Supreme Court of India
Nilkantha Shidramappa ... vs Kashinath Somanna Ningashetti ... on 28 April, 1961
Equivalent citations: 1962 AIR 666, 1962 SCR Supl. (2) 551
Author: R Dayal
Bench: Dayal, Raghubar

PETITIONER:
NILKANTHA SHIDRAMAPPA NINGASHETTI

Vs.

RESPONDENT:
KASHINATH SOMANNA NINGASHETTI AND OTHERS.

DATE OF JUDGMENT:
28/04/1961

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
SINHA, BHUVNESHWAR P.(CJ)
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1962 AIR 666 1962 SCR Supl. (2) 551
CITATOR INFO :
R 1988 SC2054 (7)

ACT:
Arbitration-Award filed in court' Expression "give notice", meaning of-If must be given in writing-Period of limitation to file objections from when to run-Objection to set aside award filed beyond time-Court files the award-If amounts to refusal to set aside the award-Indian Limitation Act, 1908 (IX of 1908), art. 158-Arbitration Act, 1940 (10 Of 1940), ss. 14(2), 39(1)(VI).

HEADNOTE:
In a partition suit the Arbitrator filed his award in the court and the judge adjourned the case for "the parties' say to the arbitrator's report." No notice in writing was given to the parties by the court of the filing of the award. Objection to the award was filed by the appellant beyond the period of limitation. The court ordered the award to be filed and decree to be drawn up in terms of the award as the objection filed was beyond the period of limitation.
The appellant's case was that the period of limitation as under art. 158 of the Limitation Act, for an application to

set aside the award, would run against him only from the date of service of the notice in writing of the filing of the award and as no notice in writing was issued by the Court to the appellant the time never began to run against him. The appellant also contended that as the court had refused to set aside the award the appeal was maintainable under S. 39(1)(VI) Of the Arbitration Act.
Held, that the communication by the court to the parties or their counsel of the information that an award had been filed was sufficient compliance with the requirements of sub-s. (2) of s. 14 Of the Arbitration Act, with respect to the giving of the notice to the parties concerned, about the filing of the award. Notice does not necessarily mean "communication in writing". The expression "give notice" in sub-s.(2) of s. 14 Of the Arbitration Act simply means giving intimation of the filing of the Award. Such intimation need not be given in writing and could be communicated orally. That would amount to service of notice when no particular mode of service was prescribed.
Held, further that where there was no objection before the court praying for setting aside the award, no question of refusing to set it aside could arise, and no appeal therefore was maintainable under s. 39(1)(VI) Of the Arbitration Act.

JUDGMENT:

CIVIL APPELLATe, JURISDICTIOn: Civil Appeal No. 36 of 1958.

Appeal from the judgment and decree dated January 7, 1954 of the Bombay High Court in Appeal from Order No. 63 of 1950. A. V. Viswanatha Sastri and Naunit Lal, for appellant. W. S. Barlingay and A. G. Ratnaparkhi, for respondents Nos. 1 and 2.

S. T. Desai and M. S. K. Sastri, for respondents Nos. 4 to

7. 1961. April 28. The Judgment of the Court was delivered by RAGHUBAR DAYAL, J.-This is an appeal on certificate under Art. 133(1)(c) of the Constitution, granted by the High Court of Judicature at Bombay.

A suit for partition was filed against defendants 1 to 10 and 12, members of a joint family. Defendant no. 1 was father of the appellant, who was then a minor, defendant no.

12. Defendant no. 11 was an outsider, he being a partner in the partnership shop of the family. Parties other than defendant no. 11 referred the matters in difference to an arbitrator. The arbitrator filed the award in Court on February 18, 1948. On February 21, 1948, the Civil Judge adjourned the matter "for parties' say to the arbitrator's report", to March 22, 1948. On March 16, i 1 948, an application was presented on behalf of defendant no. 1 praying that certain papers and documents

be called for from the arbitrator. On March 22, 1948, an application was presented on behalf of defendant no. 1 praying for 15 days' time for going through the papers and documents which he had asked the arbitrator to send to the Court and to intimate his say regarding the arbitrator's award. The Court granted the request. Defendant no. 1 filed his say about the arbitrators report on April 2, 1948. He withdrew his contentions on March 31, 1949. It is to be noted that neither the objections filed on April 2, nor the other applications' purported to have been filed on behalf of defendant no. 12.

