

Sardool Singh Vs. Hari Singh and ors.

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Court : Punjab and Haryana

Decided On : Nov-08-1966

Reported in : AIR1968P& H204

Judge : Mehar Singh, C.J.,; Harbans Singh and; D.K. Mahajan, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 16, 17 and 32; Registration Act

Appeal No. : F.A.F.O. No. 103 of 1962

Appellant : Sardool Singh

Respondent : Hari Singh and ors.

Advocate for Def. : S.K. Jain and; Ram Rang, Advs.

Advocate for Pet/Ap. : H.L. Sibal,; S.C. Sibal and; M.S. Jain, Advs.

Disposition : Appeal dismissed

Judgement :

D.K. Mahajan, J.

1. This case has been referred by my learned brother, Harbans Singh J., to a Full Bench in view of the con-flict of opinion in the various High Courts on the question-

'Whether an award affecting immovable property of the value of or above Rs. 100 requires registration before it can be made a rule of the Court?'

The Patna High Court in *Seonarain Lal v. Prabhu Chand*, AIR 1958 Pat 252 (FB), has taken the view that registration is not a sine qua non for the award being made a rule of the Court under the 1940 Arbitration Act, A contrary view has been taken by a Division Bench of the Andhra Pradesh High Court in *Srinivasa Rao v. V. Venkata Narasimha Rao*, AIR 1963 Andhra Pradesh 193 and also by a Division Bench of this Court in *Shambhu Nath v. Gokal Chand*, AIR 1952 Punj 146. This view is also shared by the Gujarat High Court in *Ichharam Damodardas v. Kantilal Nathubhai*, AIR 1963 Guj 28.

2. It is not necessary to set out the facts--the question to be settled being purely a legal one.

3. After hearing the learned counsel for the parties at considerable length, it appears that the view of the Patna High Court in *Seonarain Lal's* case, AIR 1958 Pat 252 is correct and legally sound. I am in respectful agreement with the entire line of reasoning in the Patna case barring the underlined (here in ' ') observations:

'.....an award is only effective when a decree follows the judgment on the award, 'such an award may be covered by the exception mentioned in Section 17(2)(vi) (any decree or order of a Court) of the Registration Act.'

If these observations are meant to convey that award as such is covered by the exception (vi) of Section 17(2) of the Registration Act, I am unable to agree. But the decree that follows the award when it is made a rule of the Court, no exception can be taken to the view that such a decree is covered by the exception.

4. In order not to cover the same ground again, it will be proper to set out in detail the entire reasoning in *Seonarain Lal's* case, AIR 1958 Pat 252. There are two additional reasons which have also weighed with me in coming to the same conclusion. Those reasons will be set out after the relevant passages from *Seonarain Lal's* case, AIR 1958 Pat 252:

'X X X X X X So far as the first point is concerned, it has to be seen whether an award, without the intervention of the Court, made subsequent to the coming into force of the Indian [Arbitration Act, 1940](#) deciding questions of title to immovable property worth one hundred rupees and upwards is compulsorily registrable. We have, therefore, to consider the provisions of Section 17 of the Registration Act, which falls under Part III 'Of Registrable Documents', the relevant portions of which are contained in Section 17 (1) (b) which reads thus;

'Documents of which registration is compulsory-

1. The following documents shall be registered, if the property to which they relate is situate in a district in which, and it they have been executed on or after the date on which. Act No. 16 of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely.

(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property.'

We have to find out whether an award in respect of immoveable property worth one hundred rupees and upwards requires registration. In other words, whether such an award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest to or in immoveable property. It has to be mentioned that the exception to the general rule provided in the section, namely, Sub-section (2) of Section 17. does not now, after the amendment of the Registration Act of 1929, expressly refer to an award. The relevant exception, however, in Sub-section (2) will read as follows:

'(2) Nothing in Clauses (b) and (c) of Sub-section (1) applies to -

(vi) any decree or order of a Court 'except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding.'

The important words have been underlined (here into") by me, and they were introduced by Section 10 of Act 21 of 1929 in place of the words 'and any award'. Before the amendment, the exception was in respect of any decree or order by a Court and any award, We have, therefore, to consider whether an award made without the Intervention of the Court concerning immovable property worth one hundred rupees and upwards by its own force purports or operates to create, declare, assign, limit or extinguish any right, title or interest in such property; in other words, whether such awards, in any manner, affect immovable property. The matter has to be considered in the light of the provisions of the Arbitration Act (10 of 1940) which came into force on 1st of July, 1940. Chapter II, commencing with Section 3, relates to arbitration without the Intervention of a Court.

This Chapter ends with Section 19. Although the reference to arbitration under this Chapter is without the Intervention of Court, It appears that the scheme of the Act is that, once a reference is made to arbitration, the control of the Court, without any party to the dispute inviting such a control, starts immediately, and Section 5 makes the authority of the appointed arbitrator or umpire irrevocable except by leave of the Court. 'Court' is defined as 'a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference If the same had been the subject-matter of a suit. (Section 2(c)).'

So, although the reference is made without the intervention of the Court, the authority of the arbitrator or umpire to arbitrate becomes absolutely irrevocable, and, if any alteration has to be made, it can only be made with the leave of the Court. Section 8 defines the power of the Court to appoint arbitrator or umpire in cases covered by that section. Section 9 gives power to the Court to set aside any appointment as sole arbitrator made under Clause (b) of Section 9. Section 11 gives power to the Court to remove arbitrators or umpire in certain circumstances mentioned in that section.

