

NARAIN DAS

v.

VALLABHDAS & ORS.

October 15, 1971

[K. S. HEGDE AND H. R. KHANNA, JJ.]

Arbitration Act 10 of 1940—Person entitled to maintenance out of certain property whether necessary party to arbitration agreement relating to dispute about that property—Reference made out of court—Whether all parties to reference must sign award in token of acceptance of award—Whether previous litigation about a property bars reference to arbitration of a fresh dispute about the property.

By an arbitration award given in 1933 D was given a maintenance allowance enforceable against property allotted to the appellant and his brothers and mother. Since the allowance was not paid D secured a decree for the sale of houses belonging to the appellant and his brothers. The property was purchased by respondents 4 and 5 who after obtaining sale certificate from the court sought to obtain possession of the same. On 8th April 1955 the appellant his brothers and mother entered into an arbitration agreement with respondents 4 and 5. According to the agreement respondents 4 and 5 gave up their claim to the houses purchased by them in court auction and the arbitrators were to make award in respect of the amounts to be paid by either of the parties as well as the maintenance allowance payable to D and to the appellant's mother. The arbitrators by their award dated 20th October 1956 made provision for the amounts payable to different parties. They also made provision for the payment of allowance to D as well as for her residence. After the award had been put in court objections were filed against it. The Additional District Judge set aside the award *inter alia* on the ground that the award affected the rights of D and she had not been made a party to the agreement. The High Court reversed the judgment of the Additional District Judge. In appeal by certificate the appellant contended; (i) that the award was invalid because D was an interested party in the dispute relating to arbitration and she had not joined the arbitration agreement; (ii) that the reference to arbitrators was made out of court and as all the parties to the arbitration agreement did not sign the award in token of their acceptance, the same could not be made a rule of court; (iii) that because there had been earlier litigation about the house allotted to the appellant and his brothers, the same could not be the subject matter of arbitration dispute,

HELD: (i) The rights of D remained intact and were in no way affected by the award dated 20th October 1956. The maintenance allowance payable to her was also kept as a charge over the immovable property. The fact that D did not sign the arbitration agreement as such would not vitiate the arbitration proceedings. She did not raise any objection to the arbitration proceedings or the subsequent award. According to counsel, she died three years ago. In the circumstances the question whether her rights were prejudicially affected by the award was purely academic [31 E]

(ii) An award given on a reference during the pendency of a suit relating to a dispute which is the subject matter of reference without obtaining the order of the Court cannot be enforced. The underlying reason for the same is to avoid conflict of jurisdiction. However according to s. 47 of the Arbitration Act, 1940, an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration

- A as a compromise or adjustment of a suit by any court before which the suit is pending.' In such an event, the Award is enforced as a compromise or adjustment of the suit because all the interested parties give their consent to the award. When however, as in the present case, no suit is pending with respect to the subject matter of dispute and the parties choose to refer a dispute to the arbitrators, it is not essential that the parties should signify their consent to the award before the same can be enforced.
- B Agreement and consent are imperative only at the stage of referring the dispute to arbitrators but not at the stage of the award. [31H—32D].

Jagaldas Damodar Modi & Co. v. Pursottam Umedbhai & Co., A.I.R. 1953 690, held in applicable.

- (iii) A dispute is referred to arbitration because the parties agree to such a reference and the mere fact that the property which is the subject matter of dispute was also the subject matter of earlier litigation, cannot prevent the parties to refer the dispute about that property to arbitration.
- C What is referred to arbitrators in such a case is the fresh dispute and although the finding of the Court in the previous litigation may have a bearing on the dispute referred to the arbitrators, it would not stand in the way of reference of the fresh dispute to the arbitrators. [32 F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 194 of 1967.

- D Appeal from the judgment and order dated April 27, 1964 of the Madhya Pradesh High Court in Misc. (First Appeal No. 60 of 1960.

