is it necessary to give the reason for excluding the natural heirs of the testator when the bequest is clear and unambiguous and is in favour of a near relative to whom the testator was admittedly obliged. The testator took care to get it mentioned at the end of the will that Madha Singh was the son of her real brother who had been living with her for the previous twelve or thirteen years. This is enough explanation of her desire to make the bequest in favour of Madha Singh.

(13) It is a simple and straightforward will, which is very natural in the circumstances of the case and has been proved to have been executed by Iqbal Kaur of her free will while in sound disposing mind.

(14) After carefully considering all the submissions made by the learned counsel and the entire facts and circumstances of the case, I am, therefore, unable to hold contrary to what has been found by both the Courts below on issue No. 2. No other point having been argued in this case, the appeal fails and is dismissed. I do not, however, make any order as to costs of this appeal.

R.N.M.

APPELLATE CIVIL

Before Prem Chand Pandit and H. R. Sodhi, JJ.

HARDYAL,—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

First Appeal from Order No. 120 of 1962

November 18, 1969

Arbitration Act (X of 1940)—Sections 3, 28, 30 and First Schedule, para 3—Evidence Act (I of 1872)— Section 115—Award given by the arbitrator after prescribed time—Such award—Whether a nullity—Parties to the arbitration proceedings raising no objection regarding time of the award before the arbitrator and participating in the proceedings after the prescribed time—Such parties—Whether estopped to challenge the validity of the award—Objection raised before the Court regarding the invalidity of the award for its having been made beyond the prescribed time—Court dismissing the objection—Whether deemed to have enlarged the time for making the award.

Held, an award made after the expiry of the period fixed by law is an invalid award but not a nullity. A void award which is a nullity cannot, be equated with an invalid award, and the distinction between the two must always be borne in mind. What is intended by holding the award to be invalid in such a situation is that for all intents and purposes it cannot be operative or acted upon under the Act. A decree, order, award or any instrument which is a nullity need not be set aside as law will not take notice of them. An invalid award is only voidable and can be set aside at the instance of any party thereto, by an application under section 30 of the Arbitration Act, 1940. Cases may arise when an award is void *ab initio* or, in other words, a nullity, as for instance where the agreement which led to the reference is itself illegal or void or the arbitrators have not been validly appointed. In such a case, there is initial want of jurisdiction in the arbitrators and the proceedings taken or the award made by them will in law be void and no rule of law enables a civil Court to cure such a defect. The distinction is all the more necessary since invalidity of an award only furnishes a ground for setting aside the same. In case of an award given beyond the fixed time, if a Court chooses to exercise its discretion and extend the time, the invalid award is validated from the date it was made and is a good award whereas any award which is a nullity cannot be validated. (Para 6).

Held, that a party to an arbitration agreement is not estopped from raising an objection as to the validity of the award on the ground of its having been made after the expiry of the period of four months as fixed by rule 3 Schedule 1 of the Act, or that as extended from time to time by the Court because of the objector having participated in the proceedings before the arbitrator and raised no such objection there. It depends upon facts and circumstances of each case and the Court has to decide in the exercise of a sound judicial discretion vested in it by section 28(2) of the Act, whether to enlarge the time for making the award after the same had been made beyond time. In the exercise of such discretion it can legitimately take into consideration the conduct of the parties who participated in the proceedings before the arbitrator without an objection. There may be cases where the party not objecting before the arbitrator can satisfy the Court that these were good reasons for not objecting or that in spite of his conduct it is a fit case for setting aside the award. (Para 15)

Held, that from the mere fact that a Court has dismissed an objection about the invalidity of the award on the ground of its not having been made in time, it does not follow that the time for making the award must be deemed to have been extended under section 28(2) of the Act. The matter of extension of time has to be decided by the exercise of sound judicial discretion after giving a proper opportunity to the parties to give explanation and satisfy the Court, by evidence or otherwise, as to the circumstances which led to the delay and enable it to decide as to whether it was a fit case where the delay be condoned and the time for making the award enlarged. (Para 16)

Case referred by the Hon'ble the Chief Justice Mr. Mehar Singh, on 13th February, 1968 to a Larger Bench for decision of important questions of Law. The Division Bench consisting of the Hon'ble Mr. Justice Prem Chand Pandit and The Hon'ble Mr. Justice H. R. Sodhi, decided the case finally on 18th November, 1969.