Section 12 speaks of power of the Court where the arbitrator is removed or his authority is revoked. These sections illustrate the fact that, though the reference to arbitration is without the intervention of the Court, the Court has power to intervene in matters referred to in the aforesaid sections; in other words, from the very start,

the scheme of the Act is that the Court must have effective control over the arbitration proceedings. Before we come to the important sections, namely, 14, 15, 16 and 17, I should like to refer to Sections 18 and 19. Section 18 gives power to the Court, after filing of the award, to pass interim orders of the nature mentioned in that section.

Section 19 gives power to the Court to supersede arbitration altogether when the award becomes void under Sub-section (3) of Section 16, or when it has been set aside. We find, therefore, that, before and after the filing of the award, the Court is given control over the arbitration proceedings. Now, Section 14 directs that the arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court, cause the award or a signed copy of it to be filed in Court, and the Court, thereupon, shall give notice to the parties concerned (I am omitting the details of the provisions).

Section 14(3) is as follows:

'Where the arbitrators or umpire state a special case under Clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion which shall be added to and shall form part of, the award.'

Section 15 gives power to the Court to modify or correct an award in suitable cases provided for in that section. Section 16 enacts that the Court may from time to time, remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit in cases mentioned therein.

Chapter III relates to arbitration with intervention of a Court where there is no suit pending, and consists of only one section, namely, Section 20.

Chapter IV deals with arbitration in suits, and consists of Sections 21 to 25.

Chapter V is general, and contains Sections 26 to 38. Some of the sections mentioned in Chapter V have got to be considered as they give clue to the answer to be given to the question in hand. Section 26 says that, save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations,

which will include arbitration without reference to the Court. Section 28 gives power to the Court to enlarge the time for making the award. Section 30 enumerates the grounds for setting aside an award. Section 31 relates to jurisdiction, and it reads as follows-

'1. Subject to the provisions of this Act an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

2. Notwithstanding anything contained in any other law for the time being in force and save as 'otherwise provided' in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

3. All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

4. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.' I have exhaustively reproduced this section, as in my view, it limits the jurisdiction in respect of awards to one Court and one Court alone where all question? regarding the validity, effect or existence of an award or an arbitration agreement could be decided, and that Court is the Court defined in the Act by Section 2(c). Section 32 emphasises the fact that no suit shall lie on any ground whatsoever for a decision

'upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended modified or in any way affected otherwise than as provided in this Act.' Section 33 speaks of the means of contesting the arbitration agreement or award and it reads as follows:

'Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the questions on affidavits:

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

These sections, therefore, namely. Sections 31 and 32, give exclusive jurisdiction to the Court under the Arbitration Act to deal with the questions regarding the existence, effect or validity of an arbitration agreement or award, and it says that such arbitration agreement or award cannot be set aside, amended, modified or in any way affected otherwise than as provided in this Act, and this aspect of the matter is emphasised by 8. 34, which contains provisions relating to stay of proceedings in other Courts in respect of matters referred to in any arbitration agreement, and, in suitable cases, provided for in that section, the proceedings in the suit have to be stayed.

I have attempted to show that, once matter has been referred to arbitration, it comes within the immediate control of the Court under the Act, and no other authority has any jurisdiction to deal with the matter. There is only one exception to this rule provided for in Section 35 of the Act. and 'itsays:

'No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but where 'legal proceedings' upon the whole of the subject matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under Section 34, be invalid.' I have underlined (here into ') the important expression. In other words, where the matter for which the reference has been made is the subject-matter of a decision of a Court between all the parties concerned and a notice thereof has been given to the arbitrators or umpire, then alone the reference or award shall be rendered invalid, otherwise not.

It is thus apparent from a review of the sections of the Act of 1940 that, once a reference has been made to arbitration, the Court under the Act has got exclusive jurisdiction in regard to the validity, effect or existence of the reference and the award, and the jurisdiction of all other Courts is ousted.

I come back to Section 17 again to show that, when the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration (Section 16) or to set aside the award (Section 30), the Court shall, after the time for making an application to set aside the award has expired (under Article 158 of the Limitation Act) or if such application has been made and refuted, proceed to pronounce judgment according to the award, and, upon the judgment so pronounced, a decree shall follow.

This shows in unmistakable terms that an award, though given without the intervention of the Court, has to be made a rule of the Court, and the Court will pronounce judgment on the basis of the award, and a decree shall follow, that is to say, the award by itself is of no effect.

Effect to the award is given only when a judgment has been pronounced on its basis followed by a decree. In the second schedule to the Code of Civil Procedure there were also similar provisions for passing a judgment on the basis of the award and thereupon a decree was to follow, but what distinguished the present provision from the earlier one in the Code of Civil Procedure is that the 1940 Act bars jurisdiction of all Courts to pronounce upon the validity, effect or existence of an award or arbitration agreement except the Court under the Act itself.

What I have said above, therefore, is sufficient to show that an award, as such, does not 'purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property (Section 17(1)(b) of the Registration Act) and, therefore, an award, even though it be in respect of immovable property worth one hundred rupees and upwards, does not require registration.

In the light of the discussions mentioned above, the second question, in my opinion, must be answered in the affirmative.

A large number of authorities have been cited at the bar in the view which I have taken, I do not think it necessary to consider all those authorities except a few of them, and I do so presently

I would first refer to the cases of this Court which have considered the present Act of 1940, as I do not consider it at all necessary or useful to refer to the decisions given on the previous state of the law. In *Dewaram v. Harinarain*, ILR 26 Pat 437 AIR 1948 Pat 320 it was held that, under Section 32 of the Act, no Court can entertain any independent suit for a decision that a certain award existed or was valid, or to set aside, amend or modify or to affect the award in any way otherwise than as provided in the Act itself, but this, in the view of their Lordships did not mean that the provisions of Section 49 of the Registration Act had been abrogated, as it was further held that an award made without the intervention of a Court amounted to a non-testamentary instrument purporting to create, declare, assign, etc., any interest of the value of over one hundred rupees in immovable property.