S. N. Anand and Kailash Mehta, for the appellant.

- E *S. S. Khanduja and K. C. Dua*, for respondent No. 1.

The Judgment of the Court was delivered by

- F **Khanna, J.** This is an appeal on a certificate of fitness granted by the Madhya Pradesh High Court against the judgment of that Court whereby that Court in appeal set aside the order of the Additional District Judge, Jabalpur, dismissed the objections against an award and directed that the award be made a rule of the Court.

- G Naraindas, appellant is the brother of Vallabhdas and Durgaprasad, respondents 1 and 2 and son of Smt. Sukhrani, respondent No. 3. There were some arbitration proceedings in 1932 between the appellant and respondents 1 to 3 on one side and Pannalal and Smt. Dulari Bahu on the other side. Those proceedings related to partition of property and a claim for maintenance allowance by Dulari Bahu. An award was given in those proceedings and was made a rule of the Court on 13-12-1933. According to the award, Dulari Bahu was to get
- H a maintenance allowance of Rs. 12/- per mensem from the appellant and his brothers. A charge was created of the maintenance allowance on the house which fell as a result of partition to the

share of the appellant and respondents 1 to 3. It was also provided that if the appellant and his brothers failed to pay the monthly allowance, Dulari Bahu would be entitled to get the house sold. Out of the sale proceeds, Rs. 3,000/- were to be deposited in a bank on the condition that the amount of interest would be paid to Dulari Bahu but she would not be entitled to draw the principal amount. On Dulari Bahu's death, Rs. 2,000/- out of Rs. 3,000/- would be paid to the appellant and his brothers and Rs. 1,000/- to Pannalal.

The amount of maintenance payable to Dulari Bahu was increased to Rs. 30/- per mensem in a suit brought by her and decided on 8-10-1949.

As the appellant and his brothers did not pay the maintenance allowance to Dulari Bahu, she, in execution of her claim for maintenance allowance, got their houses situated at Jabalpur sold by Court auction. The houses were purchased for Rs. 22,000/- by Sitaram and Laxminarain, respondents 4 and 5. After obtaining the sale certificate, respondents 4 and 5 took proceedings for obtaining possession of the houses but they were resisted by respondent No. 1. The appellant and his brothers further claimed that they had deposited some amount with respondents 4 and 5. The appellant and his brothers and mother on one side and respondents 4 and 5 on the other side thereupon appointed four arbitrators, as per agreement dated 8th April, 1955. According to the agreement, respondents 4 and 5 would have no claim in the houses purchased by them in Court auction and the arbitrators would make award in respect of the amounts to be paid by either of the parties as well as regarding the maintenance allowance payable to Durga Bahu and Sukhrani Bahu. The arbitrators thereafter gave their award dated 20th October, 1956 wherein they made provision for the amounts payable to different parties. Regarding the amount of maintenance allowance payable to Dulari Bahu, the award provided that Rs. 3,000/- out of the sale proceeds would be withdrawn from the Court and be deposited with Durgaprasad, respondent. Durgaprasad was made liable to pay the amount of Rs. 30/- per mensem as maintenance allowance to Dulari Bahu. The award further provided that out of the amount of Rs. 3,000/-, Rs. 1,000/- would be paid to Pannalal and Rs. 2,000/- to Durgaprasad on the death of Dulari Bahu. Dulari Bahu was also given a right of residence in a room and maintenance allowance of Rs. 30/- payable to her was made a charge on the house allotted to Durgaprasad.

After the award had been put in Court, objections were filed against the award. Learned Additional District Judge set aside the award on the ground that the award affected the rights of

A Dulari Bahu and she had not been made a party to the arbitration agreement. The reference to arbitration as well as the award, according to the Additional District Judge did not amount to an adjustment and were, therefore, invalid. It was also held that the award was in excess of the arbitration agreement. Some other grounds were also given but we are not concerned with them. On appeal, the High Court reversed the decision of the Additional District Judge and held that there was no infirmity in the arbitration proceedings or the award. In the result, the award was made a rule of the Court.

