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**Court :** Kolkata

**Decided On :** Apr-29-1919

**Reported in :** (1919)ILR46Cal1059,54Ind.Cas.668

**Judge :** Sanderson, C.J. and ;Woodroffe, J.

**Appellant :** Tejpal Jamunadas

**Respondent :** B. Nathmull and Co.

**Judgement :**

Sanderson, C.J.

1. These are two appeals by the appellants from two orders made by Chaudhuri J., on the 13th March, 1919, in respect of two applications which were heard together.
2. The facts material to the matters before the Court are as follows:
3. A dispute arose between the parties with reference to a contract relating to the purchase of Hessian cloth.
4. In pursuance of the terms of the contract, the dispute was referred to the arbitration of the Bengal Chamber of Commerce and, on the 14th June, 1918, an award was made in favour of Tejpal Jamunadas.

5. On the 22nd July, 1918, the award was remitted to the said Chamber by Greaves J., in order that evidence might be taken. I have not a copy of this order before me, but I understand that no time for making the fresh award was mentioned in the order, and consequently by reason of Section 13(2) of the Indian Arbitration Act, 1899, the fresh award should have been made within three months after the date of the order remitting the award. The fresh award, which was in favour of Tejpal Jamunadas, was made on the 24th October, 1918.

6. In the learned Judge's judgment, the award is stated to have been made on the 25th October, but according to the papers before me, it was in fact made on the 24th October.

7. This was two days beyond the three months allowed by the abovementioned section.

8. On the 25th October, 1918, it was sent by the Registrar of the Tribunal of Arbitration of the Bengal Chamber of Commerce to the Registrar of the High Court.

9. In due course it was filed and, on the 18th November, 1918, one C.C. Basu on behalf of Tejpal Jamunadas wrote to B. Nathmull & Co., and demanded payment of the amount awarded. On the same day B. Nathmull & Co. obtained a Rule calling upon Tejpal Jamunadas to show cause why the award should not be set aside.

10. On the 27th November, 1918, Tejpal Jamunadas obtained a Rule calling upon B. Nathmull & Co., to show cause why the time for making a fresh award should not be extended until the 31st of October, 1918.

11. The two Rules were heard together. The learned Judge discharged the Rule for extension of time, and directed that the award should be set aside.

12. The learned Judge was of opinion that a great deal of delay was caused in consequence of the absence of witnesses on behalf of B. Nathmull & Co. and said he would have liked very much to refer this matter to the Chamber again because the whole case had been heard by them.

13. He, however, came to the conclusion that he had no power to enlarge the time after the award had been made and said that he regretted to have to come to the conclusion that under Section 13, Clause (2) he had no power to remit such an award: consequently he set aside the award.

14. Tejpal Jamunadas appealed against both the orders of the learned Judge; the appeal against the order of the learned Judge refusing to extend the time stood first in the list and was numbered 21.

15. The two appeals were heard together.

16. Sir B.C. Mitter, on behalf of the respondents, took the point that there, was no appeal from Chaudhuri J.'s order, by which he discharged the Rule for extension of time, inasmuch as it was not a judgment within the meaning of Clause 15 of the Letters Patent,

17. It was not disputed that there was a right of appeal against the learned Judge's order by which he set aside the award.

18. It was contended on behalf of the appellants that the discussion as to the right of appeal in Appeal No. 21 was academical, inasmuch as there was admittedly a right of appeal in Appeal No. 22, and the reasons for the setting aside of the award, given by the learned Judge, must be considered; that the learned Judge, would not have set aside the award if he had thought he had power to extend the time that the Court of Appeal under Order XLI, Rule 33 has power to pass any decree or make any order which ought to have been passed or made; and, consequently, that the Court of Appeal, if it thought right could, in Appeal No. 22, make an order extending the time, and so make the award effective.

19. In my judgment, the point is purely a technical one: the applications though two in form, were heard as one matter, and the substance of it was, that the appellants were alleging that the award could be made effective provided the Court would extend the time; the respondents, on the other hand, were alleging that the award was incapable of execution and was incapable of being turned into an effective award by an order of the Court.

20. The learned Judge set aside the award, because he was of opinion that he had no power to extend the time or to remit the matter to the arbitrators. The appellants contend that he had power to extend the time.

