Des Raj and others v. Hargurdial Singh and others

Mehar Singh, J.

show that the reading and interpretation of the mortgage deed by the Courts below is not correct. This is so. But it has already been shown that the terms of the mortgage deed are more than clear enough to support the position that has been urged on behalf of those defendants. In a case like this such an onus can only be discharged by the force of argument and in no other way. Here is a document and there are the contents of the document and they are to be read and interpreted. There is no other evidence which goes to support the conclusion one way or the other. So that in a case like this all that the appellants can do is to urge arguments in support of their case and show that the document has been not properly interpreted and read in the Courts below. To my mind, in this they have succeeded.

The result is that the start of limitation under article 132 in this case is the date of mortgage deed and the acknowledgment of the mortgage made by defendant No. 1. was some time after the period of limitation had expired. The plaintiff cannot have benefit of that acknowledgment. The suit is thus barred by time.

The appeal is accepted and the suit of the plaintiff is dismissed, but, in the circumstances of the case, the parties are left to their own costs throughout.

B.R.T.

APPELLATE CIVIL

Before Bhandari, C. J. and Dulat, J.

FIRM GULAB RAI-GIRDHARI LAL AND OTHERS,—*Appellants*

versus

FIRM BANSI LAL-HANS RAJ,—*Respondents*

First Appeal From Order No. 71 of 1953.

1958

Sept. 29th

Arbitration Act (X of 1940)—Section 19—Order setting aside an award—Whether must be deemed to be the order

superseding the arbitration—Words and phrases—May—meaning of.

Held, that section 19 of the Arbitration Act, 1940, provides that when an award has become void or has been set aside the Court *may* supersede the reference. The expression "may" is usually only permissive or discretionary and not mandatory or prohibitory. It is a word of permission rather than of command and it has been used in that sense in section 19. To construe it in any other manner would defeat the very object of the Legislature which doubtless was to confer full discretion on the Court to say in each particular case whether the reference should or should not be superseded. When a Court making an order under section 19 does not expressly supersede the reference and direct that the arbitration agreement shall cease to have effect, it must be deemed to have declined to exercise the power.

Held, that where the court held the appointment of a sole arbitrator to be against the provisions of the agreement of reference and that the award made by him was not binding on the parties, he merely set aside the award and did not supersede the reference. In the absence of a specific order superseding the reference, it was within the competence of his successor to direct that the matters in controversy between the parties should be referred to arbitration in accordance with the terms of the agreement.

Abdul Hakim Khan v. *Chairman, Lahore Improvement Trust* (1) relied on.

Case referred by Hon'ble Mr. Justice J. L. Kapur on 22nd July, 1954, to a Division Bench for decision of the legal point involved in the case and finally decided by a Division Bench consisting of Hon'ble the Chief Justice, Mr. A. N. Bhandari and Hon'ble Mr. Justice S. S. Dulat, on 29th September, 1958.

First appeal from the order of Shri Sham Lal Aggarwal, Senior Sub-Judge, Jullundur, dated the 27th February, 1953, holding that the agreement to refer the dispute to arbitrators was valid. Claim:—Application under Section 20 of the Indian, Arbitration Act by Firm Bansi Lal-Hans Raj against Gulab Rai-Girdhari Lal for issuing notice to the respondents and making a reference to the arbitrators to settle the matters in dispute between the parties.

HAR PARSHAD and R. K. AGGARWAL, for Appellants.

H. R. SODHI and M. M. PUNCHHI, for Respondents.

(1) A.I.R. 1950 Lah. 32

JUDGMENT

Bhandari, C. J.

BHANDARI, C. J.—This appeal raises the question whether an order by which a Court sets aside an award under the provisions of Arbitration Act, 1940, must be deemed to be an order superseding the arbitration.

The parties to this litigation are the firm Bansi Lal-Hans Raj petitioner and the firm Gulab Rai-Girdhari Lal respondent.

According to the terms of an arbitration agreement all matters in constroversy between the parties were to be referred to the arbitration of two arbitrators, one for the petitioners and the other for the respondents. The petitioners, however, appointed only one arbitrator, namely Pandit Karam Chand, who was to act on their behalf as well as on behalf of the respondents. On the 3rd October, 1950, this arbitrator filed an award in the Court of the Senior Sub-Judge at Jullundur and requested the Court to make the award the rule of the Court. Shri Gulal Chand Jain, Senior Sub-Judge, declined to accede to this request as he was of the opinion that the appointment of Pandit Karam Chand, as the sole arbitrator was contrary to the provisions of the agreement of reference and consequently that the award made by him was not binding upon the parties. This was on the 6th August, 1951.

Two days later that is on the 8th August, 1951, the petitioner presented an application under section 20 of the Arbitration Act, 1940, in which he prayed for the issue of a notice to the respondents to show cause why the matters in controversy between the parties should not be referred to arbitration in accordance with the provisions of

clause 7 of the arbitration agreement. This application came up for consideration before Shri Sham Lal, Senior Sub-Judge. The latter held that his predecessor had merely set aside the award and has not superseded the reference and consequently that it was within the power of the parties to present a second application under section 20 of the Arbitration Act. He accordingly made an order calling upon the parties to submit the names of the persons whom they wanted to appoint as arbitrators. The respondents are dissatisfied with this order and have come to this Court in appeal.

Section 19 of the Arbitration Act is in the following terms:—

> "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."

This section provides that when an award has become void or has been set aside the Court *may* supersede the reference. The expression "may" is usually only permissive or discretionary and not mandatory or prohibitory. It is a word of permission rather than of command and it seems to me that it has been used in that sense in section 19. To construe it in any other manner would, in my opinion, defeat the very object of the Legislature which doubtless was to confer full discretion on the Court to say in each particular case whether the reference should or should not be superseded. I am thus inclined to concur in the view taken in

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Abdul Hakim Khan v.*Chairman, Lahore Improvement Trust* (1), that when a Court making an order under section 19 does not expressly supersede the reference and direct that the arbitration agreement shall cease to have effect, it must be deemed to have declined to exercise the power. A contrary view has been taken in certain other cases, but it must be remembered that those cases relate to the interpretation of Paragraph 15(2) of the Second Schedule to the Code of Civil Procedure, which declared that where an award becomes void or is set aside, the Court *shall* make an order superseding the arbitration.

When the Senior Sub-Judge declared on the 6th August, 1951, that the appoinment of Karam Chand as sole arbitrator was against the provisions of the agreement of reference and that the award made by him was not binding on the parties, he merely set aside the award and did not supersede the reference. In the absence of a specific order superseding the reference, it seems to me that it was within the competence of his successor to direct that the matters in controversy between the parties should be referred to arbitration in accordance with the terms of the agreement.

For these reasons I would uphold the order of the learned Senior Sub-Judge, dated the 27th February, 1953, and dismiss the appeal. The parties will be left to bear their own costs.

Dulat, J.

DULAT, J.—I agree.

B.R.T.

(1) A.I.R. 1950 Lah. 32