C Mr. Anand, on behalf of the appellant, has argued that Dulari Bahu was an interested party in the dispute relating to arbitration and as she did not join the arbitration agreement, the reference to arbitration and the subsequent award should be held to be invalid. There is, in our opinion, no force in this contention. The dispute which was referred to the arbitrators related to the houses in question which had been sold in Court auction. The interest of Dulari Bahu pertained only to the recovery of her maintenance allowance. According to the earlier award which Dulari Bahu sought to enforce, she was to get the maintenance allowance from an amount of Rs. 3,000/- which was to be kept in deposit. The rights of Dulari Bahu in this respect remained in-tact and were in no way affected by the award dated 20th October, 1956. The maintenance allowance payable to her was also kept as a charge over the immovable property. The fact that Dulari Bahu did not sign the arbitration agreement as such would not vitiate the arbitration proceedings. The present is not a case wherein the arbitration proceedings are sought to be assailed by Dulari Bahu. On the contrary, it is the admitted case of the parties that Dulari Bahu did not raise any objection to the arbitration proceedings or the subsequent award on the ground that her rights had been prejudicially affected. This apart, we find that Dulari Bahu, according to the learned counsel, died about three years ago. In the circumstances, it would be purely academic to dilate upon the question as to whether the rights of Dulari Bahu were prejudicially affected by the award in question.

G It is next argued by Mr. Anand that as the reference to arbitrators was made out of Court and as all the parties to the arbitration agreement did not sign the award in token of their acceptance, the same could not be made a rule of the Court. There is no substance, in our opinion, in the above contention. It is always open to parties to refer a dispute to arbitration without the intervention of the Court. In case, a suit is pending in respect of the subject matter of the dispute, there can be no valid reference during the pendency of the suit, to arbitration without

the order of the Court. The underlying reason for that is to avoid conflict of jurisdiction by both the Court and the arbitrator dealing concurrently with the same dispute. An award given on a reference during the pendency of a suit relating to dispute which is the subject matter of reference without obtaining the order of the Court cannot be enforced. The only exception to this rule is provided by the proviso to section 47 of the Arbitration Act (Act 10 of 1940) according to which "an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending". In such an event, the award is enforced as a compromise or adjustment of the suit because all the interested parties give their consent to the award. Where, however, as in the present case, no suit is pending with respect to the subject matter of dispute and the parties choose to refer a dispute to arbitrators, it is not essential that the parties should signify their consent to the award before the same can be enforced. Any other view would run counter to the entire scheme and object of arbitration for the settlement of disputes according to which, agreement and consent are imperative only at the stage of referring the dispute to arbitrators but not at the stage of the award. The decision of Bachawat, J. (as he then was) in *Jugaldas Demodar Modi & Co. v. Pursottam Umedbhai & Co.*⁽¹⁾ relied upon by the appellant has no bearing as the said case dealt with an arbitration reference during the pendency of a suit.

We are also not impressed by the contention raised on behalf of the appellant that because there had been earlier litigation about the house allotted to the appellant and his brothers, the same could not be the subject matter of arbitration dispute. A dispute is referred to arbitration because the parties agreed to such a reference and the mere fact that the property which is the subject matter of dispute was also the subject matter of an earlier litigation, cannot prevent the parties to refer the dispute about that property to arbitration. What is referred to arbitrators in such a case is the fresh dispute and although the finding of the Court in the previous litigation may have a bearing on the dispute referred to the arbitrators, it would not stand in the way of reference of the fresh dispute to the arbitrators. It is not the case of the appellant before us that the precise dispute which was the subject matter of the award dated 20th October, 1956 had been adjudicated upon earlier in a civil Court.

The appeal consequently fails and is dismissed with costs.

G.C.

Appeal dismissed.