REVISIONAL CIVIL

Before Mehar Singh, C.J

BALWANT SINGH AND ANOTHER,—*Petitioners*

versus

PARTAP SINGH AND OTHERS,—*Respondents*

Civil Revision No. 609 of 1966.

October 19, 1967

Arbitration Act (X of 1940)—S. 14(2)—Limitation Act (IX of 1908)—Article 181—Application by arbitrator for permission to file award in Court—Whether necessary—Such application by arbitrator—Whether can be dismissed as barred by time.

Held, that there is nothing in section 14 of the Arbitration Act which precludes an arbitrator from filing an award in court. The arbitrator need not make an application for permission or leave to file the award. He can just file the award in Court. Any such application if filed by the arbitrator must be treated as a mere surplusage, in which case the occasion for dismissing it as barred by time cannot possibly arise. An application not necessary cannot be barred by time and cannot be thrown out as such.

Petition under section 115 of the Code of Civil Procedure for revision of the order of Shri Kartar Singh, Additional District Judge, Jullundur at Ludhiana, dated May 5, 1966, reversing that of Shri P. R. Aggarwal, Sub-Judge, 1st Class, Ludhiana, dated November 11, 1965, dismissing the petition being time barred.

N. C. JAIN, ADVOCATE, for the Petitioners.

P. S. MANN, ADVOCATE, for the Respondents.

JUDGMENT

MEHAR SINGH, C.J.—The applicants, Balwant Singh and Budh Wanti, in this revision application and the first three respondents to it, namely, Partap Singh, Darshan Singh and Sardul Singh, entered into an agreement for arbitration of disputes between them by respondent 4, Mehta Raja Ram Dutt, and one Kartar Singh, who were

thus appointed by the parties arbitrators to arbitrate on the disputes between them.

The arbitrators made their award on August 20, 1960. It has been found as a fact by the trial Court in its order of November 3, 1965, that, after notice, the parties appeared before the arbitrators on August 20, 1960, the award was made in their presence, and they read the award also. Obviously, in the circumstances, the parties knew of the award and had notice of it. It appears that none of the five parties thereafter moved to have the award filed in Court and made a rule of the Court.

On September 19, 1964, respondent 4, one of the two arbitrators, made an application in a Court at Delhi that the other arbitrator Kartar Singh, be directed to file the award in Court, and then the award be made a rule of the Court. On the very day the Court at Delhi passed an order directing Kartar Singh arbitrator to file the award in Court, which was done by him. Subsequently the Delhi Court on December 8, 1964, having come to the conclusion that it had no jurisdiction in the matter, returned the application of respondent 4 for presentation in proper Court. On that respondent 4 presented the very same application on February 22, 1965, in the Court of First Class Subordinate Judge at Ludhiana. The award already filed under the orders of the Delhi Court was with the application and thus came to the Ludhiana Court. On notice of the application having been given to the five parties concerned, the present applicants appeared and made an application that the award be made a rule of the Court, and, on the contrary, respondents 1 to 3 made an objection application under sections 30 and 33 of the Arbitration Act, 1940 (Act 10 of 1940), praying that the award be not filed and not made a rule of the Court. They raised various objections on their application including one of limitation that the application for filing the award having been made more than three years after the date of the award was barred by time. Obviously they were making reference to article 181 of the Limitation Act of 1908 in this respect. The trial Judge by his order of November 3, 1965, came to the conclusion that the application for filing the award having been made three years after the date of the award was barred by time and so he proceeded to dismiss that application. It is necessary here to repeat that the application for filing the award was made by one of the arbitrators, respondent 4 to this application, and not by any of the parties interested in the award.

An appeal was filed against the order of the trial by the present applicants and the Additional District Judge of Jullundur at Ludhiana has by his order of May 25, 1966, come to the conclusion that the appeal is not competent under section 39 of Act 10 of 1940 because it is not covered by clause (vi) of sub-section (1) of Section 39 upon which clause alone the parties were relying in this respect before him, as the order of the trial Court dismissing the application for filing the award as time-barred is not setting aside or refusing to set aside an award. This is a revision application by the applicants against the appellate order of the learned Judge.