21. If we were to accede to the respondents' contention that this Court could not go into the question of the Court's power to extend the time, this Court would be in the position that it could entertain an appeal from the learned Judge's decision to set aside the award, but it could not consider his reasons for that decision and, further, that if it did consider his reasons, and even if it came to the conclusion that his reasons were ill-founded and that he had power to extend the time, still the Court could not interfere with his decision in that respect because there was no right of appeal from his order refusing to extend the time.

22. This would lead to a most unreasonable result. In my judgment, even if there is no appeal against the order refusing to extend the time, which I do not decide, this Court in considering the Appeal No. 22, which is against the order setting aside the award, must consider the learned Judge's reasons for his decision; and if the Court comes to the conclusion that the learned Judge's reasons were ill-founded and that he was wrong in holding that he had no power to extend the time, and so make the award effective, this Court would have power to make an order for extension of time under Order XLI, Rule 33.

23. The first question to be considered on the merits of the appeal is whether the Court has power to extend the time. As I read the learned Judge's judgment, it is clear that he would have extended the time for making the award if he had power so to do; but he came to the conclusion that he had no such power and he based his decision on the judgment of Harington J., in *Shib Krishna Dawn & Co. v. Satish Chunder Dutt* (1911) I.L.R. 38 Calc. 522.

24. This case, however, depended upon the provisions of the Civil Procedure Code. The case which I have now to consider depends upon the provisions of the Indian Arbitration Act and, in my judgment, it is not covered by the case cited.

25. Section 12 of the Indian Arbitration Act provides that the time for making an award may, from time to time, be enlarged by order of the Court, whether the time

for making the award has expired or not.

26. The Court, therefore, has power to enlarge the time, though the time for making the award has expired, as in this case.

27. It was, however, contended that this power could not be exercised by the Court after the award was made. In my judgment this is not so.

28. Section 9 of the English Arbitration Act, 1889 is, in all material respects, identical with Section 12 of the Indian Arbitration Act and with reference to that section it was decided by the Court of Appeal in Knowles Sons, Ltd. v. Bolton Corporation (1900) 2 Q.B. 253, that the Court had jurisdiction to extend that time for making an award although the award had been in fact made, and in my judgment under Section 12 of the Indian Arbitration Act the Court has the power to extend the time though the time for making the award has expired and even though the award has been in fact made.

29. The above was not strenuously disputed; but it was urged on behalf of the respondents that the jurisdiction given by Section 12 could not be exercised by the Court, after the award has been remitted, as it was in this case, under Section 13 of the Act. It was argued that, having regard to the position of Section 13 in the Act, and to the fact that it came after Section 12, and having regard to the express terms of Section 13, the time for making the fresh award was limited to the three months, mentioned in the section, unless at the time of the order of remission the Judge, who made the order, otherwise directed.

30. In my judgment this contention is not well-founded, and I think the power given to the Court by Section 12 to enlarge the time is not limited in the manner suggested and may be exercised from time to time, and even after the award has been remitted by the Court to the arbitrators.

31. It was then urged that the Judicial Committee of the Privy Council had not followed the English cases, and reference was made to the case of Raja Har Narain Singh v. Chaudhrain Bhagwant Kuar (1891) I.I.R. 13 All. 300. This case was the basis of Harington J.'s decision in the case already referred to.

32. It was decided entirely upon the construction of the Civil Procedure Code then in force, and in the Judicial Committee's judgment it is pointed out that the construction of the section of the Code could not be much aided by analogies drawn from the sections of the English Common Law Procedure Act.

33. As already stated, the present case does not depend upon the provisions of the Civil Procedure Code, but upon the provisions of the Indian Arbitration Act, and in my judgment, the case cited does not govern the present one.

34. For these reasons, in my judgment, the learned Judge had power to enlarge the time for making the fresh award, even though there had been an order of remission and the award had been in fact made.

35. It remains to consider whether the learned Judge should have enlarged the time. I have already said that it is apparent from the learned Judge's judgment that he would have enlarged the time, if he had considered that he had the power so to do, and the merits of the appellants' application to enlarge the time have not been seriously disputed in this Court, and, in my judgment, the time for making the fresh award should be enlarged until the 31st October, 1918, in accordance with the appellants' application; so that the award, which was made on the 24th October, 1918, should be effective.

36. The result is that, in my judgment, these two appeals, which are in reality one appeal, should be allowed with costs; the two orders of the learned Judge should be set aside and the time for making the fresh award should be enlarged until the 31st October, 1918, and the award should be restored to the file. The respondents must pay the appellants' costs of the proceedings before Chaudhuri J.

**Woodroffe, J.**

37. I agree.