First Appeal from order of the Court of Shri Joginder Singh Mandher, Senior Subordinate Judge, Hoshiarpur, dated 18th April, 1962, by which application under section 30 of Arbitration Act was dismissed.

DAULAT RAM MANCHANDA, AND CH. ROOP CHAND, ADVOCATES, for the appellant.

G. R. MAJITHIA, DEPUTY ADVOCATE-GENERAL (PUNJAB) WITH MR. R. S. MONGIA, ADVOCATE, for the respondent.

JUDGMENT

Sodhi J.—This first appeal from order has come before us on a reference made by my Lord the Chief Justice. The two questions of law which require decision, are as follows :—

(1) When the parties in an arbitration case continue without objection participating in proceedings before the arbitrator, who gives the award after the time fixed for making the award, are they estopped from raising an objection subsequently as to the validity of the award on the ground that it had been made after the prescribed time ?

(2) If an objection as to the invalidity of the award on the ground of its having been made after the expiry of the period fixed for the same is taken before the Civil Court in order to get the award set aside under section 30 of the Arbitration Act, 1940, and the objection is not accepted by the Court, can it be said that the Court must be deemed to have enlarged the time for making the award?

(2) The facts which led to the reference are not in dispute and may be stated in a narrow compass. Hardyal appellant entered on 4th January, 1958 into a contract with the State of Punjab, Public Works Department, Buildings and Roads Branch, for the construction of some bridges and culverts on the Mukerian-Naushehra road. In the written agreement between the parties there was an arbitration clause which provided that the disputes, if

any, would be referred for arbitration to the Superintending Engineer, Public Works Department, (Buildings and Roads), Jullundur Circle, who would be the sole arbitrator. Some disputes did arise as a result whereof the appellant sent a notice, Exhibit C. 2, on 7th January, 1960, to the Superintending Engineering calling upon him to accept his claim to the tune of Rs. 7,568 and give his award accordingly. It is not necessary to make a mention of the details of his claim and suffice to state that the appellant claimed this amount as compensation because of the Sub-Divisional Officer having not demolished certain bridge which according to the appellant had been constructed in accordance with the terms of the agreement. Since the appellant had also been directed to stop his work the total claim for compensation, including that for demolition of the bridge, as made by him was for the said amount. The proceedings commenced before the arbitrator and the first date of hearing was 20th February, 1961. It is not disputed that both the parties continued taking part in the proceedings which ultimately ended in the impugned award dated 28th April, 1961. The claim of the appellant was rejected in *toto* by the arbitrator. The appellant then presented an application on 1st June, 1961, in the court of Senior Subordinate Judge, Hoshiarpur, raising certain objections under section 30 of the Arbitration Act, 1940 (hereinafter called the Act), and prayed that the award made by the Superintending Engineer on 28th April, 1961, be set aside. The objections raised were:—

(i) that the arbitrator had misconducted himself and not allowed the claim of the objector even in regard to the items admitted by the department;

(ii) that reasonable opportunity was not afforded to the objector to adduce evidence;

(iii) that the award was against natural justice ; and

(iv) that the award was given after inordinate delay and was otherwise also invalid.

The Senior Subordinate Judge, Hoshiarpur, dismissed the objections by his order dated the 18th April, 1962, thereby upholding the award. The objection regarding delay in making the award was repelled on the short ground that the appellant had participated in the proceedings throughout upto the announcement of the award and was not able to convince the Court as to how delay in such

circumstances could by itself be enough for setting aside the award. It is not necessary to state the reasons for rejecting other objections since the same are not relevant for the purposes of the present reference. The objector Hardyal then preferred an appeal in this Court which came up for hearing before my Lord the Chief Justice who, because of the importance of the questions involved and the conflict of judicial opinion in regard to question No. (1), referred the case for decision by a Division Bench.

