

## Radha Kishen vs Madho Krishna And Anr. on 25 April, 1952

**Equivalent citations: AIR1952ALL856, AIR 1952 ALLAHABAD 856**

### JUDGMENT

Bind Basni Prasad, J.

1. These two appeals arise from the same order passed by the learned First Civil Judge of Meerut on 5th February 1948. The parties to the dispute are step brothers. There was a family dispute between them and they referred it for arbitration on 5th November 1945. The award was made by the arbitrator on 18th March 1947. On 23rd August 1947 Madho Kishan who was one of the parties to the agreement of reference made an application purporting to be under Section 17 read with Section 28, Arbitration Act, 1940, praying that a judgment might be pronounced according to the award and a decree framed in accordance with it.

His step brother, Radha Kishan, raised several objections to this petition and himself made an application under Section 30, Arbitration Act praying that the award might be set aside. The learned Civil Judge repelled Radha Kishan's objections and pronounced a judgment in accordance with the award granting Madho Kishan a decree for Rs. 8,018-8-0. Radha Kishan's application under Section 30, Arbitration Act was rejected. These two appeals arise out of the order passed upon the aforesaid two applications.

2. The first contention raised on behalf of the appellant Radha Kishan is that the award is invalid as it was made beyond the statutory period. Para. 3 of Schedule 1 to the Arbitration Act provides:

"The arbitrators shall make their award within four 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."

The provision about the extension of time is contained in Section 28 of the Act which runs as follows :

"The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award."

3. Learned counsel for the appellant has argued that this section is applicable only to cases in which reference to arbitration has been made in a suit pending before the Court. There is nothing in this section to support this contention. On the other hand, Section 28 appears in chap. 5 the heading of which is "General". The language of this section is also very general and we see no force in the contention that it is applicable only to references to arbitration made through Court.

The power given to Court is so wide that it can extend the time even after the award has been made. The learned Civil Judge has exercised the discretion under Section 28 of the Act and has extended the time for valid reasons. It has not been shown to us that the discretion has been wrongly exercised. It is true that the award was made after the expiry of four months after the reference, but as the time has been extended by the trial Court the award does not become invalid for that reason.

4. The second ground taken is that the application made by Madho Kishan was barred by Article 178, Limitation Act. That is an Article which applies to applications made under Section 14 of the Act and not to those under Section 17. The distinction between these two sections is that under Section 14 the arbitrator is called upon to file the award while under Section 17 the prayer is that the award may be made a rule of the Court and a judgment and decree may be pronounced accordingly. In the present case there is evidence to show that a copy of the award was given by the arbitrator to Madho Kishan. Indeed it was filed by Madho Kishan along with his application under Section 17 read with Section 28 of the Act. The case reported in *Jai Kishen v. Ramlal Gupta*, A. I. R. 1944 Lah. 398 is on all fours with the present case. Article 178 is not applicable to the present case.

5. The third ground taken was that the arbitrator was guilty of misconduct. Upon this, the finding of the learned Civil Judge is that no misconduct was proved. Learned Counsel for the appellant has not been able to show us any evidence to prove that the arbitrator was guilty of any misconduct. He has emphasised, however, upon the fact that as the award was given piecemeal so it was invalid.

It appears that the reference related to the immovable property and certain loan taken from Madho Kishan by Radha Kishan. The award about the immovable property was given long before and that is not a matter in dispute in this case. The second award was about the cash money and it is in respect of it that the award in dispute was made. There was nothing wrong in law on the part of the arbitrator to have given the award first about the immovable property and then about the cash.

6. No other point was argued before us on behalf of the appellant.

7. Both, the appeals fail and they are hereby dismissed with costs.