Supreme Court of India
Munshi Ram vs Banwari Lal on 9 January, 1961
Equivalent citations: 1962 AIR 903, 1962 SCR Supl. (2) 477
Author: Hidayatullah
Bench: Hidayatullah, M.

PETITIONER:
MUNSHI RAM

Vs.

RESPONDENT:
BANWARI LAL

DATE OF JUDGMENT:
09/01/1961

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1962 AIR 903 1962 SCR Supl. (2) 477
CITATOR INFO :
RF 1966 SC1888 (6)

ACT:
Arbitration-Award filed in Court-Application for setting aside award-Compromise between parties-Decree in terms of award as modified by compromise-Validity of-Arbitration Act 1940 (10 of 1940) ss., 15, 23, 30, 32 and 41-Code of Civil Procedure, 1908 (5 of 1908), O. 23.

HEADNOTE:
The dispute between the parties regarding their shares in a firm was referred to arbitration. The arbitrator made his award, inter alia, awarding certain sums of moneys to be paid by certain instalments. There was also a provision in the award that the parties shall be liable to pay in equal shares the income-tax to be assessed. The award was filed in court by the arbitrator. The appellant made an application for setting aside the award and the respondents filed their replies to the application. Thereafter, the parties came to terms and asked for a decree to be passed in accordance therewith. The court passed a

decree on the award as modified by the compromise. In execution, the appellant contended that the decree was a nullity as the court had no jurisdiction to modify the award by compromise.
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Held, that the decree was not a nullity and was executable. In cases of compromise after an award, if the parties are dissatisfied with the award and wanted to substitute it by a compromise involving matters alien to the original dispute which are inseparable, the court may supersede the submission and leave the parties to work out their agreement in accordance with the law outside the Arbitration Act. In such circumstances the new compromise itself furnishes a very good ground for superseding the reference and thus revoking the award. Where the parties do not throw the award overboard but modify it in its operation, the award, in so far as it is not altered still remains operative and continuous to bind the parties and cannot be revoked. If the whole of the subject-
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matter of the compromise is within the reference, the court may include in the operative part of the decree the award as modified. But if it is not so, the court may confine the operative part of the decree to the award as far as it is accepted and the other terms of the compromise, if severable and within the reference, in a schedule to the decree. The portion included in the operative portion would be executable but that included in the schedule would be enforceable as a contract of which the evidence could be the decree, but not enforceable as a decree. In the present case the compromise and the decree did not alter the amounts awarded to the respondents by the award, it only made adjustments after quantifying the amount of income-tax. The difference was as to the mode of payment by changing the number of instalments. This was a matter on which parties could agree and the court could substitute the agreement in the operative part of the decree.

Lala Khunni Lal v. Gobind Krishna Narain (1911) L. R. 38 I.A. 87 and Hemanta Kumari Debi v. Midnapur Zamindari Co. (1919) L.R. 46 I.A. 240, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 178 of 1956.

Appeal by special leave from the judgment and order dated November 26, 1952, of the Punjab High Court in L.P.A. No. 11 of 1952.

G. S. Pathak and G. C. Mathur, for the appellant.

Nanak Chand for respondents 1 (a) and 1(b). 1962. January 9.-The Judgment of the Court was delivered by HIDAYATULLAH, J.-This appeal by special leave has been filed by one Munshi Ram, a Judgment- debtor, against whom a decree based on a compromise, following an award by an arbitrator, is sought to be executed. The respondents are the decree-holders. The appeal is directed against, a common judgment and decrees of the Punjab High Court dated November 26, 1952, in two appeals under the Letters Patent (Nos. 5 and 11 of 1952) by which the orders of a learned single Judge of the High Court in Execution First Appeals Nos. 56 and 121 of 1951 were confirmed. The present appeal is, however, confined to the decision in L.P.A.No 11 of 1952. To understand what these orders were, and also the point involved in this appeal, a somewhat long narration of facts is necessary.

The following genealogy gives the relationship of the parties :

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| | Kanhaiyalal | Mangalsain | | ---------- Munshi Ram | | (adopted) Faqirchand Banwarilal (Respdt. 2) (Respd. 1) Munshi Ram (appellant) (adopted by Mangalsain)

Munshi Ram was adopted by Mangalsain, when the former was five or six years old. Mangalsain was separate from the other Branch.

