

the ratification will not have the effect of saving the limitation it is not necessary for me to decide the question at this stage as the same will be decided by the trial Court after a proper plea is raised and facts determined.

In the circumstances, the revision petition must fail and is dismissed but having regard to the circumstances of the case there will be no order as to costs. Parties will appear before the trial Court on 9th August, 1965.

B. R. T.

REVISIONAL CIVIL

Before S. K. Kapur, J.

M/S HIMALAYA FINANCE & CONSTRUCTION CO.,—
Petitioner.

versus

LAKHA SINGH, AND OTHERS,—Respondents.

Civil Revision No. 551-D of 1964.

Arbitration Act (X of 1940)—Ss. 30 and 41—Code of Civil Procedure (Act V of 1908)—Order 6 Rule 17—Limitation Act (IX of 1908)—Art. 158—Objections to the award—Whether can be added to after the expiry of 30 days prescribed under Article 158.

Held, that, no doubt, section 41 of the Arbitration Act, 1940, provides that the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under the Act, subject to the provisions thereof, but there is no provision in the Arbitration Act prescribing a period of limitation for filing of objections to an award. The period of limitation is prescribed by Article 158 of the First Schedule of the Indian Limitation Act, 1908. It, therefore, follows that order 6 Rule 17 of the Code of Civil Procedure are applicable and can be rightly invoked by the petitioner for amending the grounds of attack to the validity of the award. The rules applicable to amendment of pleadings in a suit are fully applicable to amendment of the objections against an award. The fact that a party has acquired a valuable right by lapse of time may be a relevant consideration for allowing or disallowing the amendment but that is again a matter affecting the discretion of the Court rather than its jurisdiction.

Petition for revision under section 115 of Act V of 1908 against the order of Shri V. P. Bhatnagar, Sub-Judge, 1st Class, Delhi, dated 15th

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v.
Delhi Wakf
Board and
another

Kapur, J.

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December, 1964 allowing the application for amendment of the objections, subject to the payment of Rs. 40 as costs.

MISS C. M. KOHLI, ADVOCATE, for the Petitioner.

BAKSHI MAN SINGH, ADVOCATE, for the Respondent.

ORDER

Kapur, J.

KAPUR, J.—This civil revision is directed against the order of Shri Ved Parkash Bhatnagar, Subordinate Judge, Ist Class, Delhi, dated December 15, 1964. The petitioner allegedly entered into a hire-purchase agreement, dated June 7, 1960, with the respondents. The said agreement contained an arbitration clause, under which Shri G. R. Chopra, Advocate, was appointed the sole arbitrator. Certain disputes having arisen the matter was referred to the arbitrator who gave his award on September 3, 1962, which was filed in the Court. Notice under section 14(2) of the Arbitration Act was issued by the Court about the award having been filed and the respondents preferred objections on December 19, 1962, challenging the validity of the award. Issues were framed and a date was fixed for evidence in the case. After about 18 months from the date of filing of objections the respondents made an application under Order 6, rule 17, Civil Procedure Code, for amendment of the objections by including certain additional grounds of attack against the award. The learned Subordinate Judge by his aforesaid order allowed the application for amendment subject to payment of Rs. 40 as costs.

Miss Kohli, the learned counsel for the petitioner, has raised two contentions : (1) In view of the fact that a period of limitation is prescribed under the Limitation Act for filing objections against an award, no additional ground can be permitted to be added after the expiry of the limitation; and (2) the Court has mis-directed itself in allowing the amendment, particularly after the lapse of such a long time and has not observed the well-established principles governing the amendment of pleadings. Regarding her first contention she submits that Article 158 of the First Schedule of the Indian Limitation Act, 1908, prescribes a period of 30 days for filing objections to the award and no additional objections can be allowed to be filed after the expiry of the limitation period. According to the learned counsel, allowing a party to add new

grounds of attack would amount to dispensation with the rule of limitation mentioned above. In this connection she relies on a decision of their Lordships of the Supreme Court in *Harish Chandra v. Triloki Singh* (1), and particularly the following passage:—