On February 17, 1948, defendant no. 1 filed an application stating therein:

> "An arbitrator is to be appointed in the matter of the suit and the arbitrator is to submit an award. For the aforesaid reasons it is impossible for me to put forth properly necessary contentions etc., in the said matter. Consequently, the minor will be put to a heavy loss. In these circumstances, I have no desire to act as a guardian of the minor. Therefore, my appointment as a guardian of the minor may be cancelled and further steps may be taken after appointing a proper guardian of the minor. His mother Dhondavvabai may be appointed guardian of the minor. I have put forth a contention against the arbitrator's award. I may be granted time for that purpose."

His resignation from guardianship was accepted on April 13, 1948, and Dhondavvabai, the mother of the minor defendant no. 12, was appointed guardian on June 16, 1948. On September 5, 1948, a summons purporting to be for settlement of issues, was served on her. On September 7, 1948, she applied for, and was granted, one month's time for submitting the written statement with regard to the claim and the award in the said matter. On October 7, 1948, she applied for, and was granted, another one month's time for the same purpose. On November 9, 1948, she filed a written statement on behalf of defendant no. 12, with regard to the suit and the award, questioning the validity of the award and praying that it be declared null and void and that the suit be heard after taking into consideration the interest of the minor.

On August 24, 1949, the Civil Judge ordered that the award be filed, that a decree be drawn tip in terms of the award and that the decree should further contain the terms as to the Bombay shop run in partnership with defendant no. 11 as was mentioned in the order. It was said in this order that none of the parties except defendant no. 1 put in any objections to the, award, that defendant no. 1 filed his objections beyond the period of limitation and subsequently withdrew them and that the objections filed by the guardian- ad-litem of defendant no. 12 on November 9, 1948, was also filed beyond the period of limitation Defendant no. 12 then went up in appeal to the High Court. The High Court dismissed the appeal holding that it was incompetent as the order of the Civil Judge did not amount to an order refusing to set aside an award, as there had been no objection before him for the setting aside of the award. It further held that the issue of a formal notice under sub-s. (2) of s. 14 intimating the fling of the award was not necessary for the commencement of the period of limitation under Art. 158 of the Limitation Act and that objections coming under s. 33 of the Arbitration Act also amounted to objections for the setting aside of the award. It is this order of the High Court whose correctness is challenged in this appeal.

The first question to determine is whether limitation for filing an application to set aside the award began to run against the appellant-defendant no. 12 from a date more than a month before November 9, 1948, when a written statement on his behalf was filed stating that the award be declared null and void. According to Art. 158 of the First Schedule to the Indian Limitation Act, the period of limitation for an application to set aside an award under the Arbitration Act, 1940, begins to run from 'the date of service of the notice of the filing of the award'. No notice in writing was issued by the Court to the appellant or his guardian intimating that the award has been filed in Court. It is therefore urged for the appellant that the period of limitation for filing an application to set aside the award never began to run against him. There could be no date of service of notice, when no notice had been issued. On the other hand, it is submitted for the respondents, that- the limitation began to run from February 21, 1948, the date on which the Court adjourned the case for parties' say to March 22, 1948, and that, in any case, from September 7, 1948, when his guardian had applied for time to file the statement after having received a summons from the Court on September 5, 1948. On February 21, 1948, the pleaders were present, according to the entry against the date in the roznama of the Court. Notice to the counsel of the filing of the award means or amounts to notice to the party.

