when retrenchment is conceded. In this case, the appellant had never conceded that any compensation for retrenchment could be claimed by the workmen.

(22) In *Workmen of U.P. State Electricity Board* v. *Ganges Valley Electricity Supply Company and others* (2) also, their Lordships of the Supreme Court have ruled that the workmen were entitled to retrenchment compensation from the Company in which they were employed and not from the Board to which the undertaking had been transferred. It may be remembered that the reference was not only against the Board, but against the appellant as well and the Tribunal was competent to award the relief against the party that was found liable to meet the demands of the workmen.

(23) In view of the above discussion, I find no merit in this appeal and would dismiss the same with costs.

N. K. S.

APPELLATE CIVIL

Before A. D. Koshal, J.

M/S DEESONS ENGINEERS COMPANY,—*Appellant*

versus

M/S C. P. ENGINEERING COMPANY,—*Respondent.*

First Appeal From Order No. 258 of 1971

May 12, 1972.

Arbitration Act (X of 1940)—Sections 19 and 20—Court setting aside an award without any further directions—Reference to arbitration—Whether remains alive—Application under section 20—Whether can be made.

Held, that Chapter III of the Arbitration Act, 1940, envisages arbitration in cases where the parties to a dispute are not already in Court with regard thereto by way of a suit. Sub-section (1) of section 20 also lays down in unmistakable terms that it applies to arbitration agreements where the subject-matter thereof has not been taken to a Court through a suit. It is thus clear that an application under section 20 of the Act is not barred where no proceedings before the Court to which it is made are pending with regard to the subject-matter covered by such application. The fact of an award being set aside by the Court 'without any further directions' does

(2) 1966 (1) L.L.J. 730.

not stand in the way of an application being made under section 20. While making an order setting aside an award, the Court has the discretion to supersede the reference or not to do so under section 19 of the Act and in case the Court chooses the latter course of not superseding the reference, it is left alive and an application under section 20 of the Act is not barred. (Paras 6 and 7)

First Appeal from the order of the Court of Shri K. D. Mohan, Senior Sub-Judge, Chandigarh, dated 4th June, 1971, ordering that as the award has been set aside, by the Hon'ble High Court without any further directions, there are no pending proceedings and, therefore, no action can be taken on the second and third applications of the applicants and in the circumstances, no action is called for on any of three applications of the applicants which shall be filed.

H. L. Soni, Advocate, *for the appellant.*

Nemo, *for the respondent.*

ORDER

KOSHAL, J.—On the 13th of September, 1967, the appellant and the respondent, who are both firms, appointed Shri Ram Sarup Sharma, Advocate, Chandigarh, as the sole arbitrator to go into their accounts and determine the amount due from the respondent to the appellant in respect of their dealings with each other. Shri Sharma gave his award on the 6th of February, 1968, declaring that a sum of Rs. 42,224.22 was due to the appellant from the respondent. The award also made the respondent liable for the appellant's costs amounting to Rs. 228.

(2) On the 22nd of February, 1968, the appellant made an application under sections 14(2), 17 and 31(4) of the Arbitration Act, 1940 (hereinafter referred to as the Act) to the Court of the Senior Subordinate Judge, Chandigarh, praying for a direction to the arbitrator to file the said award in Court. On the 1st of January, 1970, the learned Senior Subordinate Judge accepted the application and made the award a rule of the Court. The respondent firm then instituted in this Court an appeal which was accepted by Tuli, J., who held that the arbitrator had not acted fairly, justly or impartially and had given his award in a hurry without looking into the accounts of the parties, and concluded :

> "For the reasons given above, this appeal is accepted and the award of the arbitrator is set aside. In the circumstances, however, I leave the parties to bear their own costs."

(3) On the 28th of August, 1970, the appellant made to the learned Senior Subordinate Judge another application, the relevant paragraphs of which are reproduced below :

> "3. That on appeal against the making of the award the rule of the Court, the Hon'ble High Court, Punjab and Haryana, set aside the award,—*vide* order and judgment dated 11th August, 1970.
>
> 4. That the effect of the order of the High Court above mentioned is that the reference is to be re-adjudicated by the Arbitrator and a fresh award is to be made in accordance with the law.
>
> 5. That with the original arbitration agreement and the other relevant documents touching the subject-matter of dispute between the parties are on the file of the case No. 1 of 1968 and the said file is available in the Hon'ble Court.
>
> 6. That with a view to enabling the arbitrator to proceed afresh with the adjudication of the reference it is necessary that the above mentioned record relating to the submission and the arbitration agreement is sent to the arbitrator.
>
> * * * * * *
> * * * * * *
>
> 8. That the applicant is likely to suffer loss by reason of delay in the adjudication of the matter of the dispute by the arbitrator. So for facilitating an early decision by the arbitrator the sending of the aforesaid file of the case to him would be in the interest of justice.
>
> Prayed accordingly."