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“On these authorities, it is contended for the appellants that even if the Tribunal is held to possess a power to order amendments generally under Order 6, rule 17, an order under that rule cannot be made when a new ground or charge is raised, if the application is made beyond the period of limitation prescribed for filing election petitions. The Tribunal sought to get over this difficulty by relying on the principle well-established with reference to amendments under Order 6, rule 17, that the fact that a suit on the claim sought to be raised would be barred on the date of the application would be a material element in deciding whether it should be allowed or not but would not affect the jurisdiction of the Court to grant it in exceptional circumstances as laid down in *Charan Das v. Amir Khan* (2). But this is to ignore the restriction imposed by section 90(2) if that the procedure of the Court under the Code of Civil Procedure in which Order 6, rule 17 is comprised, is to apply subject to the provisions of the Act and the rules, and there being no power conferred on the Tribunal to extend the period of limitation prescribed, an order of amendment permitting a new ground to be raised beyond the time limited by section 81 and rule 119 must contravene those provisions and is, in consequence, beyond the ambit of authority conferred by section 90(2). We are accordingly of opinion that the contention of the appellants on this point is well-founded, and must be accepted as correct.”

In my opinion, this judgment is of no avail to the petitioner. Their Lordships were in that case concerned

(1) A.I.R. 1957 S.C. 444.

(2) 47 Ind. App. 255=A.I.R. 1921 P.C. 50.

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with the provisions of the Representation of the People Act, 1951. Under the said Act the provisions of the Civil Procedure Code, including Order 6, rule 17, were, by section 90(2), made applicable to the trial of election petitions subject to the provisions of the said Act. Section 81 of the said Act provided that an election petition could be filed within the time prescribed. It was in view of the aforesaid two provisions that their Lordships held that the power of the Tribunal to order amendment under Order 6, rule 17, Civil Procedure Code, was limited and circumscribed by section 81 and since the Tribunal had no power to extend the period of limitation prescribed, an order of amendment permitting a new ground to be raised beyond the time limited by section 81 would contravene the said provision. That is not the position here. No doubt, section 41 of the Arbitration Act provides that the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under the Act, subject to the provisions thereof. but there is no provision in the Arbitration Act prescribing a period of limitation for filing of objections to an award. The period of limitation, as already stated, is prescribed by Article 158 of the First Schedule of the Indian Limitation Act, 1908. It, therefore, follows that Order 6, rule 17 of the Code of Civil Procedure was applicable and could be rightly invoked by the petitioner for amending the grounds of attack. The rules applicable to amendment of pleadings in a suit would in this view be fully applicable to amendment of the objections against an award. The fact that a party has acquired a valuable right by lapse of time may be a relevant consideration for allowing or disallowing the amendment but that is again a matter affecting the discretion of the Court rather than its jurisdiction. There is no direct authority on this point under the Arbitration Act, 1940, but in *Bhagwan Din Singh v. Fakir Singh* (3), a case under Schedule II, Civil Procedure Code, it was held that the Court had discretion to allow an additional ground of attack to an award being added by way of amendment after the expiry of the period of limitation prescribed for filing objections. In my opinion, the principle set out therein is applicable to amendment of objections filed under the Arbitration Act, 1940. Regarding the second contention, I am of the view that

no case has been made out for interference in revision. After all the question whether amendment should be allowed or not is a matter primarily within the discretion of the trial Court and I am unable to hold that the discretion has been exercised contrary to any rules of law or justice.

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and others

Kapur. J.

In the result, the petition fails and is dismissed but having regard to the circumstances of the case there will be no order as to costs.

B. R. T.

LETTERS PATENT APPEAL

Before Mehar Singh and R. P. Khosla, JJ.

HAZARI AND OTHERS,—*Appellants.*

versus

NEKI AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 13 of 1965

Pre-emption—Right of—Whether personal to the pre-emptor—Pre-emptor complying with the decree in his favour by depositing the amount in court in time—Vendee filing appeal against the decree—Pre-emptor dying during the pendency of the appeal—Decree—Whether should be set aside—Vendor and his sons brought on record as legal representatives of the pre-emptor—Decree—Whether can be affirmed in their favour.

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Held, that a right of pre-emption is not a personal right; it attaches to the land and runs with the land though it is not a right to or in the land. It does not die with death of the pre-emptor.

Held, that in a case where the pre-emptor obtained a decree in his favour and complied with its terms by depositing the amount in court within the time fixed in the decree, the title to the lands in the pre-emption suit accrued to him from the date of such payment as is expressly provided in Order 20, Rule 14(1)(b) of the Code of Civil Procedure, 1908. The death of the pre-emptor during the pendency of the appeal by the vendee from the decree of pre-emption did not have the effect of divesting the pre-emptor of his ownership of the land which he obtained before his death. At the stage of the appeal the pre-emptor was not enforcing or exercising a right of pre-emption but had already successfully done so and the vendee-appellant could only defeat him on the merits of his defence.