

Raj Kumar Dey And Others vs Tarapada Dey And Others on 14 September, 1987

Equivalent citations: 1987 AIR 2195, 1988 SCR (1) 118, AIR 1987 SUPREME COURT 2195, 1987 4 JT 555, (1987) 3 JT 555 (SC), (1988) 1 APLJ 6.1, 1987 (4) SCC 398

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, G.L. Oza

PETITIONER:
RAJ KUMAR DEY AND OTHERS

Vs.

RESPONDENT:
TARAPADA DEY AND OTHERS

DATE OF JUDGMENT 14/09/1987

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)

CITATION:
1987 AIR 2195 1988 SCR (1) 118
1987 SCC (4) 398 JT 1987 (3) 555
1987 SCALE (2) 551
CITATOR INFO :
D 1989 SC 1923 (26)

ACT:
Arbitration Act, 1940 : Sections 11 and 14-Award affecting immovable property-Registration of-Period of limitation-What is-Period during which judicial proceedings pending-Whether be excluded.
Registration Act, 1908: Sections 23 and 25-Arbitrator's award-Registration of-period of limitation-What is.
Limitation Act, 1963: Section 15-Period during which judicial proceedings pending-Whether to be excluded.

HEADNOTE:
An agreement was entered into by appellants Nos. 1 to 4

and respondent No. 1 regarding partition of joint movable and immovable properties. A dispute arose relating to certain properties, which was referred to arbitration. The arbitrators made their award on November 28, 1977, which was filed by them before the Sub-Judge on January 28, 1978, pursuant to the application made by appellants Nos. 1 to 4 under s. 14 of the Act.

On December 1, 1977, respondent No. 1 had filed an application under s. 11 of the Arbitration Act, 1940, before the Munsif, who passed an injunction order on July 26, 1978, for maintaining status quo till the disposal of the said application. On the application made by the arbitrators on 14th August, 1978, the Sub-Judge ordered on September 2, 1978, the returning back of the award to the arbitrators, to enable them to present the same for registration before the Sub-Registrar. The High Court in appeal set aside the above order holding that during the subsistence of the interim injunction to maintain status quo, the arbitrators could not take back the award for presenting it for registration. and ordered that the arbitrators' application be kept pending and

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heard when the injunction order was vacated.

On December 20, 1982 the Munsif dismissed the case of the respondent No. 1 and that interim injunction ipso facto was discharged. Thereafter, the Subordinate Judge dismissed the application of the arbitrators for returning of the award, holding that limitation for registration of the award had already expired. The High Court, in appeal, directed the Subordinate Judge to return back the award, holding that it was the Registrar and not the Sub-Judge who could determine the question of limitation for the purpose of registration of the award. On November 24, 1983, the arbitrators got back the award and the next day presented it before the Sub-Registrar and the award was registered the same day.

The High Court on a petition by respondent No. 1 challenging the registration sent back the award to the Sub-Registrar to re-consider the question of limitation. The Sub-Registrar found that the award was presented within time as the period during which the judicial proceedings were pending, namely, 28th January, 1978 to 24th November, 1983, should be excluded in view of s. 15 of the Limitation Act. Against the aforesaid decision, respondent No. 1 filed an application before the High Court which, by the impugned order, quashed the registration and held that the award had been presented for registration beyond time.

In the appeal by special leave, the validity and propriety of the aforesaid order was challenged.

Allowing the appeal by special leave, this Court,

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HELD: Under the Registration Act, 1908, the limitation period for registration is four months from the date of execution and in cases where the delay in presentation does

not exceed four months, such document could be accepted for registration, on payment of fine. The cumulative effect of sections 23 and 25 read together is that a total period of eight months is available for registration, if the conditions requisite are fulfilled. [122G; 123A-B] G

In the instant case, the award was made on November 28, 1977 and before the expiry of four months, it was filed in the court pursuant to the order of the court. During the period from July 26, 1978 to December 20, 1982, there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as the award was in H

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the custody of the court from January 28, 1978 till the return of the award to the arbitrators on November 24, 1983, the arbitrators or the parties could not have presented the award for its registration during that time. The award was presented before the Sub-Registrar on November 25, 1983 the very next day of getting possession of the award from the court. The Sub-Registrar, pursuant to the order of the High Court, found that the award was presented within time as the period during which judicial proceedings were pending from January 28, 1978 to November 24, 1983 should be excluded in view of the principle laid down in s. 15 of the Act. [123G-H; 124A,D-E]

The High Court was, therefore, wrong in holding that the only period which should be excluded was from 26th January, 1978, the date of the order of the Munsif directing maintenance of status quo till 20th December, 1982, the date when the interim injunction was vacated. The award was still in the custody of the court and there was ample evidence that the Arbitrators had tried to obtain the custody of the award which the court declined to give to them. [124E-G]

The two legal maxims LEX NON COGIT AU IMPOSSIBILIA, and ACTUS CURIAE NEMINEM GRAVABIT-the law does not compel a man to do that which he cannot possibly perform, and an act of the Court shall prejudice no man-would apply with full vigour in the facts of this case. [124C]

Nityananda M. Joshi and others v. Life Insurance Corporation of India and others, [1970] I S.C.R. 396, distinguished.