(3) In order to answer the questions refered to us it is necessary first to determine what is the time within which an award must be given and if the award is not made within such a time, who has the power to extend it. The relevant provisions in this connection are contained in sections 3 and 28 of the Act read with para 3 of the First Schedule appended thereto. These provisions are reproduced below *in extenso* for facility of reference:—

> "3. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.
>
> 28. (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not enlarge from time to time the time for making the award.
>
> (2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."
>
> The First Schedule.
>
> (3) The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow."

A perusal of the above-mentioned provisions of law leaves no manner of doubt that it is open to the parties to an arbitration agreement to fix a time within which the arbitrator must give an award but it has to be so stated in the arbitration agreement itself.

If no such time has been specified by the parties in the arbitration agreement then by virtue of the operation of section 3 read with para 3 of the First Schedule, the award must be given within four months of the arbitrator entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. The power to extend time has been given to the Court by virtue of section 28(1) and this power can be exercised even after the award has been made. Marginal note to this section is in the following terms :—

"Power to Court only to enlarge time for making award."

I have made reference to the marginal note to dispel any doubt about the intention of the Legislature which obviously is that it is the Court alone which can extend time whether the award has been made or not. There is only one contingency envisaged in section 28(2) when an arbitrator or umpire can also extend the time but that is when a provision to that effect has been made in the arbitration agreement itself, and it specifically provides that the arbitrator or umpire may enlarge time for making the award with the consent of all the parties to the agreement. Except in such a contingency it is the Court and Court alone that can extend time for making an award.

(4) The policy of law has always been that awards are given as expeditiously as possible and in furtherance of this policy it is provided by the Act that time cannot be extended by the parties or even by the arbitrators and it is the Court which must apply its mind and agree to the extension of time. If a Court finds that the making of the award is being unnecessarily delayed whether for any fault of the arbitrators or the parties, it can exercise its discretion and supersede the arbitration altogether thereby leaving it to the parties to have recourse to proceedings by way of a regular suit. It is not correct to say that the parties, by mutual consent whether expressed in writing or given orally, when the arbitrators are seized of the proceedings can have the time enlarged without the intervention of the Court. There is one and only one eventuality as referred to in sub-section (2) of section 28, which is in the nature of a proviso to that section when the arbitrators or umpire can enlarge the time with the consent of the parties to the agreement and that is where a provision to that effect appears in the arbitration agreement.

(5) The next question that arises for consideration is as to whether an award which has not been made in time is invalid and liable to be set aside under section 30. Ch. Roop Chand, learned counsel for the appellant, has invited our attention to a majority judgment of their Lordships of the Supreme Court in *Hari Shanker Lal* v. *Shambhu Nath and others*, (1), in support of the contention that the award not made in time is invalid. There cannot be a dispute that the time can be extended even after the award has been factually made. In *Hari Shanker Lal's case*, (1) their Lordships were, of course, dealing with the question as to when an arbitrator can be said to have entered on the reference and from which point of time the period of four months is to be computed. We are not, in this case, concerned with that aspect of the matter but some of the observations of their Lordships go to show that an award not made within four months from whatever may be the starting point for computing that period is made by an authority which had become *functus officio*. The expression *functus officio* implies that the arbitrator was no longer seized of the reference when he made the award and could not exercise any power or jurisdiction in that behalf.