There was a firm known as Kanhaiyalal & Sons, consisting of Kanhaiyalal and his two sons. The affairs of the firm fell on evil days. We are, however, not concerned with it. Munshi Ram had, on this other hand, stated another concern by the name of "Munshi Ram, B.Sc.", and that concern prospered. It appears that the respondents in this appeal claimed to be partners in that business. With the merits of their claim we are not again concerned. On October 30, 1946, there was an agreement between the contending parties, by which the dispute was referred to the sole arbitration of one Lala Premnath, Advocate. Lala Premnath gave an award on March 3, 1947, by which he awarded Rs.50,000/- payable to Faqir Chand as follows :

(a) Rs.15,000 on April 4, 1947.

(b) balance in three equal instalments on August 4, 1947, December 4, 1947 and March 4, 1948.

Interest on any instalment defaulted at 0-8-0 per cent per mensem until payment.

He also awarded Rs.45,000 payable to Banwarilal as follows :

> (a) Rs.15,000 on April 4, 1947.
>
> (b) balance in three equal instalments on the same dates as above with interest in the same way on default.

There was also an award about the residential house called haveli, which was given in moieties to Faqir Chand and Banwarilal, including the portion built by Munshi Ram. The rest of the immovable property was given to Munshi Ram as his self-acquired property, and it was declared that Faqir Chand and Banwarilal would have no connection with or claim in the concern, "Munshi Ram, B.Sc.".

No action appears to have been taken for some time. But on April 4, 1947, Rs.15, 000 were paid to Banwarilal. On the request of Faqir Chand made on December 17, 1947, the arbitrator filed an application under s.14(2) of the Arbitration Act, on January 6, 1948. With this application, he produced a signed copy of the award. It may be pointed out that the original award has not been produced, and is said to be lost. On February 19, 1948, the stamp Auditor reported that according to the endorsement on the copy of the award, the original was written on a stamp paper of the value of Rs.50/-, and that there was a deficiency of Rs.662- 8-0. He recommended that the award be impounded. The Senior Sub Judge, Ferozepore, ordered that the report would be considered, when the document would be produced.

On July 11, 1948, Munshi Ram made an application for setting aside the award on the following, among other, grounds: (a) that the award was insufficiently stamped; and (b) that the award was not registered. He also alleged that the Arbitrator was guilty of legal misconduct, and that the award was given beyond time. These objections were replied to by the respondents. Meanwhile, it appears that there was some further settlement, and the parties stated that they were prepared to have a decree passed in accordance with the terms accepted by them. By an order dated October 18, 1948, the Court passed a decree on the award, modifying terms of the award according to the compromise. The objections of the Stamp Auditor as well as other objections were not considered.

The modified terms in the decree were that instead of Rs. 50,000 and Rs. 45,000 payable to Faqir Chand and Banwarilal respectively, the sums payable were Rs.46,000 and Rs. 41,000. In the award, it was provided as follows:

> "However, the amount to be paid as income-tax for the year 1945-46 has not been assessed so far. All the three parties shall be liable to pay that in equal shares."

In the decree that was passed, it was set down:

> "In fact both the petitioner and the second party No. 2 were entitled to receive a further sum of four thousand rupees each, but the second party No. 1 has deducted that amount from their shares on account of their share of the income-tax for the year 1945-

46."

This shows that there was no difference between the award and the decree, in so far as the amounts were concerned. There was, however, a difference in the mode of payment. These payments were as follows:

Faqir Chand Banwarilal.

15,000 11-10-1948 5,000 7,500 11-10-1949 5,000 7,500 11-10-1950 5,000 7,500 11-10-1951 5,000 7,500 11-10-1952 5,000 1,000 11-10-1953 1,000

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46,000 26,000 already paid. 15,000

41,000

It was also provided that the award was not operative, so far as the haveli was concerned, and parties would take other action. There was no other vital difference.

On December 27, 1949, Banwarilal filed an application for execution of the decree for the defaulted instalment. On January 3,1950, Munshi Ram filed objections by an application purporting to be under O.47,r.1, ss.47 and 151 of the Code of Civil Procedure. The main objections were that the order making the award into a rule of the Court after modifying it was "void, without jurisdiction, invalid and against law" on the following grounds:

> (1) The original award was not filed and only the original could be modified and not a copy.
>
> (2) The award was not properly stamped and without recovery of the deficit duty and the penalty, the proceedings were without jurisdiction.
>
> (3) The decree being an instrument of partition, must be stamped.

