

Robarts Vs. Harrison

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SooperKanoon Citation : sooperkanoon.com/864292

Court : Kolkata

Decided On : Jun-06-1881

Reported in : (1881)ILR7Cal333

Judge : Wilson, J.

Appellant : Robarts

Respondent : Harrison

Judgement :

Wilson, J.

1. This was an application by the plaintiff to take off the file an award filed by the arbitrators who made it, on the ground that, under the Limitation Act, it was filed too late.

2. The reference was in a suit. The award was made and published in due time on the 29th September 1880 It was filed by the arbitrators on the 29th April 1881. The plaintiff contends, that the filing was out of time under Article 176 of the second schedule of the Limitation Act (XV of 1877), which prescribes a period of six months from the making of the award for an 'application under the Code of Civil Procedure, Section 516 or 525, that an award be filed in Court.'

3. In order to see whether this contention is correct, it is necessary to examine the sections of the Code relating to arbitrations. There are three kinds of arbitration dealt with in chap. xxxvii—references of matters in difference in suits already pending; references not in suits, but in which the submission is filed under Section 523, and which thereupon become suits; and thirdly, references not in suits, and in which the submission has not been filed but in which the award may be filed under Section 525.

4. The first two kinds of reference may, for the present purpose, be regarded as identical. In each, by the time the award has to be dealt with the Court has already control of the proceedings, and the rules as to the award are in each case the same. By Section 516 the arbitrators must sign their award and cause it to be filed in Court. This causing the award to be filed, it must be observed is the act of the arbitrators. The only duty of the Court or its officers is to receive the award when tendered, and, I suppose, to make the proper endorsement or entry, and deposit the document in its proper place. The judicial functions of the Court are to be exercised afterwards, or at any rate in different matters altogether. The Court may, on certain grounds, modify the award (Section 518), or remit it (Section 520) or set it aside altogether (Section 521), or may make a decree according to the award (Section 522).

5. In cases where, before the award, there has been no proceeding in Court, the procedure is entirely different. Before the award can be filed, there must (Section 525) be an application in writing, against which the other parties must have an opportunity of showing cause. And the Court has, or may have, to determine important questions (Section 526), as for instance, whether the arbitrator has or has not exceeded his authority.

6. These, briefly stated, are the provisions of the Code bearing upon the present question. It remains to consider the meaning of the words 'applications under Section 516 or Section 525' as used in Article 176 in the schedule of the Limitation Act. So far as Section 525 is concerned, there is no difficulty. No award can be filed under that section without a written application which the Court deals with judicially. But it is a very different thing to say that the filing of an award by an

arbitrator under Section 516 is an application.

7. The Limitation Act is a disabling Act, and no Court, I think, is justified in straining its language beyond its natural meaning in order to take away from any one the rights which but for it he would possess. There is little in the general framing of the Act to throw light upon particular provisions. But there is something.

8. The preamble deals only with 'applications to Courts,' and I think the Act is limited accordingly. It is also legitimate, I think, to consider the character of the series of applications enumerated in order to ascertain what an application means; see *Be Ishan Chunder Roy* (8 C. L. R., 52). Now, in the case of all the other applications mentioned in the schedule, the application is one which the Court has to deal with judicially by making an order in accordance with the application or dismissing it. I think I should have to do great violence to the ordinary meaning of words, and to disregard all the indications afforded by the Act itself, if I were to hold that the act of an arbitrator, in handing an award to the proper officer to be filed was an application within the meaning of the Limitation Act.

9. It was argued, that the effect of holding as I do would be to make the article in question wholly inoperative. It may be so. It may be, on the other hand, as was also suggested, that the article might be held to apply to an application to the Court by any of the parties to compel an arbitrator to file his award. These are questions which do not arise on the present application. I can only take the words of the Statute as they stand, and see whether they, apply to the case before me. I think they do not.

10. This application is dismissed with costs.

* Description of Application. Period of limitation. Time from which period begins to run.

158.---Under the Code of Ten days When the award is submitted to the Civil Procedure to set aside an Court,]

ward.