(6) The argument that the award made after the expiry of the period allowed by the Court is invalid is not without force. It is not possible to agree with the learned counsel that it is a nullity or void *ab initio* as held by a learned Single Judge of the Lahore High Court *in Zarif* v. *Gharib Ullah and another* (2). Their Lordships of the Supreme Court have only observed that the award not made in time is invalid, given by a person who had become *functus officio*, but it is not intended to be laid down that the award is void *ab initio*. A void award which is a nullity cannot, be equated with an invalid award, and the distinction between the two must always be borne in mind. What is intended by holding the award to be invalid in such a situation is that for all intents and purposes, it cannot be operative or acted upon under the Act. A decree, order, award or any instrument which is a nullity need not be set aside as law will not take notice of them. An invalid award is only voidable and can be set aside at the instance of any party thereto, by an application under section 30 of the Arbitration Act. Cases may arise when an award is void *ab*

(1) A.I.R. 1962 S.C. 78.
(2) 55 Ind. Cas. 221.

initio or, in other words, a nullity, as for instance where the agreement which led to the reference is itself illegal or void or the arbitrators have not been validly appointed. In such a case, there is initial want of jurisdiction in the arbitrators and the proceedings taken or the award made by them will in law be void and no rule of law enables a civil Court to cure such a defect. The distinction is all the more necessary since invalidity of an award only furnishes a ground for setting aside the same. In case of an award given beyond the fixed time, if a Court chooses to exercise its discretion and extend the time, the invalid award is validated from the date it was made and is a good award whereas any award which is a nullity cannot be validated. There may be circumstances where the Court may refuse to set aside an award even when it is given beyond the time so fixed, and it can do so by condoning the delay under section 28(1) of the Act. A civil Court has, in this regard, to exercise its judicial discretion on the facts and circumstances of each case. In order to support his contention that the award given after the expiry of the period fixed by law is void, the learned counsel also relied on a Full Bench decision of the Allahabad High Court in *Ibrahim Ali and another* v. *Mohsin Ali,* (3). The learned Judges held there that if the period fixed for making the award has expired before the award is made, the arbitrators have no longer seisin of the reference and they are *functus officio* and they cease to have any more power to make an award than the man in the street, and that any award made by them would be void *ab initio.* This was a case decided under the old law and not under the Indian Arbitration Act, 1940, which gives a power to the Court to enlarge time for making an award even after the same has actually been made.

(7) The other case referred to by the learned counsel in *Arb* *Hindusthan Steel* v. *Appejay Pr. Ltd.,* (4), which also is not of much help to him. The question before the learned Judge of the Calcutta High Court was as to whether a Civil Court could revoke the authority of an arbitrator when he had become *functus officio* because of the expiry of four months in terms of rule 3 of Schedule 1 of the Act read with section 3 thereof. The scope of section 28 in the matter of condoning delay and extending time after the expiry of the same was not before the learned Judge and the short matter that arose for consideration was only as to whether the authority of the arbitra-

(3) I.L.R. 18 All. 422.
(4) A.I.R. 1967 Cal. 291.

tor could be revoked when, under the law, he could no longer be deemed to function. It was in these circumstances that it was held by the learned Judge that no question of revocation would arise. A reference has also been made by the learned counsel to *I.G.H. Ariff and others* v. *Bengal Silk Mills Ltd. and another,* (5), where the validity of the award had been challenged on various grounds one of them being that the award had been made after the time fixed had expired. The view taken was that the award was bad on this score. It has not been held there that the award is to be treated as void *ab initio,* and no help can, therefore, be drawn from this case. The matter came up before a Full Bench of the Patna High Court in the case reported as *M/s. Bokaro and Ramgur Ltd.* v. *Dr. Prasun Kumar Banerjee,* (6), where Untwalia, J., who delivered the judgment of the Court, observed that under the Act, an award made beyond time can never be held to be invalid or void merely on that ground. It is true that section 28 empowers the Court to extend time even after the making of the award but with all respect to the learned Judges constituting the Full Bench, we cannot persuade ourselves to agree with them that an award made beyond time is not invalid though it may not be void. A distinction between an invalid and a void award does not seem to have been kept in mind. The mere fact that the Court can extend time after the making of the award goes to show only this much that the award is not valid till the time is extended and the delay condoned. No doubt it is not so provided in the Act as was to be found in the Code of Civil Procedure of 1882 that an award made beyond time is a nullity, nor as in the Code of 1908, it is a ground for setting aside the award that the same was not made in time, but once we hold that it is a statutory requirement of law that the award must be made within the time fixed or extended by the Court from time to time and there being no power in any one except the Court to extend the time except in a case covered by sub-section (2) of section 28, it follows as a necessary corollary that after the expiry of the prescribed time an arbitrator becomes *functus officio* and the award made by him cannot be regarded as a valid award. It was not necessary to incorporate in the Act any such provision as the award, if invalid, can be set aside under section 30. The learned Judges of the Patna High Court in *Bakaro's case* (6) tried to distinguish the Supreme Court judgment in *Hari Shanker Lal's case* (1), on two grounds, firstly that it was not clear whether the parties objecting to