The opposite parties joined issue. The senior Sub Judge, Ferozepore, by his order dated March 3, 1951, held that the original being lost, the copy was admissible, and the decree passed was not without jurisdiction. In view of the decision in Dwarka Das v. Krishna Kishore (1), the parties admitted that a compromise could be made even after the award, and the Senior Sub Judge also held likewise. He held further that the award was an instrument of partition, and that there was deficiency of stamp duty. The learned Senior Sub Judge then considered whether the decree needed

to be stamped as an instrument of partition, and held that it was an instrument of partition, and could not be acted upon, unless either the award or the decree was properly stamped. He, therefore, rejected the application for execution, but added a rider that, "After paying the proper stamp on the decree, fresh execution application may be put in by the decree-holder."

Against the last direction quoted here, Munshi Ram appealed to the High Court of Punjab at Simla (Execution First Appeal No. 121 of 1951). Meanwhile, Banwari Lal made a second application depositing the necessary stamp papers on March 10, 1951. By order dated March 28, 1951, the Executing Court impounded the decree, and sent it to the Collector. Against that order, Banwarilal appealed to the High Court (Execution First Appeal No. 56 of 1951). Munshi Ram also appealed, but his appeal has not been printed in the record here.

These two appeals were heard by a learned Single Judge of the High Court but at different times. The first to be heard was Execution First Appeal No. 56 of 1951, in which order was passed on December 28, 1951. That was the appeal of Banwarilal against the order of March 28, 1951, impounding the decree and sending it to the Collector. Munshi Ram's appeal against the same order was not then heard. The appeal of Banwarilal was treated by the learned Single Judge as a revision. According to the learned Judge, the order did not fall within s. 47 of the Code of Civil Procedure. The learned Judge observed:

> ".....I am of the opinion that the Court was justified in not proceeding with the execution application on the 3rd March, 1951. But once on an application made by the decree-holder it had ordered the stamp duty to be put in and the stamp had been put in, the decree passed had become a properly stamped decree. The proceedings which had been brought on an application dated the 27th of December, 1949 had ended on the 3rd of March, 1951 and could not be reopened unless some proper proceedings had been taken and no such proceeding was taken. On the other hand, on the 10th of March, Banwari Lal applied that stamp duty be allowed to be put in which was allowed and, therefore, after the proper stamp duty had been put in there was left no unstamped decree on the file...if the Court had carried out its own orders there would not have been any unstamped decree to be impounded on the 28th March 1951."

The learned Judge repelled the argument of the counsel for Munshi Ram, who urged that the decree was a nullity or was unexecutable, which, he held, did not arise at all in that appeal treated as a revision. The order impounding the decree was, therefore, set aside.

The learned Judge then heard Execution First Appeal No. 121 of 1951. That appeal was filed by Munshi Ram against the direction in the order of March 3, 1951. The learned Judge by his judgment dated June 16, 1952, held that the appeal was incompetent and that he would not interfere in revision. It appears that the other appeal against the order of March 28, 1951 by Munshi Ram was also heard, but it was also dismissed, though no reasons appear to have been given separately, perhaps because the order appealed against, had already been set aside by the learned Judge in the appeal decided on December 28, 1951.

Against these orders, two appeals under the Letters Patent were filed by Munshi Ram. L.P.A. No. 11 of 1952 was filed against the order dated June 16, 1952 passed in Execution First Appeal No. 121 of 1951. L.P.A. No. 5 of 1952 was filed against the order in the appeal of Banwarilal, which was decided on December 28, 1951. These two appeals were dismissed by a common judgment in L.P.A. No. 5 of 1952 on November 26, 1952, though a separate short order was also passed in L.P.A. No. 11 of 1952. From the judgment of the Divisional Bench, it appears that the contentions of the present appellant were not what they are before us, and it is, therefore, necessary to refer to the point which has been argued before us, and to see whether it was raised before, in what form, and at what stage.

It has been argued before us that after a dispute is referred to arbitration and an award has been obtained and filed in Court, it is not open to the Court to record a compromise under O. 23, r. 3 of the Code of Civil Procedure, because an award can only be set aside or modified, as laid down in the Arbitration Act, and there is no provision in the Arbitration Act for recording a compromise. This point does not seem to have been urged in the High Court or in the Court below. When the matter was before the Senior Sub Judge, Ferozepore it was conceded, in view of the decision of the Lahore High Court in Dwarka Das v. Krishna Kishore(1), that the parties were entitled to enter into a compromise regarding the terms of the award, and that a decree could be passed on the basis of an award, modified by such a compromise. The following passage from the judgment of the Senior Sub Judge Ferozepore, shows the contention of Munshi Ram at that time:

> "This principle of law is not disputed by the learned counsel for the judgment-debtor, who, however, argues that it was not open to the parties to enter into a compromise regarding the terms of the award which was never produced in Court."