I have held that an award, without being made a rule of the Court, is of no effect by itself, and, in my view, no other interpretation of the law, as contained in that Act, is possible. In that view of the matter, Section 49 does not come in the picture at all. If the parties to an arbitration agreement desire that the award should have any legal effect, they must necessarily have to file the award in Court so that a judgment may be pronounced upon it and a decree should follow.

With great respect to the learned Judges, who decided that case, I do not agree that an award, without the intervention of a Court, requires registration under Section 17 of the Registration Act, and, therefore, Section 49 of the Act has no application. The case reported as *Jagadish v. Sunder*, ILR 27 Pat 86: AIR 1949 Pat. 393, decided that a private award, without the intervention of a Court, fell within the mischief of Section 17(1) (b) and (c) of the Registration Act and that the position as to registration of such an award was not affected by the Arbitration Act of 1940. His Lordship Reuben J. (as he then was), with whom Mukharji J. agreed,

held that, on a comparison of the provisions of Schedule II of the Code of Civil procedure with the relevant provisions of the Arbitration Act, it appeared that there was no substantial difference. With great respect, I do not agree with this view also.

In the previous law, as contained in Schedule II of the Code of Civil Procedure, 1908, where an award was made on a reference to arbitration without the intervention of a Court, it was laid down in paragraph 20 that 'any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court' and. thereupon, under paragraph 21, after the parties were heard, the Court was to proceed to pronounce judgment according to the award. Under the present Act, as already pointed out, no other Court except the Court under the provisions of the Act can pronounce upon the award and if no proceeding is taken under the Act, the award is a mere waste paper, and further, under the Act. the Court also can call upon arbitrators or umpire to file the award in Court. On a consideration of the different sections of the Act of 1940, as already indicated I am of the opinion that the principle behind the present Act is that all awards made on reference to arbitration, whether with or without the Intervention of the Court, have been brought on the same level so that any uncertainty about the awards made on reference to arbitration without the intervention of the Court may not exist and that every award, to be effective and enforceable in law must be made a rule of the Court under the Act.

Their Lordships pointed out that the power of the Court is rather more under the present law, with which I agree with respect, but I do not agree with their decision which says that private awards are subject to registration under Section 17 of the Registration Act. In *Ramchander v. Munshi*, ILR 28 Pat. 569: AIR 1950 Pat 48. it was held as follows:-

'In the present suit, the question at issue clearly relates to existence and validity of the award made by the arbitratorThe defendants maintained that even if the award was genuine the plaintiff was not entitled to enforce the award since it was illegal, invalid and inoperative. Upon these pleadings it is manifest that the suit raised the question as to the existence and validity of the award and such a suit is

expressly prohibited by Section 32 of the Arbitration Act. The construction I have adopted is supported by three decisions *Moolchand Jothaiee v. Rashid Jamshed Sons and Co.*, AIR 1946 Mad 346; *Deokinandan v Basant-lal*, 45 Cal WN 881=AIR 1941 Cal 527 and *Ratanji Virpal and Co. v Dhirajlal Manilal*, ILR 1942 Bom 452; AIR 1942 Bom 101. In the last case, it was held that under the Arbitration Act, 1940, till the award had been filed in Court it was not competent to a party to an arbitration to file a petition to set aside the award Chagla J states:

Further, under the present Act, no Proceedings can be taken on the award till after it has been filed, and I fail to see how a party can possibly be prejudiced by the existence of an award which has not been filed in Court Under the old Arbitration Act it was competent to a party who obtained an award without filing it to file a suit thereon. Further, the award became enforceable as a decree as soon as it was filed. But under the present Act all proceedings with regard to the arbitration agreement or the award have to be taken as provided by the Act and before the tribunal indicated by the Act. Section 32 specifically provides that no suit shall be brought on any award or on any decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified, or in any way affected otherwise than as provided in the said Act. and under Section 17 of the Act the Court has to pronounce judgment according to the award and a decree follows. It is only this decree that can be executed.'

It is manifest that in view of the bar imposed by Section 32 of the Arbitration Act the Court had no jurisdiction to entertain the suit'

I respectfully agree with the quotation from the judgment in ILR 1942 Bom 452. AIR 1942 Bom 101, and with which their Lordships of this Court were in complete agreement. We then come to the case of *Sia Kishori Kuer v. Bhairvi Nandan Sinha*. ILR 31 Pat 586: AIR 1953 Pat 42 a Judgment of Reuben. C. J. and Saroo Prosad J I would like to make a reference to the observations which are, in my opinion, relevant for our present purpose; they are as follows:

The decisions to which I have referred illustrate the state of the law previous to the coming into force of the Arbitration Act, 1940. A valid award was an operative

award by itself and there were two ways in which It could be enforced. It might be made a rule of the Court by an application under the Civil Procedure Code or under the Arbitration Act, 1899. as the case might be, or the party might treat it as an independent source of title and enforce it by suit. In either case, it was open to the opposite party to challenge the validity of the award. The remedy by suit was taken away by Section 32 of the [Arbitration Act, 1940](#) The effect of this section was considered in ILR 28 Pat 569=AIR 1950 Pat 48 in which Ramaswami J. relied on AIR 1946 Mad 346; 45 Cal WN 881=AIR 1941 Cal 527 and ILR 1942 Bom 452=AIR 1942 Bom 101 for the proposition that a suit will not lie to enforce an award.' The Hon'ble the Chief Justice criticised the reasons given by Manohar Lall, J. in ILR 26 Pat 437=AIR 1948 Pat 320 (referred to above) and his Lordship in that connection said as follows:

'Manohar Lall J. also relied on the necessity for registration to pass title in the event of the parties accepting the award and acting on it without making it a rule of the Court. With respect, this reasoning appears to me to have no bearing on whether the award has an operative force without being made a rule of the Court. In ILR 27 Pat 86-AIR 1949 Pat 393 in which the leading judgment was delivered by me. the learned counsel relied on the amendment, as between the 1940 Act and the second schedule of the Civil Procedure Code of 1908. in the procedure by which the award is made a rule of the Court. I rejected the contention as I considered that there was no substantial difference in the two sets of provisions. But my attention was not drawn in this connection to the effect of Section 32 of the 1940 Act. ' After considering the decision of this Court in ILR 28 Pat 569=AIR 1950 Pat 48 and the observations of Chagla J. (as he then was) in ILR 1942 Bom 452-AIR 1942 Bom 101 it was observed as follows:

'In other words, the award only becomes operative when it is made a rule of the Court. In ILR 26 Pat 437 = AIR 1948 Pat 320 and ILR 27 Pat 86 = AIR 1949 Pat 393 the question at issue was whether a private award is exempt from the necessity for registration. If that question arises again it may be necessary to reconsider those decisions, but I do not regard them as authorities on the point now under consideration.' These are the Patna cases cited before the Court in respect of the provisions of the new Act of 1940. I would now like to refer in this

connection to the Bench decision of the Madras High Court reported in AIR 1946 Mad 346 and I would specially draw attention to the observation made at page 348 to the following effect:

'The Act of 1940 was intended to consolidate and amend the law of India relating to arbitration matters. The scheme of the Act is to prevent the parties to an arbitration agitating questions relating to the arbitration in any manner other than that provided by the Act. The suit which the appellants filed clearly raised the question with regard to the existence and validity of the award, and such a suit is expressly barred by Section 32.....This Section (Section 30, Specific Relief Act) obviously cannot override Section 32, Indian [Arbitration Act, 1940](#), which applies 'notwithstanding any law for the time being in force'.The governing section is Section 32, ArbitrationAct.' I respectfully agree with the observation above quoted, and that also shows that no suit, other than the proceedings under the Act, is permissible under the law in respect of awards made on reference to arbitration, and I reiterate the view that if that be the purpose of the Act of 1940 that proceedings can be taken only under that Act in respect of awards in regard to their existence, the award by itself has no force in law and no suit outside the limits of this Act can be instituted in respect of such awards. An award to be effective in other words, affecting property, immovable or otherwise, below or beyond one hundred rupees in value, must be subjected to the provisions of this Act, and awards, as such, need no registration under the Registration Act. X X X X "

The Additional reasons may now be stated. They are--

(1) If an award is registered, it is still a waste paper unless it is made a rule of the Court. Thus registration does not, in any manner, add to its efficacy or give it any added competence. Section 32 of the Arbitration Act is specific for no right can be founded on an award as such after coming into force of the 1940 Arbitration Act; and

(2) It is not disputed and indeed it could not be that the Court has the power, under Section 16, to remit the award from time to time. If registration of an award is an essential pre-requisite before it could be made a rule of the Court under Section 17, every time an award is remitted and a new award is made, the new award will

require registration. The result would be that in the same controversy, there can be not only one registration but a number of registrations regarding the same title, a situation which is not even envisaged by the Registration Act.

5. In view of the aforesaid two reasons and the reasons in *Seonarain Lal's* case. AIR 1958 Pat 252 there can be no manner of doubt that an award, after the coming into force of the Indian Arbitration Act of 1940, does not require registration before it can be made a rule of the Court.

6. In this context. It will also, be advisable to examine the purpose of the Registration Act. The Act provides for the creation of pre-appointed evidence of transactions by getting the same entered in a public record by a competent official whose duty is to attend the parties during the registration and see that the proper persons present are competent to act and are identified to his satisfaction (1906) 33 Cal 537= 33 Ind App 60 (PC). The objects of registering a document are:

(i) to give notice to the world that such a document has been executed; (1909) 31 All 523; ILR 47 Cal 485 - (AIR 1919 PC 79); (1895) ILR 18 Mad 364 and (1891) ILR 18 Cal 556 (FB);

(ii) to prevent fraud and forgery: ILR 42 All 487 - (AIR 1921 PC 93); (1886) 8 All 6 (PC) and

(iii) to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which the title to the property may be affected: ILR 48 Cal 1-(AIR 1921 PC 112); ILR (1944) 1 Cal 118 - (AIR 1945 Cal 37).

If these objects are kept in view, it will be apparent that the registration of an award does not serve any one of them. The award is a useless document unless it is made a rule of the Court; and once it is made a rule of the Court, it being a decree of a competent Court does not require registration. So far as a Court decree is concerned, it, to revert back to the object of the Registration Act, fulfils each one of those requirements. The only exception, where a decree requires

registration, is where it deals with property outside the subject-matter of the controversy. But otherwise decrees dealing with property, which are subject-matter of the controversy, do not require registration. On this proposition, there is no dispute.