(5) A.I.R. 1949 Cal. 350.

(6) A.I.R. 1968 Pat. 150.

the award being made the rule of the Court participated in proceedings before the award and, secondly that the point that fell for decision before the Supreme Court and actually decided was that a notice to act given in the circumstances of that case after the expiry of four months from the date the arbitrators entered on the reference could not give a fresh starting point for computation of the period of four months under clause 3 of Schedule I to the Act. With all respect, we do not find any jurisdiction for the distinction sought to be brought about as above. Subha Rao, J., as he then was observed that "the arbitrators become *functus officio* unless the period is extended by Court under section 28 of the Act." According to his Lordship, "if time was not extended by Court, the document described as an award would be treated as *non est*".

(8) It may be that the Court can extend time but certainly the award is *non est* till validated by an order of the Court and before such validation by condonation of the delay, the award is invalid. We must, therefore, hold that an award made after the expiry of the period fixed by law is an invalid award but not a nullity.

(9) Now the question to be next determined is whether a party to arbitration proceedings who has continued participating before the arbitrator without an objection as to the time fixed for making the award having expired, is estopped from raising an objection about the validity of the award when the same is sought to be made a rule of the Court. The duty to give an award in time is imposed by law on the arbitrators and not on the parties. Section 3 read with rule 3 of the First Schedule provides that the award must be given by the arbitrators within four months after entering on the reference or after their having been called upon to act in the manner laid down in rule 3 unless a different intention appears from the original arbitration agreement. The action of the arbitrator in not giving the award in time cannot be defended on the ground that he was allowed to continue with arbitration proceedings without an objection by either of the parties. Any such position will irresistibly lead us to the conclusion that the time which, under the law, could be extended only by an order of the Court passed under section 28(1) or by the arbitrators or umpire under sub-section (2) and that too if the original agreement of arbitration so provided can be got extended by the parties themselves without the intervention of the Court.

(10) A plain and bare reading of section 3 and rule 3 of the First Schedule leaves no room for doubt that a different intention

has to be stated in the agreement itself and not that such an intention can be manifested in the course of proceedings before the arbitrator either by a mutual consent in writing or by conduct of the parties. The statute has, in order to secure expeditious decisions by arbitrators, imposed a positive duty upon them to make the award within the period of four months as referred to above or such further period as it may be extended from time to time. To invoke the doctrine of estoppel will render the whole scheme of the Act nugatory and lead to that being done which is clearly prohibited by law. The mere fact that the parties could have originally fixed larger time than four months does not warrant the assumption that they can also be permitted to do so afterwards either by an agreement in writing or by their conduct. The rule of estoppel is primarily one of the rules of evidence, the underlying principle of which is that a party to litigation which has by his own declaration, act or omission, intentionally caused or permitted the other party to the same litigation to believe a thing to be true and act upon such belief will not be later allowed to change his position and say to the contrary. In arbitration proceedings there are arbitrators as well who have a duty to perform and with all respect to the contrary view held by some Courts, we cannot accept contention that the arbitrator has been misled because of the failure of a party to raise an objection and as a result whereof he continued with the arbitration proceedings in spite of the period of four months being fixed by law. It cannot also be said that because of the omission of one party to raise an objection, the other party to the proceedings has been led to believe anything to be true and to act upon such belief. The equitable principles of waiver and acquiescence are pressed into service in appropriate cases when there is a scope for applying the same. Where the law enjoins the arbitrators to make an award within a prescribed time, though it may be prescribed either directly by a statute or by being made an implied condition of the agreement because of a statute, the fact remains that it is a requirement of law and the award must be made within the time so prescribed. An objection, whether taken by a party or not, will, in our opinion, make no difference. The award so made being invalid can of course be set aside under section 30 of the Act. The Court in determining the question as to whether the award be set aside or not may take into consideration the fact that the party who is now seeking to avoid it, participated in the proceedings without an objection. The conduct of the parties is, thus, a relevant matter to be considered in deciding the question of extension

