

Moti Ram Vs. Mangal Singh and ors.

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Court : Delhi

Decided On : Sep-15-1971

Reported in : 8(1972)DLT312

Judge : Rajindar Sachar, J.

Acts : [Arbitration Act, 1940](#) - Sections 17; Limitation Act, 1908 - Schedule - Articles 120 and 178

Appeal No. : Civil Revision Appeal No. 276 of 1968

Appellant : Moti Ram

Respondent : Mangal Singh and ors.

Advocate for Pet/Ap. : Vijay Kishan and; B.R. Malik, Advs

Judgement :

Rajindar Sachar, J.

(1) The question that arises in this case is whether there is any period of limitation as provided in the Limitation Act, 1908 (hereinafter to be called the Act) which governs the case when the arbitrators file the award in the court. This is a revision petition against the orders of the courts below holding that the award dated 12-1-1958 made by the arbitrators on 25-5-1958 is not barred by time.

(2) On 12-1-1958 the petitioner and the respondents agreed to refer their disputes to the arbitration. The arbitrators entered upon a reference and the award was signed on 12-1-1958. No action seems to have been taken by any of the parties until the arbitrators themselves by their application of 25-5-1965 tiled the award in the court. On this notices were issued to the parties. Respondent No. 1 Mangal Singh put in an application on 26-7-1965 saying that the arbitrators' award filed is correct and that there is no cause for remitting it and that the same may be made a rule of the court. Notice was issued of this application. The petitioner, Moti Ram, objected to the award being made a rule of the court and raised various objections. The parties went to trial on the following issues:-

1. Whether the award was presented in court by a proper person? OPP. 2. Whether the petition of the petitioner is barred by resjudicata? OPR. 3. Whether the arbitrators have mis-conducted themselves in the proceedings? OPR. 4. Whether the award has been filed in court within time? OPP. 5. Whether the award has been improperly presented or is otherwise invalid? OPR. 6. Whether the objections filed by respondents are within time? OPR. 7. Whether objections of the objector are maintainable in law? OPR.

Issue No. 1 was decided in favor of respondent Mangal Singh. Issues No. 2, 5, 6 and 7 were not pressed. Issue No. 3 was also found in favor of respondent: Mangal singh.

(3) The only issue seriously canvassed was issue No. 4. The objection of the petitioner, Moti Ram, was that the award was signed or 12-1-1958 and it was filed in court by the arbitrators on 25-5-1965 i.e. after a period of 7 years. The contention was that the application of the arbitrators filing the award was beyond time and, thereforee no action could be taken on it The trial court, however, took the view that Article 178 of the Act was not applicable and that there was no period of limitation provided for filing an award by the arbitrators in the Act and hence it could not be held that the award filed by the arbitrators was beyond time. As regards the objection that the application moved by respondent Mangal Singh under Section 17 of the Arbitration Act on 26-7-1965 was barred by time, the trial court held that there was no question of limitation involved as once an award has

been filed it is the duty of the court either to set it aside or to remit it back to the arbitrators or to make it a rule of the law.

(4) The petitioner being dis-satisfied with this took up the matter in appeal. The appellate court has also held that Article 178 of the Act could not be applied as award was filed by the arbitrators. It has also held that there is no period of limitation for filing of an application under Section 17 of the Arbitration Act. He has also taken the view that the residuary Article 181 of the Limitation Act was applicable and therein three years period has been provided which starts from the date when the right to apply accrues and that in this case the right to apply accrued only after the arbitrators had filed in court the award on 25-5-1965 and hence the application filed by respondent No. 1 on 26-7-1965 was within time. He, therefore, affirmed the order of the court below. The petitioner feeling aggrieved has come up in revision to this court.

