant and the respondents referring certain differences between them to the arbitration of three persons. On January 19, 1956, an award was made, signed by two out of the three arbitrators as the third arbitrator had refused to sign the award. The award was filed in court on September 7, 1957 and the respondents prayed for a decree in accordance with the award. Notice of filing of the award was issued to the appellant and was served upon him on September 30, 1957. On November 3, 1957, the appellant filed an objection in the nature of a written statement. By this objection the appellant attacked the validity of the award on various grounds. But the objection did not contain any prayer at the end, nor did it indicate what relief the appellant desired, though there were as many as 43 paragraphs therein. When the matter came to be heard in the trial court, the respondents contended that the so-called objection was in the nature of an application to set aside the award and contained grounds coming under s. 30 of the Arbitration Act, No. 10 of 1940, (hereinafter referred to as the Act). Therefore, as the objection was filed more than

30 days after the notice was served on the appellant, it was barred by limitation under Art. 158 of the Indian Limitation Act, No. 9 of 1908.

The trial court held that the appellant's objection was not maintainable, as his remedy was to apply under s. 33 of the Act, if he wanted the award to be set aside on the grounds raised in the objection. As he had not done so and as the objection was itself filed more than 30 days after the service of notice on him, he was barred from raising any ground for setting aside the award which fell under S. 30 of the Act. The trial court also held that the objection could not be treated as an application under s. 33 of the Act in view of the fact that it was beyond 30 days as required by Art. 158 of the Limitation Act. The trial court therefore passed a decree in terms of the award.

The appellant then went in appeal to the High Court, and the main question urged there was whether the appellant could maintain his objection when he had failed to make an application under s. 33 of the Act for setting aside the award on grounds contained in the objection. It seems that there were other points. also before the High Court, but the High Court held that if the main question was answered against the appellant it would not be necessary to go into other points. It seems therefore that other points were not pressed before the High Court. The High Court came to the conclusion that the award could not be set aside on grounds which fell under s. 30 of the Act, except on an application under s. 33 of the Act within thirty days of the service of notice of filing of the award as required by Art. 158 of the Limitation Act. The High Court further held that the objection of the appellant could not be treated as an application under s. 33, as, if it was treated as such application, it would be barred by time. The High Court therefore dismissed the appeal, but granted a certificate to the appellant to appeal to this Court.

We have heard learned counsel for the appellant on the main. question raised in the High Court. We may add that learned counsel wanted to raise other points which were not pressed before the High Court, but we have not permitted him to do so.

We are of opinion that this appeal must fail. The Act was passed in 1940 and as the long title shows it is an Act to consolidate and amend the law relating to arbitration. Before 1940, the law relating to arbitration was mainly contained in the Second Schedule to the Code of Civil Procedure, which was repealed by the Act which is now a self-contained code in the matter of arbitration. The scheme of the Act is to divide arbitration into three classes. The first consists of arbitration without intervention of a court and is contained in Chap. 11 of the Act which has 17 sections from s. 3 to s. 19. The second consists of arbitration with intervention of a court where there is no suit pending, which is in Chap. III of the Act, and there is only one section (s. 20) therein, as sub-s. (5) thereof applies the other provisions contained in the Act to this type of arbitration also so far as they can be made applicable. The third type of arbitration is contained in Chap. IV, namely, arbitration in suits. This chapter contains 5 sections, and s. 25 thereof applies the other provisions of the Act so far as they can be made applicable. Chapter 11 makes various provisions with respect to arbitrations of the first type. Reference may be made to a few which are material for our purpose. Section 5 lays down that the authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the court, unless a contrary intention is expressed in the arbitration agreement. Section 8 gives power to court to. appoint an arbitrator or umpire in certain circumstances. Section 11 gives power to court to

remove an arbitrator or umpire in certain circumstances and s. 12 gives consequential power to court to appoint persons to fill vacancies which may have arisen. Section 13 provides for powers of the arbitrators and s. 14 provides for the award to be signed and filed. When the award is filed the court has to give no ice to the parties of the filing of the award under s. 14(2). Under s. 15, the court is given power to modify or correct an award and under s. 16 the court can remit the award for reconsideration. Section 17 provides for judgment in terms of the award and reads thus :-

> "Where the court sees no cause to remit award on any of the matters referred to arbitration for reconsideration or to set aside the award, the court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."