Sub-section (1) of s. 14 of the Arbitration Act, 1940 (X of 1940) requires the arbitrators or umpire to give notice in writing to the parties of the making and signing of the award. Sub-section (2) of that section requires the Court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the Court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. No question of the service of the notice in the formal way of delivering the notice or tendering it to the party can arise in the case of a notice given orally. The communication of the information that an award has been filed is sufficient compliance with the requirements of sub-s. (2) of s. 14 with respect to the giving of the notice to the parties concerned about the filing of the award. 'Notice' does not necessarily mean 'communication in writing'. 'Notice', according to the Oxford Concise Dictionary, means 'intimation, intelligence., warning' and has this meaning in expressions like 'give notice, have notice' and it also means 'formal intimation of something, or instructions to do something' and has such a meaning in expressions like 'notice to quit, till further notice'. We are of opinion that the expression 'give notice' in sub-s. (2) of s. 14, simply means giving intimation of the filing of the award, which certainly was given to the parties through their pleaders on February 21, 1948. Notice to the pleader is notice to the party, in view of r. 5 of O. III, Civil Procedure Code, which provides that any process served on the pleader of any party shall be presumed to be duly communicated and made known to the party whom the pleader represents and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person. We have been referred to s. 42 of the Arbitration Act for the modes of serving notice. This section does not apply to the giving of notice by Courts. It applies to the service of notice by a party to an arbitration agreement or by an arbitrator or umpire. It is contended that verbal communication of the filing of the award does not amount to serving of a notice. The expression 'date of service' of notice is used in Art. 158, First Schedule of the Limitation Act because sub-s. (2) of s. 14 would be applicable both when the reference to arbitration is out of Court or in a suit. When the arbitration reference is out of Court, no party is expected to be present in Court and, therefore, the notice will

have to go to the party formally, i.e., a written notice will is-sue from the Court to the parties concerned, intimating them that an award had been filed. It is only in cases where an arbitration is through Court that, when the award is filed, the Court can have the counsel for the parties present at the time the case is put up with the award and that the Court can then orally intimate to the counsel about the filing of the award. Further, 'service', according to Webster's New International Dictionary, II Edition, Unabridged, means 'act of bringing to notice, either actually or constructively, in such manner as is prescribed by law'. Oral communication will therefore amount to service too, when no particular mode of service is prescribed.

We see no ground to construe the expression 'date of service of notice' in col. 3 of Art. 158 of the Limitation -Act to mean only a notice in writing served in a formal manner. When the Legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words ,;notice' and 'service' it would have said so explicitly. It has not done so here. Moreover, to construe the expression as meaning only a written notice served formally on the party to be affected, will leave the door open to that party, even though with full knowledge of the filing of the award he has taken part in the subsequent proceedings, to challenge the decree based upon the award at any time upon the ground that for want of a proper notice his right to object to the filing of the award had not even accrued. Such a result would stultify the whole object which underlies the process of arbitration-the speedy decision of a dispute by a tribunal chosen by the parties.

In this case, the parties knew of the filing of the award. Defendant no.1 had probably known of the imminence of the filing of the award when he stated, in his application dated February 17, 1948, that he intended to file an objection to the award. He was then the guardian of the appellant. He continued to be the guardian till April 1948. The appellant's mother became guardian in June 1948. It has to be presumed that she would have known of the filing of the award on that day. Anyway, she knew definitely on September 7, 1948, that an award had been filed and that she had to file an objection. She took one month's time on September 7, for filing the objection and again, one month's time, on October 7. She actually filed the objection on November 9. If she be held to have notice of the filing of the award on September 7, 1948, even then the filing of the objection on November 9, 1948, was beyond the period of thirty days prescribed in Art. 158 of the Limitation Act. We therefore see no justification for the contention that the period of limitation had not begun to run against the appellant and that the objection filed on his behalf on November 9, 1948, was within the period of limitation prescribed under Art. 158 of the First Schedule to the Limitation Act. We therefore agree with the High Court that the intimation to the pleaders of the parties on February 21, 1948, amounted to service of the notice on the parties about the filing of the award and that the objection filed on behalf of the appellant was filed after the expiry of the period of limitation.

The second question is whether the order of the Civil Judge amounted to an order refusing to set aside the award and therefore appealable to the High Court. The High Court hold that it was not such an order and we agree. When no party filed an objection praying for the setting aside of the award, no question of refusing to set it aside can arise and therefore no appeal was maintainable

under s. 39(1)(VI) of the Arbitration Act which allows an appeal against an order refusing to set aside an award.

Lastly, it was submitted that the objection to the effect that the award was illegal and without jurisdiction, inasmuch as the arbitrator included in the award property which did not fall within the scope of his authority, should have been considered by the trial Court. Such an objection was not pressed before the trial Court and therefore the High Court did not allow that objection to be taken before it. We think that the High Court was right in not allowing the objection to be raised since it, being not pressed in the trial Court, will be presumed to have been given up. We therefore see no force in this appeal and dismiss it with costs.

Appeal dismissed.