(5) Mr. Vijay Kishan, the learned counsel for the petitioner, did not address any argument as to whether the application filed under Section 17 of the Arbitration Act by respondent Mangal Singh on 26-7-1965 was within time or not. It was fairly conceded by him that unless he could show that the award filed by the arbitrators on 25-5-1965 was beyond time, the judgments of the courts below could not be upset. The real question therefore in the present case is whether the award filed by the arbitrators on 25-5-1965 was within time or not. If it is held that the award was filed within time then the Act requires the court either to remit the award under Section 16 of the Arbitration Act or if it sees no cause to remit the award, for any of the matter referred to the arbitration for reconsideration or to set aside the award to proceed to pronounce judgment according to the award in terms of Section 17 of the Arbitration Act. The application filed by Respondent Mangal Singh under Section 17 of the Arbitration Act was really superfluous. Even if such an application had not been filed, the court on its own had to issue notice on the award filed on 25-5-1965 and if it saw no cause to remit the award or to set it aside, to proceed to pronounce judgment in terms of the award as required under Section 17 of the Act. No significance therefore can be attached to the application purported to have been filed by respondent No. 1 on 26-7-1965. The case really has to be decided on the point whether the arbitrators award filed on

25-5-1965 was within time and the court could therefore proceed to act on it or not. If the award filed was beyond time, it is obvious the court could not proceed to act on it, as the application of 26-7-1965 gives no independent jurisdiction to the court to do so. If on the other hand the award was found to have been filed within time, the absence of any application like the one filed on 26-7-1965 would not by itself prevent the court from acting on it as required by Section 17 of the Act.

(6) The controversy in the present case, therefore, has to be determined by finding out whether any of the Articles namely, Articles 178, 181 or 120 of the Act, is applicable to an application filed by, arbitrators to file the award or as the counsel for the respondents maintains that there is no time limit for the arbitrators to file the award and hence even if the application has been filed in the present case after a period of 7 years the same cannot be 'held to be barred by time' it is not disputed that the application filed on 25-5-1965 has been filed by the arbitrators and not by any of the parties to the reference. As a matter of fact a reference to the application clearly shows that this application has been filed by both the arbitrators who have stated that they no longer wish to keep the award with them and they hereby file the award with the prayer that further proceedings according law may kindly be taken under notice of filing to the parties' In. *Champalal V. Mst. Samrathbai* : [1960]2SCR810 it been held that Article 178 of the Limitation Act only applies to the applications., made. by the parties and not to the filing of the award by the arbitrators, Hence Article 178 of the Limitation Act is not applicable to this case. In *Wazir Chand Mahajan and another V, The Union of India* : [1967]1SCR303 the question that came not for consideration was whether the Limitation Act governs the application for filing, an arbitration agreement under Section 20 of the Arbitration, 1940. It was held that though the terms of Article 181 of the Limitation Act were general and were apparently not restricted to applications under the Code of Civil Procedure, but the long catena of authorities have held that in Article 181 the expression 'under the Code of Civil Procedure' must necessarily be implicit. It was observed as under:-'

IF Art. 181 of the Limitation Act only governs applications under the Code of Civil Procedure for which no period of limitation is provided under the Schedule an application under the [Arbitration Act, 1940](#) not being an application under the.

Code of Civil. Procedure, unless there is some provision which by express enactment or plain intendment to the contrary in the Arbitration. Act, will not be governed by that Article.

(7) The .same. view. was reiterated by .their lordships of the Supreme Court in Mohd. Usman V.. Union of India : [1969]2SCR232 where in it was held that an application under Sections 8 and 20 of the Arbitration Act is not governed by Art. 181 of the Limitation Act 1908 which it is well settled was restricted to applications under the Civil Procedure Code. The Limitation Act did not provide any period of limitation for such application. It further observed. It is manifest that the legislature intended that save as provided in Articles 158 and 178 there would not be any limitation for other applications under the Act.'