of time under section 28(1) of the Act, and this appears to be one of the reasons why the legislature has provided in the said section that time can be extended by the Court even after the award has been made. To say that the rule of estoppel operates and the Court without applying its mind as to whether it should extend time or not must straightaway dismiss the objection of a party relating to the invalidity of the award which was made beyond time, is, in our opinion, not the correct appreciation of the legal position. It will depend on the facts and circumstances of each case whether the Court should set aside an invalid award which is invalid because of its having been made beyond time.

(11) When we actually find that the law precludes the parties from extending time unless there is a specific provision in the original arbitration agreement, it will be contrary to all established canons of interpretation to hold that the same result can be brought about by the conduct of the parties. It is a well established rule of law that there can be no estoppel against a statute. It is true as observed by the Full Bench in *M/s. Bakaro's case* (6) that the matter of time to be fixed for making the award was initially one of agreement between the parties but it does not follow that in the face of clear prohibition by law that the time fixed under rule 3 of the Schedule can only be extended by the Court and not by the parties at any stage, it still remains a matter of agreement and the rule of estoppel operates. There is no gain saying the fact that the Act has injuncted the arbitrator to give an award within the prescribed period of four months unless the same is extended by Court or the parties themselves had provided in their initial agreement of reference, that in a certain situation time could be extended. In the absence of any such provision in the arbitration agreement, the only plain meaning is that it is a statutory requirement that the award has to be made within the period of four months as enjoined in rule 3 of Schedule I of the Act. To put the same thing differently, an arbitrator has no jurisdiction to make an award after the fixed time. The well-known proposition of law that there can be no estoppel against a statute means that no estoppel can be pleaded against the direction, injunction and prohibition of any statutory law and the right which accrues to a party by reason of any such direction, injunction and prohibition, cannot be denied to him by invoking the doctrine of estoppel. The expression estoppel against statute has been explained in Article 345 of Halsbury's Laws of England, Third Edition, Volume 15, in the following terms :—

> "The doctrine of estoppel cannot be invoked to render valid a transanction which the legislature has, on grounds of

general public policy, enacted shall be invalid, or to give the court a jurisdiction which is denied to it by statute, or to oust the statutory jurisdiction of the court under an enactment which precludes the parties contracting out of its provisions. Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of this duty cannot by estoppel be prevented from exercising his statutory powers."

(12) We are of the considered opinion that an award made beyond time being invalid, the parties are not estopped by their conduct from challenging the award on the ground that it was made beyond time because of their having taken part in the proceedings before the arbitrator after the expiry of the prescribed period. A similar view was taken by a Division Bench of Allahabad High Court in *Kamta Pd. Nigam* v. *Ram Dayal and others* (7) and a Bench of the Patna High Court in *Lakhmir Singh* v. *Union of India and another* (8). A different view, of course, had been taken in an earlier case, *Patto Kumari* v. *Upendra Nath* (9). That case was rightly distinguished in *Kamta Pd. Nigam's case* (7) apart from other points of distinction on the ground that the decision there was based on the provisions of Schedule 2 of the Civil Procedure Code, 1908, which contained no provision analogous to para 3 of Schedule 1 of the Arbitration Act, 1940. The learned Judges in *Patto Kumari's case* (9) were of the view that rule 8 of the Schedule enabling the Court to enlarge time from time to time was not mandatory and imperative and that circumstances could arise where from the conduct of the parties, an inference could fairly be drawn that the parties intended and impliedly agreed to an extension of time. The judgment in *Patto Kumari's case* (9) proceeds on the assumption that it was open to the parties to agree at any stage to the enlargement of time which situation is not permitted under the Act. A Full Bench of the same High Court in *M/s. Bakaro's case* (6) did not approve of the Bench decision in *Lakhmir Singh's case* (8) but accepted the view taken in *Patto Kumari's case* (9). What seems to have weighed with the Full Bench was that in the Code of Civil Procedure, 1882, it had been provided that the award made beyond time fixed by the Court

