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**SooperKanoon Citation :** [sooperkanoon.com/762265](http://sooperkanoon.com/762265)

**Court :** Rajasthan

**Decided On :** Nov-14-1975

**Reported in :** 1975WLN(UC)467

**Judge :** V.P. Tyagi, Ag. C.J. and; M.L. Jain, J.

**Appeal No. :** D.B. Special Appeal No. 72 of 1973

**Appellant :** Chiraguddin

**Respondent :** Luqman and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**M.L. Jain, J.**

1. This appeal of plaintiff Chiraguddin is directed against the judgment of the learned Single judge setting aside the award given by the sole arbitrator Amin. The facts giving rise to this litigation may in a nut shall be placed below.

2. A suit was filed by Chiraguddin against the respondents. That suit was decreed by the trial court. The respondents filed an appeal against that decree and the judgment of the trial court, in this Court. During the course of pendency of the appeal the parties agreed to refer the matter to the sole arbitrator Amin, who has been the real brother of Chiraguddin and the cousin of respondents Luqman,

Qasim and Abdullah. It, may be mentioned here that Amin appeared in the trial as a witness on behalf of the defendants.

3. Since the entire arguments of the parties are centered round the interpretation of the deed of reference, it, will be worth while to reproduced the relevant language of that deed whereby the parties choose to refer the matter for arbitration to Amin, in the deed of reference it was mentioned.

You are competent to decide the dispute after making such enquiry as you please and you are not bound to keep any record of evidence (Oral or Documentary) which you may like to examine. In case you want to examine the record or the case or documents, you may inform this Court so that the record may be sent to the lower court for your examination.

Amin gave his award. The respondents filed objections under Section 30 of the Arbitration Act to that award and inter alia submitted that the award stands will and, because she arbitrator treed his personal knowledge in giving the award with given notice thereof to the parties It was also urged cannot be upheld because it was given in dear violation of the principles of natural justice inasmuch as no notice was ever given to the respondents by Amin, the sole arbitrator and as such, disproved them of their valuable rights of placing their case before the arbitrator.

4. The learned judge, while setting aside the award observed:

In the present case the parties can be imputed with the knowledge that the arbitrator Amin was personally aware of the controversy between the parties. He was near relative of both the parties being the brother of she plaintiff-respondent and the cousin of the appellants. Apart from that be had appeared as a witness in the case and had made a statement which was favourable to the appellants. Therefore. the parties can be taken to have agreed that the arbitrator would undoubtedly be using has personal knowledge. If the matter were to stand as that then perhaps there would be very little for the appellants to contend against the validity of the award, but I cannot lose sight of the statement made by the arbitrator in Court. If his knowledge of the truth was of one kind then one would expect him to tell how the knowledge became the other way round in the course of

his conducting the arbitration. It may be that there would be such irresistible facts or documents before him as might induce him to change his previous opinion, but then according to the principles of natural justice which govern such proceedings the appellant was entitled to know from the arbitrator what it was that brought about a change in the so-called personal knowledge....

5. The appellant before us challenged the judgment of the learned Single judge on the ground that the law laid down by the learned Judge is not a correct law, specially when the learned Judge himself admits that the parties have agreed to allow the arbitrator to use his personal knowledge while giving the award and, therefore, on that ground the award could not be set aside by the learned Judge. The learned Counsel for the respondents on the other hand contended that the law has now been settled by the authority of the Supreme Court in *Dewan Singh v. Champatsingh and Ors.* : [1970]2SCR903 . which lays down that if personal knowledge is allowed to be used by the arbitrator, then it must find a specific mention in the letter of reference. Since no such mention has been made, the sole arbitrator has no business to use his personal knowledge by giving his award it was also agreed by Mr. Vyas that even if the personal knowledge was to be imported by the sole arbitrator, he should have been given an opportunity to the parties to the award to lead evidence, if it is so required.

6. Mr. Bhargeva while arguing that where a particular arbitrator has been selected only because of his personal knowledge in the matter in dispute, it would not be a misconduct on the part of the arbitrator to use his personal knowledge in coming to a certain decision. He relied on *Daulat Singh Bapu Singh Raul v. Ratna Anand Singh and Ors.* AIR 1928 Bom 527, *Cnidambaram Chettiar v. Ayappa Chettiar* AIR 1935 Mad 152 and *Ramindar Singh v. Mohinder Singh* AIR 1940 Lah 186.

7. We have carefully perused these authorities wherein it has been held that where the arbitrator has been selected because of his personal knowledge of the matter in dispute between the parties, then it will not be a misconduct on the part of the arbitrator if he uses that knowledge in discharging of his duties as an arbitrator, but in all these cases the courts have put a rider that if the arbitrator uses his knowledge or information derived from other sources and if he fails to

communicate to the parties what he knew and if the party making the objection is prejudiced, the award would certainly be invalidated.

8. The contention of Mr. Vyas that in the present case the sole arbitrator Amin, no doubt, appeared as a witness on behalf of the defendants at the stage of the trial and he did possess personal knowledge, as deposed by him in that statement, but at the time where he delivered his award he manifested a different knowledge of which the parties had no notice at all. Amin has come in the witness box during the enquiries of the objections filed by the defendants and he had stated that he was informed by the defendants and their deceased father Sandal that the judgment of the trial court passing the decree against the defendants is correct and, therefore, he derived that knowledge right from the defendants themselves. In such circumstances it is urged by Mr. Bnargava that no notice was necessary to give the defendants that the knowledge was to be used by him while discharging his duties as an arbitrator.

9. There is no controversy between the parties on this question that before the award was given by Amir, he did not disclose to the parties that he was going to use his personal knowledge and also did not tell them that what principal knowledge he had with him. The Supreme Court in *Dewan Singh v. Champat Singh and Ors.* : [1970]2SCR903 has laid down the law, which is as follows.

It is normally an implied term of an arbitration agreement that the arbitrators must decide the dispute in accordance with the ordinary law. That rule can be departed from only if specifically provided for in the submission.

The recital in the agreement between the parties that the arbitrators may decide the disputes referred to them in "whatever manner they think" does not mean that the arbitrators can decide those disputes on the basis of their personal knowledge. The proceedings before the arbitrators are quasi-judicial proceedings. They must be conducted in accordance with the principles of natural justice. The parties to the submission may be in the dark as regards the personal knowledge of the arbitrators, There may be misconceptions or wrong assumptions in the mind of the arbitrators. If the parties are not given opportunity to correct those misconceptions or wrong assumptions, grave injustice may result.

From these observations of the learned Judges it becomes clear that if it is spelt out front the agreement of arbitration that personal knowledge can be used by the arbitrator in deciding the matters between the parties, then it is incumbent on him that the parties must be informed of the knowledge that the arbitrator possesses about the controversy between the parties. According to the observations of the Supreme Court, if the arbitrator fails to give notice of his personal knowledge to the party and if the party is prejudiced by nondisclosure of such personal knowledge, then the award given by the arbitrator shall stand vitiated, as there is likelihood that a grave injustice may result if such an award is allowed to held good.

10. We can accept the contention of Mr. Bhargava that under the circumstances of this case there was an implied consent of the parties that the arbitrator could use his personal knowledge, but that implied consent did not absolve the arbitrator from the responsibility which had fallen on him as an arbitrator to disclose that personal knowledge to the patties, which be wanted to use specially when he used such knowledge, which was quite contrary to the one disclosed earlier by him in his statement on catch at the trial In these circumstances we do not find that the judgment of the learned Single Judge deserves interference at our hands.

11. The special appeal is, therefore, dismissed with costs.