Section 19 gives power to the court to supersede the arbitration agreement in certain circumstances. This analysis of the relevant provisions of the Act contained in Chapter 11 which apply mutates mutandis to arbitrations of the other two types shows that the court has to pronounce judgment in accordance with the award if it sees no cause to remit the award or any of the matters referred to arbitration for reconsideration, or if it sees no cause to set aside the award. The court has to wait for the time given to a party to make an application for setting aside the award and where such an application has been made the court has to decide it first and if it rejects it the court proceeds to pronounce judgment according to the award. It is clear therefore from s. 17 that an application to set aside the award is contemplated therein and it is only when no such application has been made within the time allowed or if such an application has been filed and has been rejected that the court proceeds to pronounce judgment in terms of the award. The Act therefore contemplates the making of an application to set aside an award and the grounds on which such an application can be made are to be found in s. 30. The grounds on which an application can be made for setting aside the award are-(a) that an arbitrator or umpire has misconducted himself or the proceedings, (b) that an award has been made after the issue of an order by the court superseding the arbitration or after arbitration proceedings have be-come invalid under s. 35, or (c) that an award has been improperly procured or is otherwise invalid. These are the only grounds on which an award cat be set aside under s. 30 and it will be seen that if a party wants an award to be set aside on any of these grounds it has to make an application. Thus any party wishing to have an award set aside on the ground that it was improperly procured or otherwise invalid has to make an application. We may also refer to s. 32 which lays down that "notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or' award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.".

It is clear therefore from the scheme of the Act that it a party wants an award to be set aside on any of the grounds mentioned in S. 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Art. 158 of the Limitation Act. If no such application is made the award cannot be set aside on any of the grounds specified in s. 30 of the Act. It may be conceded

that there is no special form prescribed for making such an application and in an appropriate case an objection of the type made in this case may be treated as such an application, if it is filed within the period of limitation. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award, for if it is so treated it will be barred by limitation.

It is not in dispute in the present case that the objections raised by the appellant were covered by S. 30 of the Act, and though the appellant did not pray for setting aside the award in his objection that was what he really wanted the court to do after hearing his objection. As in the present case the objection was filed more than 30 days after the notice it could not be treated as an application for setting the award, for it would then be barred by limitation. The position thus is that in the present case there was no application to set aside the award as grounds mentioned in S. 30 within the period of limitation and therefore the court could not set aside the award on those grounds. There can be no doubt on the scheme of the Act that any objection even in the nature of a written-statement which falls under s. 30 cannot be considered by the court unless such an objection is made within the period of limitation (namely, 30 days), though if such an objection is made within limitation that objection may in appropriate cases be treated as an application for setting aside the award. Learned counsel for the appellant however urges that S. 17 gives power to the court to set aside the award and that such power can be exercised even where an objection in the form of a written statement has been made more than 30 days after the service of the notice of the filing of the award as the court can do so suo motu.He relies in this connection on Hastimal Dalichand Bora v. Hiralal Motichand Mutha(1) and Saha & Co. v. Ishar Singh Kripal Singh (2). Assuming that the court has power to set aside the award suo motu, we are of opinion that power cannot be exercised to set aside an award on grounds which fall under s. 30 of the Act, if taken in an objection petition filed more than 30 days after service of notice of filing of the award, for if that were so the limitation provided under Art. 158 of the Limitation Act would be completely negatived. The two cases on which the appellant relies do not in our opinion support him. In Hastimars case(1) it was (1) A.I.R. 1954 Bom. 243.

(2) A.I.R. 1956 Cal. 321.

observed that "if the award directs a party to do an act which is prohibited by law or if it is otherwise patently illegal or void it would be open to the court to consider this patent defect in the award suo motu, and when the court acts suo motu no question of limitation prescribed by Art. 158 can arise". These observations only show that the court can act suo motu in certain circumstances which do not fall within s. 30 of the Act.

Saha & Co.'s case(1) was a decision of five Judges by a majority of 3 : 2 and the majority judgment is against the appellant. The minority judgment certainly takes the view that the non-existence or invalidity of an arbitration agreement and an order of reference to arbitration may be raised after the period of limitation for the purpose of setting aside an award because they are not grounds for setting aside the award under s. 30. It is not necessary in the present case to resolve the conflict between the majority and the minority Judges in Saha & Co.'s case(1), for even the minority judgment shows that it is only where the grounds are not those falling within s. 30, that the award may be set aside on an objection made beyond the period of limitation, even though no application

has been made for setting aside the award within the period of limitation. Clearly therefore where an objection as in the present case raises grounds which fall squarely within s. 30 of the Act that objection cannot be heard by the court and cannot be treated as an application for setting aside the award unless it is made within the period of limitation. The Saha & Co.'s case(-') therefore also does not help the appellant.

Learned counsel for the appellant also relies on Mohan Das v. Kessumal(2). In that case the objection which was made more than 30 days after the service of notice was that the award had been filed by a person not authorised by the arbitrator to do so. The court held that such an objection did not fall within s. 30 of the Act and therefore Art. 158 of the Limitation Act did not apply. On these facts the decision in that case may be right. But-the court seems to have made a general observation that Art. 158 cannot apply to a written-statement by a defendant in reply to an application to have the award made a rule of the court. If by ,that general observation the court means that even if the objection is of the nature falling within s. 30 and is filed more than 3O days after service of notice, it would be open to the court to set aside the award on such objection, we are of the opinion that the view is incorrect. In the result the appeal fails and is hereby dismissed with costs.

Appeal dismissed.

R. K. P. S. (1) A.I.R. 1956 Cal. 321.

(2) A.I.R. 1955 Aim. 47