(7) A.I.R. 1951 All. 711.
(8) A.I.R. 1957 Pat. 633.
(9) A.I.R. 1919 Pat. 93.

would be invalid while in the Code of Civil Procedure, 1908, this provision had been deleted and in the Act it was only made a ground for setting aside the award. Support is also sought from the statement of law as given in Article 95 of Halsbury's Laws of England Third Edition, Volume II, a relevant part whereof runs as under:—

> "95. Time for making award.
>
> The parties to an arbitration agreement may expressly consent to the time for making the award being enlarged, but the consent should be given in writing, because an enlargement of time by consent of the parties amounts in law to a fresh agreement; and, therefore, unless the consent be in writing, the agreement becomes an oral submission, and the provisions of the Arbitration Act, 1940, cease to be applicable thereto.
>
> The parties to an arbitration agreement may by their conduct be precluded from objecting to the award on the ground that it was made out of time, although they have given no express consent to the time for making the award being enlarged."

At the foot-note, reference has also been made to *Darnley (Earl)* v. *London, Chatham and Dover Rail Co.* (10) that taking up an award made out of time did not preclude the party taking it up from objecting that it was made out of time. The controversy in that case mainly rested on the award that had been made beyond time and the argument raised was that the defendant company was precluded by its conduct from objecting to the validity of the award. This argument was repelled by Knight Bruce J., though the whole matter rested on the terms of article 10 of the agreement only and there was no statutory rule involved therein. In *Tyreman* v. *Smith* (11), relied upon by the Full Bench, it was conceded before Lord Campbell C.J. that the award would be good if there were consents in writing. It was in these circumstances that it was held that the plaintiff was estopped from saying that there was not such a written consent as was essential to the statutable authority. In other words, if there were

(10) (1887) L.R. 2 H.L. 43.
(11) 119 E.R. 1033.

written consent by the parties, there could be no objection to the award having been made beyond time. In another case reported as *Palmer* v. *Metropolitan Rly. Co.* (12), the objection taken was that the award made after the expiry of the fixed period was a nullity. Mellor, J. held there that "the arbitration clauses being introduced for the benefit of the parties, they are at liberty to renounce at their pleasure the advantage which those clauses afford". On the other hand, we find that a different view has been taken in *Darnley (Earl's) case* (10).

(13) It is not safe to refer to decisions of English Courts in view of the interpretation that we have placed on the relevant rule of law as contained in the Act. We must not be guided by the observations that arbitration clauses being for the benefit of the parties can be renounced at their pleasure. This approach may be sustained in ordinary agreements but arbitration agreements have been viewed by law differently it being intended that awards must be made expeditiously and the parties be not allowed to go on prolonging proceedings without the intervention of the Court. The Act has expressly laid down that the award must be made within four months or such other time as extended by the Court and the parties cannot extend the same even by subsequent consent in writing unless there was a provision in the original agreement itself. The reason for allowing time to be extended by the agreement of the parties is that such agreement may amount to a fresh reference, but in the instant case, it has rightly not been contended before us that by applying the rule of estoppel, a fresh reference should be deemed to have been made.