(8) Faced with this difficulty Mr. Vijay Kishan, learned counsel for the petitioner contended that even if Articles 178 and 181 of the Act were not applicable. Article 120 of the Act would still apply. The argument was that Article 120 of the Act is a residuary Article which provides that a suit for which no period of limitation is provided elsewhere in this schedule may be brought 'within six years as and when the right to sue accrues. According to the learned counsel the award was signed by the arbitrators on 12-1-1958 and the maximum time could be calculated from the said date i.e. of the signing of the award and calculated from that date six years would run from 12-1-1958 to 11-1-1964 and hence the application filed by the arbitrators filing the award on 25-5-1965 was hopelessly barred by time. It is argued that though the word 'suit' is used in Article 120 of the Act applications are also covered by analogy in it and therefore the application filed by the arbitrators should be deemed to be covered within this Article. This argument of the learned counsel for the petitioner, however, assumes that an arbitrator is an interested person who is seeking some relief from the court when he files the award and therefore his application for filing the award would be governed by Article 120 of the Limitation Act. It is the correctness of this assumption which was seriously challenged by the counsel for the respondents who maintained that the arbitrator is not a person interested in the award and that in filing the award he is only performing a ministerial act. It will be seen that Article 120 of the Act contemplates a suit or by analogy an application by a party who is interested in getting some

relief from the court. It is, therefore, essential that before Article 120 of the Act could be made applicable, the act of filing the suit or an application must be by a party interested in the proceedings. If, therefore, the arbitrator is not a person interested in the filing of the award it would be difficult to hold that Article 120 of the Act can be made applicable to him. The intention of the legislature in providing period of limitation in the Act obviously refers to a party seeking some kind of relief in his own interest. Now first schedule of the Act provides for different period of limitation in three divisions. The first division deals with suits, second division with appeals and the third division of schedule which relates to the application and therefore it must relate to a party or parties who are seeking some relief from the court against some other party or parties. Now series of decisions have consistently held that the act of the arbitrators in filing an award is a ministerial act and that he is not thereby seeking any relief from the court for himself or against any other party. In *John B. Paes V. Soomar* A.I.R. 1943 Sind 33 it was observed:

'NOW an arbitrator who applies for the filing of an award in court seeks no relief from the court for himself or against any body. The Arbitration Act does not even lay upon an arbitrator any obligation suo motu to file in court an award that he has made. When the arbitrator applies for the filing of an award in court he is performing a mere ministerial act, at the request of party to the arbitration or by the order of the court. He has no interest in the award apart from his fees and charges. An application by an arbitrator for the filing of an award in Court, therefore, is not an application of the nature contemplated in part 3 of Sch. 1, Limitation Act.'

Dealing, with the argument that the rules framed by the court prescribed a form in which the application by the arbitration for filing of an award is to be made, it was observed : -

'IT may also be that the rules require such an application to bear a court fee label of annas 8, but these requirements cannot alter the nature of the application or make it one falling within the category of applications in part 3 of Sch. 1, Limitation Act.'

Dealing further with the arguments that the object of limitation is to quiet long possession and to extinguish stale demands, it was observed:-

'THIS being the purpose of the law of limitation, it is reasonable to suppose that a period of limitation will be prescribed by the Legislature for a party who seeks the assistance of the court for the establishment of a pecuniary claim or any other legal right against another party or parties. The Legislature would not provide a period of limitation for an application by a party who has no interest therein and who does not seek the assistance of the Court for any such purpose.'

(9) It cannot be disputed that there is nothing in Section 14 of the Arbitration Act which precludes the arbitrator from filing the award or that it is only parties to the arbitration who should make an application to the award for filing the award vide Air 1945 Nag. 117. In Jayantilal Jamnadas V. Chhaganlal Nathoobhai A.I.R. 1945 Bom 417 Chagla J. held as under:-

'RULES have been framed by our High Court under the Act and R.375 lays down the procedure that the arbitrator has got to follow when he files his award. That rule provides that he has to forward the award under a sealed cover with a letter requesting that the same be filed. Rule 373 of the High Court Rules lays down that all applications under the Act shall be made by petition except those under Ss 17, 20, and 34 of the Act which have got to be made in open Court on a notice of motion. therefore, reading Rs. 373 and 375 together it is clear that an arbitrator does not make an application to the court when he files an award but he does an act which the statute requires him to perform, and he intimates to the court by his letter that he has made the award and that award should be taken on the file.' * * *

* * 'The position is very different when an arbitrator does not file the award and a party apenes to the court to direct him to file the award. Then a formal application has got to be made by the party and on that application the court makes the order. In my opinion, it is only when such an application is made by a party to the reference that the application of Article 178, Limitation Act is attracted.'