7. I may also mention that there is a consistent course of decisions before the 1940 Act that an award in an arbitration through Court or with the assistance of the Court did not require registration before its being made a rule of the Court. See in this connection the decision in (Firm) Hassanand Naraindas v. Jodhomal Chengomal, AIR 1936 Sind 79 (FB) wherein it was observed as follows:

'Now, it appears to us that a distinction must be drawn between awards made with and award made without the intervention of the Court; that where an award is made with the intervention of the Court, the award is part of a judicial proceeding and comes within the general principle laid down by the Privy Council in 20 All 171 (2) and does not require registration; and that an award made without the intervention of the Court does require registration. X XX'

Also see the decision in Jitendra Nath Dey. Nagendra Nath De, AIR 1934 Cal 815. No decision taking a contrary view has been cited before us. But if an award was not made a rule of the Court, its efficacy was not affected without registration because before the year 1940, a suit could be based on the award itself, it being the final repository of the rights of the parties. In the presence of the award, the parties could not fall back upon the original cause of action. But after the 1940 Act, if it is not made a rule of the Court, a suit is not barred on the original cause of action. But it cannot be enforced by a suit. In this connection, reference may be made to the following decisions:

(1) Kashinathsa Yamosa v. Narsingasa Bhaskarasa AIR 1961 SC 1077;

(2) Chandrabhaga E Jtdashiv v. Bbika-chand Hansaji, 61 Bom ILR 364= (AIR 1959 Bom 549) and

(3) AIR 1942 Bom 101.

The view, that I have taken of the matter, finds support from a Full Bench decision of the Andhra Pradesh High Court in Pamandass Sugnaram v. T.S. Manikyam Filial, AIR 1960 Andh Pra 59 (FB). The relevant part of the aforesaid decision is set out below for facility of reference:

'The object of the Legislature in codifying and enacting a comprehensive Code relating to arbitration was to provide simple, speedy and cheap settlement of differences in the interests of trade and commerce and provide a summary method of disposing of objections to awards. It is with a view to attaining the above objects that the law requires that questions relating to the existence or validity of any award shall be by means of applications within the particular period of time mentioned in Article 178 of the Limitation Act. A party to an award cannot afford to lie by and not take steps to get the award filed in Court and get it declared as valid and binding and after the lapse of a considerable period of time produce the award in answer to a suit that may be filed against him. It would amount to circumventing the provisions of law. A perfectly just claim may be sought to be resisted by the setting up of an award, having been made at some remote time and it might have become impossible by sheer lapse of time to establish the invalidity or unenforceability of such award and the defendant would be enabled to escape liability merely on the ground. It is to avoid a contingency like this that the Arbitration Act required that the process of making it a rule of Court and a decree passed thereon should be gone through. If, therefore, a defendant has not taken steps to have an award filed and gone through the formalities enjoined by the specific provisions of the Arbitration Act, it is not open to him to set up the award as a bar to an action that may be brought against him.

No party can be prejudiced by the mere existence of an award. It does not become operative and enforceable until it has been filed in Court and the Court adjudicates about its validity.

Learned counsel for the respondent argued that after the award was passed in this case, the said award operated to merge and extinguish all claims which were the subject-matter of the submission to arbitration and, therefore, once where the claim had been extinguished, it was no longer open to bring a fresh suit on the

same cause of action. There can be no doubt that under the law prior to the passing of the Arbitration Act of 1940 a valid award operated to extinguish all claims, which were the subject matter of the reference to arbitration and the award alone furnished the basis by which the rights of the parties could be determined and any action on the original cause of action was barred. The Arbitration Act, of 1940 effected a change in that, it proscribed the procedure for getting an award enforceable. The effect of this change was that the passing of the award by itself did not extinguish the rights of the parties until such award was subjected to the process mentioned in the Act. The decisions relied upon by the learned counsel were cases which related to awards prior to the Act of 1940. Those rulings must be held to be not applicable now. They cannot apply to the present case.'

The stage is now set to consider the decisions that have taken a contrary view, namely, that an award if it affects immovable property of the value of Rs 100 or more, requires registration before it could be made a rule of the Court

8. The first decision in point is the decision of this Court in AIR 1952 Punj 146 by Weston. C. J.. and Falshaw J. (as he then was). In this case, the trial Court had held that the award required registration because it dealt with property of the value of Rs. 100 or more. On appeal to this Court, the learned Single Judge of this Court held that the award in respect of immoveable property did nothing more than recite what according to the arbitrator was a pre-existing fact and, therefore, in view of the Privy Council decision in Baeeshwari Charan Singh v. Jagar-nath Kuari. ILR 11 Pat 272 = (AIR 1932 PC 55) it did not require registration On an appeal under Clause 10 of the Letters Patent, Chief Justice Weston. who spoke for the Court, observed:

'I think, therefore that the declaration made by the arbitrator was something which in itself created title and the award, therefore, required registration.'

No arguments were addressed in this case on the basis of the change brought about by the Arbitration Act of 1940: nor was the position of law examined in that perspective. The matter was merely approached from the point of view of the Registration Act alone This decision, therefore, with utmost respect to the learned Judges, is not correct in law.