In the appeal which was filed by Munshi Ram against the decision of the Senior Sub Judge, Ferozepore, no ground was taken that the compromise could not be recorded, or that by compromise the award could not be modified. The only objection then taken was that the award was insufficiently stamped and not registered, that secondary evidence of the award could not be admitted, and further that no decree could have been passed on the basis of the copy of the award produced as secondary evidence. There was a general ground that the decree in question was wholly without jurisdiction, and that the learned "trial Court" lacked inherent jurisdiction to pass such a decree. This ground obviously had reference not to the point of law now mooted but to the grounds on which the award was attacked. As a result, we find no mention of the present point in the two orders passed by Kapur, J. (as he then was). When the matter was taken to the Divisional Bench by appeals under the Letters Patent, no point bringing out the controversy was raised. The only objection was that the Court had no jurisdiction to order that the copy of the award should be stamped, and it was urged that the decree passed on the basis of the unstamped award was a nullity, and could not be executed. The point, now urged, therefore, does not figure in the judgment of the Divisional Bench, against which the present appeal has been filed. Further, even when an application was made for a certificate, this point was not mentioned as one of the grounds of appeal. All the points that were urged then are mentioned in the order refusing certificate. It was only when the petition for special leave was filed in this Court that this point was included, and as many as eight separate grounds were urged, which, as has been shown above, were not taken at an earlier stage. On this ground alone, this Court should decline to consider this matter, and this appeal

should be dismissed. Further, the decree was never questioned on this ground, as it could hardly be, since it was passed on consent of the parties. It is now being characterised as a nullity, because in execution, a decree can only be questioned on the ground that it is a nullity. We need not go to these objections, since the point was argued before us, and as there appears to be a conflict of view in the High Courts upon the subject of compromises following awards by arbitrators, we think it proper to decide the question whether after an award is filed in the Court, and parties enter into a compromise modifying the terms of the award, the Court can pass a decree on the award, as modified by the parties.

Learned counsel for the appellant relies upon Rabindranath Chakrabarti v. Jnanendra Mohan Bhaduri (1), which was approved by the Privy Council in Jnanendra Mohan Bhaduri v. Rabindra Nath Chakravarti (2), Dooly Chand Srimali v. Mohan Lal Srimali (3), Brindaban Chandra v. Kashi Chandra, (4) and Motandas v. Wadhumal (5), where it has been laid down that after an arbitration award has been made, it is not open to the Court to record a compromise modifying the award and pass a decree incorporating the modified award. The other side relies upon Behari Lal v. Dholan Das (1), Dwarka Das v. Krishan Kishore (2), Attar Singh v. Bishan Singh (3) and Fazal Ahmad v. Enayat Ahmad, (4).

In Rabindranath Chakrabarti's case, which also went before the Privy Council, the Arbitration was before the present Arbitration Act was passed, and was governed by the Arbitration Act of 1899. Under s.15 of that Act, the Court was not required to pronounce a judgment or pass a decree, since the Act did not contain any provision for passing a decree. The award when filed in Court, unless set aside, had the force of a decree and was per se executable. It was, therefore, held that the Court had no general jurisdiction over the matter, and that a decree passed modifying an award was without jurisdiction and a nullity, which the executing Court could refuse to execute. It will easily be seen that the reason of the rule was the absence of jurisdiction to pass a decree on the award, and a decree passed without such jurisdiction must evidently be a nullity. The principle, however, was applied also under the present Arbitration Act, even though the Court now pronounces a judgment according to the award and upon the judgment so pronounced, a decree follows. The principle is now invoked, because of the limitations upon the powers of the Court to modify an award under s.15. That section read as follows:

> "15. The Court may by order modify or correct an award-
>
> (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
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> (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
>
> (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission."