(10) It was also in this very case held that the limitation applies to applications made by parties to the proceedings and cannot apply to the one which was not a party to the proceedings and not interested in the result of the proceedings and

therefore it could not have been intended that the act of the arbitrator in filing the application and the award was controlled by any article of the Limitation Act. John B. Paes case was referred with approval. Dealing with the argument that this interpretation would mean that whereas a party's application would be barred ninety days after the notice had been served upon him, an arbitrator would be at liberty to file the award at any time if so requested by one of the parties, it was observed: -

'FIRSTLY it is not likely that an arbitrator would be permitted to allow a considerable period of time to lapse without his being called upon to file the award because the award is bound to be in favor of one or other of the parties and that party would be interested in seeing that the award was filed with due dispatch. The second answer is that inconsistencies in a statute are for the Legislature. To the extent that the language of a section is clear the court must give effect to it and especially in a statute like the Limitation Act which deprives a party of valuable rights.'

A number of other cases have also taken the view that the filing of an award by the arbitrator is a ministerial act and that no limitation is attached to such an act vide *Lachmi Prasad v. Gobardhan Das and others* (A.I.R. 1948 Patna 171 and *Dwarka Das V. Pearay Lal and others* : AIR1949 All234 . In *Gendalal Motilal v. Mathuradas Ramprasad and others* A.I.R. 1951 Nag 32 Hidayatullah J. (as he then was) held that though 'the rule of the court requires the arbitrator to file the award in a particular way, those rules are merely to make it convenient to the arbitrators to forward their award and this fact that an application is made is not sufficient to import Art. 178 of the Limitation Act. In the same authority it was also held that the arbitrator is certainly not a party to the proceedings and acts in a ministerial manner while filing the award in court. In *R. Dasaratha Rao and others v. K. R. Ramaswamy Iyengar and others* A.I.R. 1956 Mad 134 a Division Bench consisting of Gobinda Menon J. (as he then was) and Basheer Ahmed J. held:

'THE arbitrator is not in that position. His situation is analogous to that of an adjudicator resembling a court and unless the provisions of the Limitation Act expressly provide a period of limitation for any act to be performed by him it is

unreasonable to impute any intention to the legislature that an Article of the Limitation Act should control his action.'

It was further held that in so far as there is no time prescribed for an application by the arbitrators to file the award in court, either expressly or otherwise Article 178 could not apply to the present application. It was observed as under:-

It may be that the arbitrators have taken out this application at the instance of one of the parties but this fact will not make any difference to the application of the Article to the case. What is contemplated under Article 173 of the Limitation Act is not an application by the arbitrators or as we have already observed there is no obligation on the arbitrators under the Arbitration Act to file the award suo mota with or without any application.'

Dealing further with the argument that the rules of the High Court and procedure to be followed in an application to be filed under the Arbitration Act it was observed in this very case:-

'THERE can be little doubt that these rules to be followed in regard to applications under the Arbitration Act. But the mere fact that these rules required that the filing of the award should be by means of an application or petition and that such application or petition is made under the Arbitration Act, would not by itself be sufficient to say that the application of the arbitrator to the court to receive the award for the purpose of filing the same would be governed by Article 178 of the Limitation Act.'

In *M/s. Francesco Corsi v. Gorakhram Gokalchand* A.I.R. 1960 Bom 91 the award which was given on 23-2-1953 was filed on 13-10-1955 by the arbitrator. In repelling the argument that the award was filed beyond time it was observed as under:-

'WHEN the arbitrator or umpire send the award to the court for the purpose of being filed in court it is the duty of the court to file the award and give notice to the parties of the filing of the award. The filing contemplated under Section 14 is a ministerial Act. Article 178 of the Indian Limitation Act does not apply to such filing.

There is no time for the arbitrators or umpire to file the award in court.'