M. Venkataratnam v. M. Chelamayya, A.I.R. 1967 Andhra Pradesh 257 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2224 of 1987.

From the Judgment and order dated 19.6.1986 of the Calcutta High Court in Civil order No. 2278 of 1985.

S.N. Kacker and Sukumar Ghosh for the Appellants. A.K. Sen, D.N. Mukherji, Ranjan Choudhary, N.R. Choudhary for the Respondents.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. Special leave granted. This appeal is directed against the judgment and order of the High Court of Calcutta dated 19th of June, 1986 in Civil order No. 2278 of 1985. On or about 11th of June, 1977 an unregistered deed of agreement between the four brothers being the appellants Nos. 1 to 4 and their eldest brother, respondent No 1 was entered into regarding partition of joint movable and immovable properties and the same were referred to three arbitrators; namely, three appellants Nos. 5, 6 and 7 herein. On or about 2nd of July, 1977 the same agreement was re-written on a fresh stamp paper and the same was registered by which the abovenamed arbitrators were given the option to take assistance of one, two or more persons. The dispute related-to certain properties among the brothers in Chinsurah the district of Hooghly in the State of West Bengal. The three arbitrators took the assistance of appellant No. 8 and he functioned and acted as one of the arbitrators.

On or about November 28, 1977 the arbitrators explained their award to the parties and made and signed the award. On or about 1st December, 1977 the eldest brother filed an application under section 11 of the Arbitration Act, 1940 (hereinafter called 'the Act') before the learned Munsif, Arambagh being Misc. Case No. 74 of 1977. The appellants Nos. 1 to 4 filed an application under section 14 of the Act before the learned Sub Judge, Hooghly at Chinsurah praying for a direction on the arbitrator to file the award in the court in Misc. Case No. 28 of 1977. The arbitrators filed the award before the learned Sub-Judge Hooghly at Chinsurah on 28th of January, 1978. On 26th of July, 1978 the learned Munsif, Arambagh ordered interim injunction on the parties including the arbitrators to maintain status quo till the disposal of Misc. Case No. 74 of 1977 initiated by the appellant No. 1. On 14th of August, 1978 the arbitrators made an application before the learned Sub Judge, Hooghly at Chinsurah to return back the award to enable them to present the same before the Sub-Registrar for registration. On 2nd September, 1978, the learned Sub Judge fixed the hearing of the arbitrators' application to return the award to them. In January, 1980 the arbitrators' application was heard and the learned Sub Judge ordered return of the award to the arbitrators to enable them to present the same for registration.

The High Court of Calcutta in Civil Rule No. 621 of 1980 on 6th March, 1981 set aside the aforesaid order of the learned Sub Judge holding that during the subsistence of the interim injunction order on the arbitrators to maintain status quo the arbitrators could not take back the award for presenting the same for registration. The High Court ordered that the arbitrators' application dated 14th of August, 1978 should be kept pending and be heard when the injunction order was vacated. On 20th December, 1982 the learned Munsif, Arambagh dismissed Misc. Case No. 74 of 1977 and the interim injunction order ipso facto was discharged. The arbitrators therefore, renewed their prayer before the learned Sub Judge to return the award. On 25th of February 1983 the learned Sub Judge dismissed the arbitrators' application and did not direct return of the award holding that the limitation for the registration of the award had already expired. The High Court in Civil order No. 589 of 1983 on 19th of September, 1983 directed the learned Sub Judge to return back the award to the arbitrators holding that it was the Registrar and not the Sub Judge who could determine the question of limitation for the purpose of registration of the award. The learned Sub Judge. Hooghly

at Chinsurah on 23rd of November, 1983 ordered returning back of the award to the arbitrators. On 24th of November, 1983 the arbitrators got back the award from the court. On 25th November, 1983 i.e., the very next day the arbitrators presented the award before the Sub- Registrar, Arambagh for registration. The Sub-Registrar, Arambagh on 25th of November, 1983 registered the award. The High Court in Civil order No. 9696(W) of 1984 on 24th July, 1984 had sent back the award to the Sub-Registrar to reconsider the question of limitation and found that the award was presented within time as the period during which the judicial proceedings were pending, namely, 28th of January, 1978 to 24th of November, 1983 should be excluded in view of the principle laid down under section 15 of the Limitation Act. On 19th June, 1986 by the judgment and order impugned the High Court quashed the registration under Article 227 of the Constitution holding that the award had been presented for registration beyond time. It is the validity and propriety of that order which is under challenge in this appeal.