In view of the limits of the powers of the Court, it has been held in some cases that the Court cannot go outside the terms of s.15, and make a decision of its own, even though the parties might have compromised the dispute and agreed to modify the award. It is not necessary to refer to all the cases relied upon by the learned counsel for the appellant, because the question was elaborately considered in Prafulla Chandra Karmakar v. Panchanan Karmakar (1) by Chakravartti, J. In that case, there was a reference to arbitration during the pendency of a partition suit, and after award, the parties entered into a compromise. Chakravartti, J. held that the Court could give leave to the parties to revoke a submission under s. 5 of the Arbitration Act, and on superseding the arbitration agreement thereafter under s.12(2)(b), pass decree in terms of the compromise. He, however, held that till the submission lasted, the Court's authority was suspended, and the Court could neither enquire into the factum of the compromise nor pass a decree different from the award. He pointed out that under ss. 30 and 32, the award could be set aside or varied as provided there and in no other way. The learned Judge observed that the precise question raised in the case before him was not decided in the earlier case of the same Court reported in Dooly Chand Srimali v. Mohan Lal Srimali (2). He also observed that what he said in the case applied to an arbitration with the intervention of the Court in a pending suit, and added:

> "What the position would be in a case of reference without the intervention of the Court, it is not necessary to consider."

The learned Judge then pointed out that a compromise between the parties was not mentioned in the Arbitration Act as one of the grounds on which an award could be set aside or modified. He declined to apply O.23, R.3 of the Code of Civil Procedure on the strength of s.41 of the Arbitration Act, where it is provided that the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court and to all appeals under the Arbitration Act. He gave three reasons for not doing so. The first was that s.41 was headed "Subject to the provisions of the Act" and thus subject to ss. 15, 23(2) and 32 of the Arbitration Act. He was also of opinion that s.41 only applied the procedural parts of the Code of Civil Procedure, to proceedings under the Arbitration Act and O.23, R. 3 applied only to suit, it could not be made applicable to proceedings on awards, which were not suits. According to him, the proceedings on an award involved only the consideration of the award, and modifying the award to the extent allowed by the Act was different from "a compromise of the entire dispute between the parties apart from and independently of the award", and he held that "that would be going outside the award."

The views so expressed were repeated in other cases, but were amplified in Motandas v. Wadhumal(1), where it was held that the proceedings on an award were not a suit, even though those proceedings were registered as a suit. It may be pointed out that even Chakravartti, J. felt that the resulting position led to an anomaly, which he expressed himself with his characteristic vigour thus:

> "... it would seem strange if the law also were that once a reference has been made to arbitration, the parties can no longer even settle their dispute or bring the settlement before the Court, but must continue the strife till a decree on the basis of the award is made and compromise, if at all, thereafter. A suit is but a dispute; the function of the

> Court is but to decide it; and an arbitration is but an alternative machinery of decision. That a statute should, because a reference has been made to arbitration, forbid the parties to terminate the dispute by mutual agreement and to obtain from the Court an agreed decree, would certainly seem extraordinary. "Specially since no question of public policy can possibly be involved; but if the Arbitration Act contains provisions to that effect, they must of course be enforced."

His solution, therefore, was that a compromise between the parties, though not mentioned in the Arbitration Act as one of the grounds on which a reference could be superseded or award set aside, might be regarded as a good cause for revoking the submission within s.5 of the Arbitration Act.

As against this, the Lahore High Court has, in more than one case, held that a compromise is possible after an award, and the Court, can pass a decree under O.23,R.3 of the Code of Civil Procedure modifying the award according to the compromise. Those cases have already been cited above. No special reasons, however, were given in those cases, and they are all based upon the decision in Behari Lal v. Dholan Das (1). In Dwarka Das v. Krishan Kishore(2), it was observed at p. 124:

> "Mr. Tekchand contended that the parties had no power to modify the award and that the Court could not have passed a decree otherwise than upon the award as given by the arbitrator. It appears to me, however, that if the original award was valid, so far as Jai Gopal was concerned, it certainly cannot be considered to be invalid merely because it was somewhat modified in his favour. In the case of Behari Lal v. Dholan Das (1) it was held by Rattigan, J., the late Chief Justice of this Court, that it is competent to the parties to compromise the proceedings under section 525, Civil Procedure Code, by altering amending or adding to the award."

An additional reason was given in Attar Singh v. Bishan Singh(2), and it was that the Act lays down the powers of the Court to interfere with awards, but it does not lay down that a party may not withdraw from a claim. In that case, after the award one party offered to be bound by the special oath of the other party, and the oath having been taken, a decree was passed.