Mr. Vijay Kishan, however, referred me to some cases for his contention that Article 120 of the Limitation Act would be applicable in the present case. They are, however, all distinguishable. He referred me to *Sha Mulchand and Co. Ltd. v. Jawahar Mills Ltd.* : [1953]4SCR351 . In that case the question arose whether an application filed under Section 38 of Companies Act for rectification of the register was governed by Article 181 of the Limitation Act. Their lordships took the view that Article 181 of the Limitation Act was not applicable as in a long catena of decisions it has been held to govern only applications under the Code of Civil Procedure. In this case their lordships of the Supreme Court observed that if Article 181 does not apply then the only Article that can apply by analogy is Art. 120. It is on this observation that Mr. Vijay Kishan places his main reliance. It will be seen that in the case before the Supreme Court the application was made by a person who was aggrieved and was seeking some relief namely the rectification of the register. Accepting, therefore, that to an application under the Companies Act, Article 120 of the Limitation Act applies by analogy, the same result does not follow when the arbitrator does a ministerial act of filing the award, for before Article 120 can apply it is essential that such an application should be by a party interested in the proceedings. If the view taken in the decisions mentioned above is correct and (I respectfully agree with those decisions) that the arbitrator is not a party to the proceedings and his act in filing the award is merely a ministerial one, then it is manifest that Article 120, of the Act cannot be invoked even by analogy, because it is a condition precedent to its applicability that an application should be by a person or a party to the proceedings who is interested in it. This condition precedent is missing in the eventuality when an arbitrator files an application to file the award because he is not a party interested in the up-holding or the setting aside of the award.

(11) The next case referred to is *L. Ganga Ram v. L. Radha Kishan* . What had happened in that case was that award was given by the arbitrator on 20-1-1943. One of the parties to the reference filed an application under Section 17 of the Act on 2-2-1948 for making award the rule of the court and passing a decree. The first question for determination was whether the application under Section 17 of the

Arbitration Act was competent. Kapur J., (as he then was) who was one of the members of the Division bench held that the applications for enforcement of the award are not confined to Section 14 of the Arbitration Act but such application are possible even outside that Section, because Section 14 deals with filing of the awards by an arbitrator or an umpire and does not cover an application made by a party for the enforcement of the award. It was, therefore, held that such an application under Section 17 by a party to the reference was competent.

(12) As regards the question whether the application was within time his lordship took the view that in a case where no period of limitation was prescribed and there is no provision in the Limitation Act it may be covered by rule laid down by the Supreme Court in : [1953]4SCR351 and, therefore, by analogy Article 120 is applicable. It would again be seen that the distinguishing feature in L. Ganga Ram's case was that the application was made by a party to a reference who was seeking to enforce the award. Thus the application was by a party who was interested and therefore, it was held that Article 120 of the Limitation Act could be applicable. It is unnecessary in the present case to determine whether this view of the Division Bench is correct after the decision in Mohd. Usman's case : [1969]2SCR232 wherein it has been held that apart from Articles 158 and 178 of the Act, Limitation Act does not apply to any of the applications under the Arbitration Act. Even if the ratio of L. Ganga Ram's case was to be applied namely that the application by a party under the [Arbitration Act, 1940](#) which is not covered by Article 158 and 178 of the Act would be governed by Article 120 of the Act, the same would not apply in a case like the present where the application is not by a party interested but is by the arbitrator who has merely done a ministerial act by filing the award. This case is, therefore, of no assistance to the petitioner.

(13) The next case referred to is Rambilas Mahto and others v. Babu Durga Bijai Parasad Singh and others : AIR1965 Pat239 . In that case the question called for determination was whether the bar of a suit under Section 32 of the Arbitration Act was attracted when though an award had been made yet it had not been got filed in the court and made a rule of the Court. The Division Bench held that only when the award is filed in court and made a rule of the court that Section 32 of the Act was attracted and, therefore unless the award was first filed in court and made a