9. The next decision is of the Andhra Pradesh High Court in AIR 1963 Andh Pra193 decided by Umamaheswaram and Chand-rasekhara Sastry JJ. After taking into account the provisions of Sections 17(1)(b) and 17(2)(vi) and the amendment made by Section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, whereby, the word 'award' was deleted from Section 17(2)(vi) of the Registration Act and the observations of Mulla, in his commentary on the Indian Registration Act, 5th Edition, page 103, it was observed as follows:

'That the award requires to be registered after the Amendment Act is clearly laid down by the High Courts of Allahabad, Andhra, Calcutta, Madras, Nagpur and Punjab. In Yanadama v. Venkateswarlu, AIR 1947 Mad 168, Wadsworth, J. delivering the judgment of the Bench, held at page 170, column 1 as follows:

'Since the amendment of the Registration Act in 1929, an arbitrator's award is not excluded from the operation of Section 17. The only question is whether the award now under consideration does itself create, declare, assign, limit or extinguish any right, title or interest in immoveable property, or whether it merely creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest. If the latter is the case, then Sub-clause (v) of clause (2) of Section 17 will exempt the award from the necessity of registration.' This decision of the Madras High Court is binding on us having regard to the Full Bench decision of the Andhra High Court in Subbarayudu v. State of Andhra, ILR 1955 Andh 1-AIR 1955 Andhra 87 (FB). The decision of a single Judge of the Andhra High Court is to the same effect and it is reported in Raghavareddi v. Venkatareddi, AIR 1955 Andhra 22. Subba Rao, C. J., (as he then was) held at page 23 as follows-

'A combined reading of Section 17 and Section 49. Registration Act clearly shows that an unregistered partition deed or an award cannot affect any immoveable property comprised therein.' According to the learned Chief Justice, the non-registration invalidates the transaction altogether and cannot be looked at under the terms of Section 49 of the Registrtrion Act. The same view was taken by the Allahabad High Court in (1950) 5 DLR (All) 250 and by the Punjab High Court in AIR 1952 Punj 146

The next decision that might be usefully referred to in this connection is the decision of the Calcutta High Court in *Nani Bala v. Ram Gopal*, AIR 1945 Cal 19. The learned Judges considered the effect of the Arbitration Act of 1940 on the question as to whether an award requires to be registered or not. At page 22 column 2. the learned Judges observed as follows:

'No doubt by the Arbitration Act of 1940 the law governing a private award dealing with mofussil properties have been placed on the same footing as an award dealing with properties situate in Presidency Towns with the result that the supervising powers of the Civil Court with regard to these award have been enlarged and the procedure for filing such awards and the subsequent proceedings in the Civil Court have been changed, but those changes do not affect the question which we are now dealing with because the provisions of Section 17 of the Registration Act have not undergone any change by way of further amendment since 1929. The authority of the decision in ILR 62 Cal 201 = AIR 1934 Cal 815 in so far as it decides that a private award has to be registered before it can be filed in the Civil Court for the purpose of obtaining a decree thereon has not been shaken by the repeal of schedule 2, Civil Procedure Code, and the enactment of the Arbitration Act of 1940.' We are inclined to share the view of the Calcutta High Court that even after the passing of the Arbitration Act, a private award requires to be registered. The observations of Kapur J. in *Champalal v. Mst Samrathbai*, AIR 1960 SC 629 also lend support to this conclusion. X X X X '

The learned Judges then preferred to follow the earlier view of the Patna High Court in *Chhati Lal v. Ram Chariter*, AIR 1941 Pat 215 and declined to follow the latter Full Bench decision of the Patna High Court in *Seonarain Lal's case*, AIR 1958 Pat 252 and the reasons given by the learned Judge why they did not follow the decision in *Seonarain Lal's case*, AIR 1988 Pat 252 may better be stated in their own words. These reasons are as follows:

'X X X X In holding that the private award does not require to be registered, the Full Bench of the Patna High Court in AIR 1958 Pat 252 has also not taken into consideration the word 'purport' in Section 17(1)(c) of the Registration Act. Reliance is only placed on the words that the award does not operate to declare or

create or assign any interest in immovable property. There can be no doubt that on a reading of the award filed in this case the document purports to create an interest in immoveable property. According to the preponderance of authority the document also operates to create an interest in immoveable property. In the award it is provided that for the services performed by the 1st respondent he was entitled to be allotted particular properties in addition to his share. We are clear on a reading of the document that it not only purports to create but also operates to create an interest in immoveable property. We accordingly hold that the award not being duly stamped and registered, the learned District Judge was perfectly right in setting aside the award.'

It will be apparent from the above decision in Srinivasa Rao's case, AIR 1963 Andhra 193 that it has not taken into account 'the two additional considerations that I have already set out. Moreover, the Division Bench has not given due weight), to a Full Bench decision of its own Court. As observed by their Lordships of the Supreme Court in *Jai Kaur v. Sher Singh*, 1960 (3) SCR 975-AIR 1960 SC 1118 it was not open to a Division Bench to differ from a Full Bench decision without referring the matter to a larger Bench. Apart from this, it will appear that the learned Judges were swayed more by the provisions of the Registration Act and particularly by the amendment of Section 17(2)(vi) of the Registration Act by the Transfer of Property (Amendment) Supplementary Act, 1929, wherein the word 'award' was omitted from Sub-clause (vi) of Section 17(2) of the Registration Act. They did not take into consideration the full impact of the 1940 Arbitration Act.

The decisions relied upon by them in support of the view taken in favour of registration of an award affecting immoveable property of the value of rupees one hundred or above, excepting two, in fact, did not consider the change brought about by the 1940 Arbitration Act and were mainly cases where the question had arisen as to the admissibility of the award in a suit and the decision on admissibility rested on the basis of Section 17(1) read with Section 49 of the Registration Act. The question whether award could be taken into consideration in view of the provisions of section 32 of the Arbitration Act was not considered because in the circumstances of those cases the question never arose.