By virtue of his order dated the 4th of June, 1971, which is impugned in the present appeal, the learned Senior Subordinate Judge dismissed the application with the following observations :

> "Now that the award has been set aside by the Hon'ble High Court without any further directions, there are no pending proceedings and, therefore, no action can be taken on the second and third applications of the applicants. In these

circumstances, no action is called for on any of the three applications of the applicants which shall be filed. These papers shall be consigned to the record-room."

(4) In view of the provisions of sections 19 and 20 of the Act, this appeal must succeed. Those sections lay down :

"19. Where an award has become void under sub-section (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

20. (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement to be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable."

(5) Section 20 is the only section contained in Chapter III of the Act which is headed thus :

"ARBITRATION WITH INTERVENTION OF A COURT WHERE THERE IS NO SUIT PENDING."

(6) The heading indicates that Chapter III of the Act envisages arbitration in cases where the parties to a dispute are not already in Court with regard thereto by way of a suit. Sub-section (1) of section 20 also lays down in unmistakable terms that it applies to arbitration agreements where the subject-matter thereof has not been taken to a Court through a suit. Further, sub-section (2) of section 20 enjoins that the application made under sub-section (1) shall be numbered and registered as a suit between the parties thereto. It is thus clear that an application under section 20 is not only not barred where no proceedings before the Court to which it is made are pending with regard to the subject-matter covered thereby but is, on the other hand, contemplated where such subject-matter is not covered by a suit already instituted. When the learned Senior Subordinate Judge observed, therefore, that the application made by the appellant on the 28th of August, 1970, could not succeed because there were no proceedings pending with it after this Court had set aside the award, was erroneous.

(7) Again, the fact that the award was set aside by this Court "without any further directions" could not stand in the way of an application under section 20 being made. While making that order this Court had the discretion to supersede the reference or not to do so and it chose the latter course inasmuch as, while setting aside the award, Tuli, J., made no order superseding the reference which was, therefore, left alive so that the appellant was fully entitled to make an application under section 20 of the Act. That is how section 19 of the Act is to be interpreted [*vide Firm Gulab Rai Girdhari Lal and others* v. *Firm Bansi Lal Hansari* (1) approved in *Juggilal Kamlapat* v. *General Fibre Dealers Ltd.* (2)].

(1) A.I.R. 1959 Pb. 102.
(2) A.I.R. 1962 S.C. 1123.

(8) The application dated the 28th of August, 1970, made by the appellant to the Court of the learned Senior Subordinate Judge does no doubt not mention that it was being made under section 20 of the Act but then its contents clearly make out that this was so. It was, in these circumstances, the duty of the learned Senior Subordinate Judge to decide it on merits and not to throw it out on the ground that there were no proceedings pending before him and that this Court had set aside the award without any further directions.

(9) In the result the appeal succeeds and is accepted. The order of the learned Senior Subordinate Judge in so far as it relates to the application dated the 28th of August, 1970, above mentioned, is set aside and the case is remanded to him with a direction that he shall deal with that application on merits. No order as to costs.

B. S. G.

APPELLATE CRIMINAL

Before Ranjit Singh Sarkaria and M. R. Sharma, JJ.

MUNICIPAL COMMITTEE, AMBALA CITY,—*Appellants*

versus

MOHAN LAL —*Respondent.*

Criminal Appeal No. 410 of 1969

May 15, 1972.

Punjab Municipal Act (III of 1911)—Section 121—Bamboos and bamboo sticks kept in a shop of a retail seller—Whether "wood" as used in section 121 and whether they fall within the description of "dangerously inflammable material".

Held, that the word 'wood' used in item No. 5 of section 121 of the Punjab Municipal Act, 1911. procedes the word "charcoal" and has been used in the sense to denote rough logs etc. which are normally used as fuel wood. The fiinished bamboo sticks cannot be desrcibed as wood. The test to be applied in such cases is whether a layman would describe bamboos as wood or not. The words used in a penal statute are to be read in the setting in which they occur and cannot be given a wider meaning so as to enlarge the scope of the offence. Hence bamboos and bamboo sticks kept in a shop of retail seller do not fall within the description of the word 'wood' as used in section 121 of the Act. It is no doubt true that dry bamboos do catch fire easily but the statute does not prohibit the storage of merely inflammable material". The prohibition applies only to the "dengerously