rule of the court the suit was competent. Mr. Vijay Kishan, however, sought to place reliance on observations in para 28 of this judgment. With respect these observations were merely obiter 'and were not actually necessary for the determination of the matter before the bench. It is pertinent, however, to note that the arbitrators have no personal interest in the dispute referred to arbitration. It is not clear from these observations whether it was being suggested that even though Articles 158 and 178 do not apply to the act of the arbitrator, in filing of the award in court yet if the Arbitrator files the award beyond the period of limitation provided in Article 178 it would be held to be barred by time because even though the filing is done by the arbitrator it must be assumed to be done at the instance of the party. If this is what the authority means to say then it is contrary to its own earlier finding that Article 178 does not apply to filing of the award by the arbitration and his opposed to the direction decision of the Supreme Court in Champalal's case : [1960]2SCR810 . where it is clearly held that Article 178 is not applicable to the case of filing of award by the Arbitrator and is only applicable when the parties file an application. It Rambilas Mahto and others' case : AIR1965 Pat239 there is no suggestion that in such a case Article 120 of the Limitation Act is applicable. This case does not therefore help the petitioner.

(14) There is another reason why Article 120 of the Act cannot be made applicable. Under the said Article the time begins to run when the right to sue accrues. The right to sue only begins to accrue when the cause of action arises. There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.

(15) The right to sue means a right to seek relief, that is a right to prosecute by law, to obtain relief by means of legal procedure, in other words, a right to sue accrues when a cause of action arises. In order that there may accrue a right to sue, there must, have come into existence the substantive right asserted in the suit and such right must have been infringed or threatened to be infringed. The right and its infringement or threat of infringement constitute the cause of action and give rise to a 'right to sue.' Applying this test how one is to hold that Article 120 of the Act applies when the arbitrator files an award in court. It is manifest that

as per Article 120, time from which period begins to run starts when the right to sue accrues. It is patent therefore, that if Article 120 of the Limitation Act is to apply there must be point of time from when the period will begin to run. Now the period begins to run only when the right to sue accrues. therefore, if Article 120 of the Act is to be held to apply to the act of arbitrator in filing the award it also must be held that there is a personal right in the arbitrator and that the arbitrator when he files the award is seeking to enforce a personal right which has accrued to him. But it is clear that when arbitrator files an award in court he is not seeking to enforce any personal right, there is no question of any right to sue accruing to the arbitrator. This clearly negatives the suggestion that Article 120 of the Act applies to such a case. As it cannot be held that the arbitrator has any personal right to enforce therefore, there can never arise a right to sue within the meaning of Article 120 of the Act and, therefore, the bar of limitation in this Article cannot be attracted. Even assuming that the word 'sue' is to cover the application it is incumbent that a person who moves an application must have a grievance which he wishes to remedy by making an application to the court. Now when the arbitrator files the award in the court he is not asking for the enforcement of a personal claim and it is, therefore, not possible to hold that any right to sue accrued to the arbitrator. It was sought to be suggested that when the arbitration award was signed on 12-1-1958 the right to sue accrued to the arbitrator and therefore six years' limitation started from that date. But the act of the arbitrator when he files the award in the court is merely a ministerial act. The arbitrator is not seeking to establish any right of his when he files the award in the court. Thus it will be seen that Article 120 of the Limitation Act in terms cannot apply because the various conditions mentioned in the Article are not at all involved. The argument that because the High Court Rules and Orders, Volume I, Chapter 4-B provide a procedure by which the applications are to be filed under the Arbitration Act and therefore, it should be deemed to be an application within Article 120 of the Act has no force. The mere fact that a particular procedure is provided for an application that does not mean that the arbitrator is seeking to establish a personal right. The rules merely provide a procedure and the manner in which the said applications are to be held. It may even be open to the arbitrator to send his award otherwise than through an application and it will have to be taken by the court on

its record because all that a court requires is an introduction of the award by the arbitrator that has been signed by him.

(16) The result of the above discussion is that neither Article 158 nor 178 nor 120 of the Act applies. In that view of the matter there is no provision of the Limitation Act, 1908 which is applicable and hence it has to be held that the award filed by the arbitrators was not barred by time.

(17) The result is that the decision of the courts below cannot be interfered with. I would, therefore, dismiss the petition, but in the circumstances of the case with no order as to costs.

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