In our opinion, cases under the Arbitration Act of 1899 cannot afford a good guidance in this matter. As has already been pointed out, under that Act the award was itself executable as a decree, and the Court was not required to pronounce a judgment or to pass a decree. If the Court had not the power to pass a decree at all, it could, even less, pass a decree modifying the award even by the consent of the parties. The question thus is whether now that the Court does pass a decree, it can ignore the compromise reached, and pass a decree which the parties do not intend, should be passed. It was observed by the Privy Council in Lala Khunni Lal v. Gobind Krishna Narain (3), approving the decision of the High Court of the North West Provinces reported in Lalla Oudh Behari Lall v. Mewa Koonwer (4), that it was the duty of the Courts to uphold and give full effect to a compromise. Indeed, Courts have allowed compromises which go beyond the subject- matter of the suits before them. In Hemanta Kumari Debi v. Midnapur Zimindari Company(1), the Privy Council said:

> "A perfectly proper and effectual method of carrying out the terms of this (R.3. O.23) would be fore the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject of the suit, or it could introduce the agreement in a schedule to the decree; but in either case, although the operative part of the decree would be properly confined to the actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement. This in fact is what the decree did in the present case. It may be that as a decree it was incapable of being executed outside the lands of the suit, but that does not prevent it being received in evidence of its contents."

We are aware that the Privy Council case has led to a great difference of opinion in India; but it does furnish the right cue to the decision of the problem with the view of avoiding the anomalies pointed out by Chakravartti, J. When an award is given, the parties cannot, under the Act, challenge it except as laid down there. The powers of the Court are indicated by the Act. They are limited to accepting the award, if there be no objection and passing a decree in accordance therewith, or superseding the reference or revoking or modifying the award or remitting it for further consideration, as laid down in the Act. But, the Act does not disable the parties from terminating their dispute in a different way, and if they do, it could not be intended by law that a dispute, which had been successfully terminated, should again become the subject of litigation. If the parties are dissatisfied with the award and want to substitute it by a compromise involving matters alien to the original dispute which are inseparable, the Court may supersede the submission, and leave the parties to work out their agreement in accordance with the law outside the Arbitration Act. In such circumstances, the new compromise itself may furnish a very good ground for superseding the reference and thus revoking the award, as said by Chakravartti, J. where the parties do not throw the award overboard but modify it in its operation, the award, in so far as it is not altered, still remains operative and continues to bind the parties and cannot be revoked. In that contingency, the Court may follow one of two modes indicated by the Privy Council in Hemanta Kumari's case (1). If the whole of the subject-matter of the compromise is within the reference, the Court may include in the operative part of the decree the award as modified. But if it is not so, the Court may confine the operative part of the decree to the award as far as accepted, and the other terms of settlement which form a part thereof, if severable and within the original reference, in a schedule to the decree. The portion included in the operative part would be executable, but the agreement included in the schedule would be enforceable as a contract, of which the evidence would be the decree but not enforceable as a decree. The power to record such an agreement and to make it a part of the decree, whether by including it in the operative portion or in the schedule to the decree, in our opinion, will follow from the application of the Code of Civil Procedure, by s.41 of the Arbitration Act and also s.141 of the Code. It only remains to point out that in a reference without the intervention of the Court, the Court has no general jurisdiction over the subject-matter as in a reference in a pending suit. If the submission is superseded in the former, there is nothing more the Court can do, but in the latter, the Court must proceed with the suit before it, and give effect to the compromise in the suit according to law.

In the present case, the decree on the award was properly framed, because the award made room for adjustment of the income-tax, ordering that the income-tax, when assessed, would be borne equally

by the three parties, and the compromise merely worked out that direction by reducing the amounts payable to the two respondents by Rs. 4,000/- each. The compromise, on this part, did not go outside the award, but was a direct consequence of the award. It quantified income- tax, which, under the award, was to be quantified later. The amounts were the same which were originally payable, less the income-tax. The only difference was as to the mode of payment, and instead of three instalments per quarter, the amount was payable in more instalments yearly. This, in our opinion, was a matter on which the parties could agree, and the Court could substitute their agreement in the operative part of the decree. There is nothing in the Arbitration Act, which disentitles the court from taking note of an agreement of this character, and, in our opinion, the decree cannot be characterised as a nullity on this ground.

In the result, the appeal fails, and is dismissed with costs.

Appeal dismissed.