The decision of the Madras High Court in AIR 1947 Mad 168. is exactly on the same lines as the decision of this Court in Shambhu Nath's case. AIR 1952 Punj 146 The only difference is that in the Madras case the question of registration did not arise in an application to make the award a rule of the Court. In a suit filed for a declaration as to title to certain properties in lieu of maintenance, an award was sought to be relied upon. The award was ruled out of evidence for want of registration and it was in this situation that it was held that the award could not be admitted into evidence for want of registration as it affected properties of the value of more than rupees one hundred. But if this decision is taken to lay down the rule that an award before it could be made a rule of the Court, requires registration, it is open to the same criticism as Shambhu Nath's case, AIR 1952 Puni 146 decided by this Court Same observations will apply to the decision of the Calcutta High Court in Nani Bala's case AIR 1945 Cal 19 which is *pari materia* with Shambhu Nath's case. AIR 1952 Puni 146 but for one matter, namely that the learned Judges did notice the provisions of the 1940 Arbitration Act; but in spite of that stuck to the view that the private award, before it could be made a rule of the Court required registration because the 'award' had been deleted from Section 17(2)(vi) of the Registration Act by the amendment of the Transfer of Property Act in 1929. The next decision, on which the learned Judges relied, is of Subba Rao C. J. (as he then was) in AIR 1955 Andh 22. This case is *pari materia* with the decision of the Madras High Court in C. Yanadamma's case, AIR 1947 Mad 168. Here again the award was set up to support a claim in a suit and it was rightly held that if the award was sought to be relied upon in a suit as evidence it would be inadmissible without registration. The next decision relied upon is that of this Court in Shambhu Nath's case, AIR 1952 Punj 146. That decision undoubtedly was given in a case where the award was sought to be made a rule of the Court and it was not permitted to be made a rule, of the Court for want of registration. I have already dealt, with this decision and it is not necessary to repeat what I have already stated, namely, that it does not lay down a correct rule of law.

The next case relied upon is the decision of the Allahabad High Court in Jag Mohan Singh v. Bisheshar Singh, 1950 (5) DLR All 250. In this case, it was held that an unregistered award could not be made a rule of the Court in application under the Arbitration Act of 1940, if it affected immovable property of the value of

Rs. 100 or more. The reason for this view was stated by the learned Judges as follows:

'That the award required registration by reason of the provisions of Section 17(1)(b) of the Registration Act and by virtue of Section 49(c) of that Act. it could not be received as evidence in a transaction affecting immovable property. Accordingly there was nothing before the Court which it could uphold or set aside.'

Suffice it to say that this decision does not give any reasons besides the provisions of the Registration Act. None of the considerations, which have prevailed with us for taking the contrary view, were either urged before or taken notice of by the learned Judges of the Allahabad High Court. In my opinion, this decision does not lay down the correct rule of law for the reasons already stated.

10. Finally the learned Judges relied upon the following observations of Kapur J. in AIR 1960 SC 629:

'What is prohibited is that an unregistered award cannot be taken into evidence so as to effect immoveable property falling under Section 17 of the Registration Act. That the award required registration was rightly admitted by both parties.'

That decision, however, is of no help because in that case it was held that the award did not require registration. It was further held that the award could be filed even if it was not registered. Moreover, the award in that case was made a rule of the Court and was followed by a decree. An appeal to the High Court had failed and so did the further appeal to the Supreme Court. It will be apparent from the decision of the Supreme Court that the point, that arises for determination in the present case, did not arise and was not considered. The observations of Kapur J. cannot be said to conclude the matter so far as the question of registration of an award before its being made a rule of the Court are concerned. With utmost respect to the learned Judges, I have not been able to see how, after the coming into force of the 1940 Arbitration Act, an award which otherwise is a useless document even if registered requires registration when the only way to make it effective is to make it a rule of the Court. I have already given my reasons in detail for taking the view that an unregistered award does not require registration for the

purposes of making a rule of the Court under the 1940 Arbitration Act.

11. The next decision is the Single Bench decision of the Gujarat High Court in AIR 1963 Guj 28 in this case, the learned Judge has taken exception to the Full Bench decision of the Patna High Court in Seona-rain Lal's case, AIR 1958 Pat 252 (FB) and the reasons that have been given for the contrary view are as follows:

'No doubt, as observed by the learned Judges of the Patna High Court an award under the Act has to be followed by a judgment and decree, and unless it is so followed, it cannot be enforced in a Court of law. But, that does not mean that the award by itself is of no effect. Section 3 of the Act provides as follows:

'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. ' Clause 7 of the First Schedule to the Arbitration Act provides that:

'the award shall be final and binding on the parties and persons claiming under them respectively.' In view of these two provisions an award becomes binding on the parties to the arbitration agreement and on the persons claiming under them, and if the award provides that a charge is kept on the immoveable property worth more than Rs 100 it becomes final and binding on the parties to the arbitration agreement and on the persons claiming under them If the parties to the arbitration agreement accept the award and do not deem it necessary to go to a Court of law, they can enter into subsequent transactions relying on the charge created by the parties to the arbitration agreement. The subsequent document can be enforced in a Court of law. although the award on which it is based is not enforceable in the Court of law. In ILR 26 Pat 437, at p. 441-AIR 1948 Pat 320 at p. 321 it is observed as follows:

'The matter may be looked at from another point of view. Supposing the parties to an award are satisfied with it and enter into possession of the property respectively awarded to them and the value is over Rs. 100 and no dispute arises between them, they are not bound to go to Court under the provisions of the Arbitration Act.

