

Crompton and Co. Ld. Vs. Mohan Lal

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Court : Kolkata

Decided On : Jul-09-1913

Reported in : 25Ind.Cas.391

Judge : Chaudhuri, J.

Appellant : Crompton and Co. Ld.

Respondent : Mohan Lal

Judgement :

Chaudhuri, J.

1. This is an application on behalf of Rai Bahadur Mohan Lal to set aside an award made by one Mr. Pooler, dated the 16th September 1912. The grounds upon which the application is made are set out in the affidavits of Rai Bahadur Mohan Lal and Mr. Lal Chand.

2. The petitioners complain that they received no notice from Mr. Pooler of his intention to enter upon the reference, and that he paid the defendant firm one visit for about ten minutes only and save and except for that visit the petitioners did not know, prior to the said Mr. Pooler making his award, of any steps being taken by him in connection with the said reference, nor was any notice of the time or place of meeting sent or given to the petitioners, nor had they or either of them any interview with or communication from the said Mr. Pooler with regard to the

reference; that they were desirous of being heard and of adducing evidence before the arbitrator, but no opportunity was given to them. This is admitted by Mr. Pooler, who says in a letter set out in the said affidavit, addressed to Mr. Lal Chand, that he had made the award in the case without taking any defence from the defendant Company. He says he went through the file of correspondence between them and Crompton & Co. and also their file on the matter; but he did not place the proposed award before them for criticism or defence.

3. It is quite clear from the affidavits that Mr. Pooler ought to have given the petitioners an opportunity of putting their case before him and the petitioners, not knowing that the reference had been taken up or that it was being dealt with, have been prejudiced.

4. One of the points in dispute between the parties is about some motors which the defendants said were useless. They said that although on one occasion Mr. Pooler went with them to the place where the motors were lying, he did not examine them. Mr. Lal Chand says that he understood from Mr. Pooler that due notice of the reference was going to be given in the ordinary course. Nothing was done by Mr. Pooler, and the defendants had no opportunity of placing what they had to say in respect of their defence.

5. The award itself is defective in some respects. Take the last paragraph: 'I further recommend that if Crompton & Co. can make use of any of the motors lying useless with Messrs. Gulab Singh & Sons, that they take these over at one-half of the costs originally charged, etc.... This is at Crompton and Co.'s option. The machineries charged for in 2409 and 2935 should be certainly taken back at one-half the costs if in good condition....'

6. Now, these were some of the matters in dispute between the parties, and it cannot be said that the arbitrator has decided these points or given any definite directions with regard to them, as he ought to have done. I am clearly of opinion that the conduct of Mr. Pooler in proceeding with the reference in the manner he did was not proper, and that it amounts to legal misconduct. The award, therefore, must be set aside.

7. The petitioners have strenuously contended that the matter should not be remitted to Mr. Pooler. Mr. Buckland appearing for them contended that in cases of misconduct if so held by the Court, the Court had no power to remit the award to the arbitrator. He relies upon Sections 13 and 14 of the Indian Arbitration Act (IX of 1899),, which run as follows: 'The Court may, from time to time, remit the award to the re-consideration of the arbitrator or umpire.' Section 14 says: 'Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award.' His argument is that there is no provision, in the section for remitting the award, in the case of misconduct, but that power is given merely to set aside the award, and that Section 13 dealt with cases other than that of misconduct. Section 13 of the Arbitration Act corresponds with Section 10. of the English Arbitration Act of 1889, 52 and 53 Vict. c. 49, and Section 14 corresponds with Section 11, Sub-clause 2. Section 10 of the English Act of 1889 is the same as Section 8 of the Common Law Procedure Act of 1854 : under Section 8 an award could be remitted upon certain specified grounds. The same rule as laid down in Section 8 has been held to apply to Section 10 of the English Act of 1889. This was so stated by Lord Esher, M. R., in *In Re: Keighley and Durant* (1893) 1 Q.B. 405 : 62 L.J.Q.B. 105 : 4 R. 136 : 68 L.T. 61 : 41 W.R. 437 : 7 Asp. M.C. 268. In *Re: an Arbitration between Montgomery, Jones & Co.* (1898) 68 L.T. 406, Smith, L.J., and Chitty, L.J., held the same. They said that they agreed that with regard to Section 10 of the English Arbitration Act of 1889 there were four grounds upon which the matter could be remitted to an arbitrator for re-consideration. Those grounds are (1) where the award is bad on the face of it, (2) where there has been misconduct on the part of the arbitrator, (3) where there has been an admitted mistake and the arbitrator himself asks that the matter may be remitted, (4) where additional evidence has been discovered after the making of the award. Chitty, L.J., however, thought that it was not necessary to limit the operation of Section 10 to those four grounds. In this case there is no question of moral misconduct and there is no suggestion that the arbitrator is corrupt or partial-in any way. All that is said is that he acted irregularly in the discharge of his duties.

8. There was a statement in the affidavit of Mr. Lal Chand that he had been informed that Mr. Pooler when in Calcutta had frequent conversations on the

telephone with persons in the office of Martin & Co., the agents of Crompton & Co. This is denied by Mr. Theobald in his affidavit of the 25th June 1913, paragraph 11. He says that so far as he is aware no conversation took place over the telephone between January and September 1912 between Martin & Co. or the said Crompton & Co. with Mr. Pooler with reference to the said arbitration, save and except that on certain occasions he caused inquiries to be made over the telephone of Mr. Pooler as to when he would make his award in this matter.

9. Under the circumstances the question is whether it would be right to remit the award to Mr. Pooler. I think I have power to remit it, and it would be entirely right in the circumstances of this case to remit the award' to him for further consideration.

10. I have already drawn attention to the indefinite character of the directions in the last paragraph of the said award. The award must be definite with regard to all points in dispute between the parties.

11. In *Anning v. Hartley* (1858) 27 L.J. Ex. 145, Pollock, C.B., held in the circumstances of that case that he ought to remit the award to the arbitrators. One of the objections taken in that case was that the third arbitrator had heard evidence in the absence of the parties and their attorneys. The learned Judge did not find that there was the slightest imputation on the conduct of the arbitrators as to their intention, and said: it would be indeed lamentable if the Court was not able to send back the award to them to be set right, as otherwise all the expenses already incurred would be thrown away.' Watson, B., was of the same opinion and said:

12. The Court sends back an award to the same arbitrators in such cases where there is no reason to believe they are not to be trusted.' There is also a serious question in this case as to whether the claim of Crompton & Co. would not be barred by the Statute of Limitations if the award was simply set aside and the Company was left to their remedy by suit.

13. I hold that the present award cannot be upheld. I asked if the petitioners could agree to refer the matter to any other person; but they were unwilling to make any suggestion and only insisted that the award should be set aside. I, therefore, order

that the present award be set aside and the matter be remitted to the arbitrator, Mr. Pooler, for further consideration. He is to give the parties an opportunity of placing their respective cases before him and he is to consider the cases made by them.

14. The petitioners would be entitled to the costs of this application from Crompton & Co.

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