The limitation period for registration is four months from the date of its execution. The award was made on 28th of November, 1977 and it was presented for registration to the Sub-Registrar on 25th of November, 1983. Section 23 of the Registration Act, 1908 (hereinafter called 'the Registration Act') stipulates that the time for registration is four months from the date of its execution. Section 25(1) of the Registration Act provides that if, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, is not presented for registration till after the expiration of the time hereinbefore prescribed, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on pay-

ment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration. Sub-section (2) of section 25 provides that any application for such direction may be lodged with a Sub- Registrar? who shall forward the same to the Registrar. Therefore the cumulative effect of sections 23 and 25 read together is that total period of eight months is available for registration if the conditions are fulfilled. The High Court had held that in this case the award has been registered after six years and as such was beyond time. It was held before the High Court that no registration was permissible beyond the period fixed under section 25 read with section 23 of the Registration Act and any registration beyond such period would be void. But in this case admittedly the award was in the court of the learned Munsif from 28th of January, 1978 to 24th of November, 1983. Therefore, this period, that is to say, from 28th January 1978 to 24th November, 1983 the award was in court and this was manifest from the order in Misc. Case No. 28 of 1977. The arbitrators had made an application on or about 14th August 1974 for return of the award but that was not done. Furthermore, there was an injunction on 26th July, 1978 which was only vacated on 20th December, 1982.

We have to bear in mind two maxims of equity which are well settled, namely, "ACTUS CURIAE NEMINEM GRAVABIT"-An act of the Court shall prejudice no man. In Broom's Legal Maxims. 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is "LEX NON COGIT AD IMPOSSIBILIA" (Broom's Legal Maxims-P. 162)-The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference

to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

In this case indisputably during the period from 26th of July, 1978 to 20th December, 1982 there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, 28th of January, 1978 till the return of the award to the arbitrators on 24th of November, 1983, the arbitrators or the parties could not have presented the award for its registration during that time. The award as we have noted before was made on 28th of November, 1977 and before the expiry of the four months from 28th November, 1977, the award was filed in the court pursuant to the order of the court. It was argued that the order made by the court directing the arbitrators to keep the award in the custody of the court was wrong and without jurisdiction, but no arbitrator could be compelled to disobey the order of the court and if in compliance or obedience with court of doubtful jurisdiction, he could not take back the award from the custody of the court to take any further steps for its registration then it cannot be said that he has failed to get the award registered as the law required. The aforesaid two legal maxims-the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would, apply with full vigour in the facts of this case and if that is the position then the award as we have noted before was presented before the Sub-Registrar, Arambagh on 25th November, 1983 the very next one day of getting possession of the award from the court. The Sub-Registrar pursuant to the order of the High Court on 24th of June, 1985 found that the award was presented within time as the period during which the judicial proceedings were pending that is to say, from 28th of January, 1978 to 24th of November, 1983 should be excluded in view of the principle laid down in section 15 of the Limitation Act, 1963. The High Court, therefore, in our opinion, was wrong in holding that the only period which should be excluded was from 26th July, 1978 till 20th December, 1982. We are unable to accept this position. 26th July, 1978 was the date of the order of the learned Munsif directing maintenance of status quo and 20th of December, 1982 was the date when the interim injunction was vacated, but still the award was in the custody of the court and there is ample evidence as it would appear from the narration of events hereinbefore made that the arbitrators had tried to obtain the custody of the award which the court declined to give to them. The principles enunciated by this Court in *Nityananda M. Joshi and others v. Life Insurance Corporation of India and others*, [1970] 1 S.C.R. 396 would have no application to the facts of this case.

It was urged before us that an award affecting the immovable properties which was not registered and which was made outside the court could not form the basis of an award and an unregistered award, in other words could not form the basis of the award. We are unable to accept that position. There is no dispute to the proposition that an award affecting immovable properties as in the instant case should be registered. It is therefore, not necessary to discuss in detail the ratio of the decision of the Full Bench of the Andhra Pradesh High Court in *M. Venkataratnam v. M. Chelamayya*, A.I.R. 1967 Andhra Pradesh. In the aforesaid view of the matter the judgment and order of the High Court cannot be sustained and are set aside. The appeal is allowed and the order of the Sub- Registrar, Arambagh dated 24th of June, 1985 is restored. In the facts and circumstances of the case, however,

the parties are directed to pay and bear their own costs.

N.P.V.

Appeal allowed.