They are satisfied with the award and they do not want any Court to pronounce a decree in accordance with the award. Has title to the property passed to the parties without file award being registered so that such a party can transfer the title to a third party by sale, gift or otherwise? In my opinion, the answer is clear that no title to immoveable property of the value of about Rs. 100 can pass by the award it is a non-testamentary instrument--without the document being registered.' Now, this decision has not been followed and has been differed from in AIR 1958 Pat 252 (FB), which is a judgment of a Division Bench of three Judges. But the argument advanced in ILR 26 Pat 437-AIR 1948 Pat 320 has not been answered in the subsequent Patna case of 1958. It is contended by the learned counsel for the applicant that the decision in ILR 26 Pat 437: AIR 1948 Pat 320 has been overruled by the Division Bench of the Patna High Court in AIR 1958 Pat 252 (FB). There is nothing in the judgment of the Full Bench (Division Court of three Judges) to show that they had overruled the decision in ILR 26 Pat 437: AIR 1948 Pat 320. No doubt they have differ-ed from the view taken in ILR26 Pat 437-AIR 1948 Pat 320. But the power to overrule such decisions rests only with the Supreme Court and none else. It is contended by the learned counsel for the opponents that there are two judgments of Division Courts of the Patna High Court in ILR 26 Pat 437-AIR 1948 Pat 320 and ILR27 Pat 86 = AIR 1949 Pat 393 and that although these two judgments have not been followed by the Division Bench of three Judges of the same High Court, this is a case in which the view of the Division Bench of two Judges should be taken as against the view taken by three Judges of the Full Bench. But it is not necessary to go into this question. The Division Bench of three Judges in AIR 1958 Pat 252 (FB) has not referred to the provisions of Section 3 of the Act and clause 7 of the First Schedule to the Act. If they had done so, perhaps they might have come to a different conclusion Although the provisions of section 3 of the Act and clause 7 in Schedule 1 of the Act have not been referred in AIR 1947 Mad 168 at p 170, they have observed as follows:-

When there is a dispute between parties and that dispute is referred to an arbitrator whose decision the parties agree to accept, there is, in fact, a contract between these parties, the final terms of which will embody the decision of the arbitrator on the point referred to him. If the nature of the contract between the parties is such that it actually declares or creates or assigns any interest in

immoveable property, the award just like any other contract having the effect, must be registered. If, however, the contract between the parties merely relates to the terms on which one party shall have the right to demand from the other party a future conveyance of property, then the award which settles the terms upon which this future conveyance should be made, is nothing more than part of an agreement to convey, and it is well settled that an agreement to convey in future falls under the exception in section 17(2)(v). Registration Act.' Even in the case of an ordinary sale deed of immoveable property, it cannot be enforced without filing a suit, but that does not mean that the sale deed has no effect by itself. Similarly, an award under the Act is not enforceable unless it is filed in a Court and followed by a judgment and decree of the Court. But, that does not mean that the award itself has no effect. It is final and binding between the parties to the arbitration agreement, and it has, therefore, great effect to that extent. I, therefore, hold that under the Arbitration Act of 1940, if an award creates a charge on immoveable property worth Rs. 100 or more, it would require registration. To take any other view would result in making easy evasion of the provisions of the Registration Act.'

With utmost respect to the learned Judge, I am unable to follow his reasoning. It is rather curious that the final view of the Patna High Court by a Full Bench was given a go-by and it was taken that the correct view had been taken by an earlier Division Bench of that Court. It appears that the learned Judge also did not take into account the provisions of Section 32 of the Arbitration Act. Moreover, the reasons that I have given for not following the view of the Andhra Pradesh High Court in Srinivasa Rao's case, AIR 1963 Andh Pra 193 fully apply to this case and thus need not be repeated. The additional reason given on the basis of clause 7 of the Schedule read with Section 3 of the Arbitration Act does not advance the argument as to the compulsory registration of the award. Clause 7 of the Schedule merely implies a term in the Arbitration agreement. It is well-known that all awards are final and binding on the parties provided they can be given legal effect to. I have already noticed the position of law before the 1940 Arbitration Act. The awards were that 'final repository of the rights of the parties and could be enforced by a suit if they had not been made a rule of the Court AIR 1961 SC 1077 at p. 1083. But the position has materially changed after the 1940 Arbitration Act. The award is not at all enforceable by a suit. The question whether it could be made

List of in defence has been left open by the Supreme Court AIR 1961 SC 1077; and there is a sharp conflict of judicial opinion in the various High Courts on this matter So far as the present case is concerned, this question does not arise and, therefore, nothing need be said on this aspect of the matter.

12. After considering the entire matter in all its facets. I am clearly of the view that an award under the 1940 Arbitration Act does not require registration before its being made a rule of the Court. This answers the principal question for which the reference to a Full Bench was necessitated. The case will now go back to the learned Single Judge for decision on the remaining questions

Mehar Singh, C.J.

13. I agree.

Harbans Singh, J.

14. I also agree.

FINAL ORDER OF THE SINGLE BENCH

(8-2-67).

15. This will be read in continuation at my order dated 15th of July, 1966.

16. In this appeal only two points were raised; first, whether the application for making the award of the arbitrator dated 9th of July, 1958, a rule of the Court, was within time and. secondly, whether the award so given required registration, and in view of the fact that the same had not been registered, it could not be made a rule of the Court. With regard to the first point, I came to the conclusion that the application was within time and, in fact, this point was not seriously stressed. On the other point I found that there was conflict of opinion and, consequently, directed that the record be placed before my Lord the Chief Justice for constituting a larger Bench to decide this point. A Full Bench was consequently constituted and came to the conclusion that such an award did not require registration. The case has now come up before me for final decision.

17. It is conceded on behalf of the appellants that no other point arises in view of my earlier decision and the decision of the Full Bench. Consequently, this appeal is dismissed, with no order as to costs in view of the complicated questions that were involved.

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