(14) In *M/s. Bakaro's case* (6), the learned Judges have also approved of a Single Bench decision in *Seth Shambhu Nath* v. *Sm. Surja Devi and others* (13). A Division Bench judgment of the same High Court does not seem to have been brought to the notice of the learned Single Judge and there is not much discussion of the provisions of the Arbitration Act. The learned Judge relied upon the general principles under the law of contract and held that a condition in an arbitration agreement about the time for making the award is not a statutory condition and it is like any other conditions which can be waived by the parties. In all respect to the learned Judge, his reasoning cannot be appreciated. After a refernce has been made to an arbitrator, the

(12) (1862) 31 LJQB 259.
(13) A.I.R. 1961 All. 180.

conditions of the arbitration agreement cannot be waived from time to time like any other ordinary agreement, when we find that the statute enjoins that the award must be given within a prescribed time unless in the original agreement the parties have reserved to themselves a right to get the time extended by the arbitrator. In the absence of any such reservation the power to extend time is only with the Court and the parties cannot circumvent that provision of law by their own conduct. Shamsher Bahadur, J. in *Sowaran Singh* v. *Municipal Committee, Pathankot and another* (14), relying on the Supreme Court judgment in *Hari Shanker Lal's case* (1), did not follow *Patto Kumari's case* (9) and held that the language of rule 3 of the Schedule read with section 8 of the Act makes it clear beyond doubt that the scope for administering law relating to arbitration on the basis of equity and good conscience is ruled out. We agree with the learned Judge. There cannot indeed be any conferment of the jurisdiction on the arbitrator by consent of the parties, express or implied.

(15) The answer to the first question, therefore, is in the negative and to the effect that a party to an arbitration agreement is not estopped from raising an objection as to the validity of the award on the ground of its having been made after the expiry of the period of four months as fixed by rule 3 Schedule 1 of the Act, or extended from time to time by the Court because of the objector having participated in the proceedings before the arbitrator and raised no such objection there. It depends upon facts and circumstances of each case and the Court has to decide in the exercise of a sound judicial discretion vested in it by section 28(2) of the Act, whether to enlarge the time for making the award after the same had been beyond time. In the exercise of such discretion it can legitimately take into consideration the conduct of the parties who participated in the proceedings before the arbitrator without an objection. There may be cases where the party not objecting before the arbitrator can satisfy the Court that there were good reasons for not objecting or that in spite of his conduct it is a fit case for setting aside the award.

(16) As regards the second question, the answer follows as a corollary to the one given above and must similarly be answered in the negative. From the mere fact that a Court has dismissed an objection about the invalidity of the award on the ground of its not

(14) A.I.R. 1963 Pb. 427.

having been made in time, it does not follow that the time for making the award must be deemed to have been extended under section 28(2) of the Act. The matter of extension of time has to be decided by the exercise of sound judicial discretion after giving a proper opportunity to the parties to give explanation and satisfy the Court, by evidence or otherwise, as to the circumstances which led to the delay and enable it to decide as to whether it was a fit case where the delay be condoned and the time for making the award enlarged.

(17) There is no other point to be decided in this appeal which, in view of our answers to the questions of law referred to above, must be allowed, and the order of the Senior Subordinate Judge set aside. The trial Court is directed to dispose of the case in the light of the observation made above. There is no order as to costs in this Court.

Pandit, J.—I agree to the order proposed by my learned brother.

R.N.M.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

KASHMIRI LAL,—*Appellant.*

versus

CHUHAR RAM,—*Respondent.*

Letters Patent Appeal No. 71 of 1965

November 19, 1969

The Punjab Pre-emption Act (I of 1913)—Sections 15(1)(a) Fourthly and 15(1)(c) Fourthly—Suit for pre-emption on the ground of tenancy—Plaintiff—pre-emptor—Whether has to prove tenancy only on the date of sale.

Held, that under sections 15(1)(a) Fourthly and 15(1)(c) Fourthly of the Punjab Pre-emption Act, 1913, when the suit for pre-emption is filed on the ground of tenancy, the plaintiff is required to prove only that he was a tenant under the vendor on the date of the sale and not at any time thereafter, as he could not remain the tenant under the vendor after the vendor had sold the suit property. In the case of a tenant, it is not necessary to prove that he continued to be tenant of the property till the filing of the suit and on the date of decree. (Para 7)