It has already been pointed out that no party to the award has made an application for filing the award in Court. No such party has made an application through the Court calling upon the arbitrators to file the award. No person claiming under any such party has done so either. If the Delhi Court had jurisdiction in the matter, it could be said that by its order of September 19, 1964, it had directed the filing of the award in Court, but that Court had no jurisdiction in the matter. The award came to the Ludhiana Court—the Court having jurisdiction in the matter—on having been called by the Delhi Court, the Court not having jurisdiction in the matter, and on that the applicants wanted the Court to make it a rule of the Court and respondents 1 to 3 wanted that the application of respondent 4 (one of the arbitrator) to file the award in Court be dismissed as barred by time. Now, the wording of sub-section (2) of section 14 of Act 10 of 1940, as such, does not refer to this, that an arbitrator or an umpire can file an award himself, though he can be compelled to do so, by the persons referred to in the sub-section, through the Court. However, in *Narayan Bhaqu* v. *Dewajibhawu* (1), *Puranik*, J., was of the opinion that there is nothing in section 14 which precludes an arbitrator from filing the award in Court and he considered it not correct to say that only the parties to the arbitration should make an application in Court for filing an award or causing an award to be filed. No doubt sub-section (2) of section 14 does not, in the negative, say that an arbitrator or umpire cannot file an award. The act in this case is that as respondent 4, as an arbitrator, brought the award to the Ludhiana Court with his application, for filing it, it must be accepted as a fact that it was he, as an arbitrator, who filed the award in Court. But it has been pointed out in *Amod Kumar*

(1) A.I.R. 1945 Nag. 117.

Verma v. *Hari Prasad Burman* (2), by a Division Bench of that Court, that an arbitrator need not make an application for permission or leave to file the award and he can just file the award in Court without making any application. It means that no application was necessary, in law, by respondent 4 as an arbitrator for filing the award in Court, and it would make no difference that he in fact did make one such application. As no such application was necessary by respondent 4, his application for filing the award must be treated as a mere surplusage, in which case the occasion for dismissing the application for filing the award as barred by time cannot possibly arise in this case. The reason is obvious, for there is no such application and there can be no application. It may be pointed out here that a Full Bench of the Madras High Court in *Mohammed Yusuf* v. *Mohammed Hussain* (3), has been of the opinion that where an award made on a reference out of Court has not been filed into Court at the instance of any of the parties thereto within the time permitted by Article 178 of the Limitation Act, 1908, it will be open to the Court to pass a decree in terms thereof, if it is produced before the Court by the arbitrators themselves; it would then be competent to the Court to investigate into the validity of such an award. In the present case the award has come before the Court not through any step taken by either the applicants or respondents 1 to 3 but by a step taken by one of the arbitrators, respondent 4, in filing the award in Court, having had it produced by the other arbitrator through the agency of the Delhi Court. So the Ludhiana Court having the award before it just could not ignore it by saying that it found the application for filing the award by one of the arbitrators as barred by time, for, as stated, no such application was necessary, and an application not necessary cannot be barred by time. It is in these facts and circumstances and on this approach that this case has to be looked at and the conduct of the trial Court in refusing to adjudicate on the validity or otherwise of the award has to be seen. In that approach apparently the substantive effect of the order of the trial Court is no more but to set aside the award because it has refused to make it a rule of the Court, and immediately the order of the trial Court comes within the scope and ambit of clause (vi) of sub-section (1) of section 39 of Act 10 of 1940, and thus for appeal to the District Judge was competent under that provision.

(2) A.I.R. 1958 All. 720.
(3) A.I.R. 1964 Mad. I.

In consequence, this revision application is accepted, the appellate order of the appellate Court is set aside, and the directions to the appellate Court now is to proceed to hear the appeal on merits and dispose of it according to law. There is no order in regard to costs in this application. The parties are directed to appear before the appellate Court on November 20, 1967.

K.S.K.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

THE MANAGING COMMITTEE OF NATIONAL COLLEGE,—*Petitioner*

versus

THE PANJAB UNIVERSITY,—*Respondent*

Civil Writ No. 135 of 1967

October 20, 1967

Panjab University Act (VII of 1947)—Ss. 2(c), 5, 11(2), 20, 27, 29 *and* 31(2)—*Panjab University Calender—Chapter* III(A)—*Regulation* 11 *and* 12—*Regulations passed by the Senate—Whether can be amended or abridged by the Syndicate—"The executive government of the University shall be vested in the Syndicate"—Meaning of—Termination of the services of a permanent Principal of an affiliated College—Prior concurrence of the University—Whether necessary—Power of the syndicate to call upon an affiliated college to take certain action—Whether amounts to impinging upon Regulation* 11 *and* 12—*Constitution of India* (1950)—*Article 226—Administrative orders—Whether can be interfered with.*

Held, that the syndicate of the Panjab University has no power conferred on it by the Panjab University Act, 1947 or by the Regulations made thereunder to amend or abridge the Regulations made by the Senate with the sanction of the Government. The phrase "the executive government of the University shall be vested in the syndicate", cannot be given the wide meaning to embrace within its ambit all powers of making or adding to the Regulations which vest only in the Senate and that too, after obtaining the sanction of the government. The syndicate is not the executive government of the University strictly so called, but a body with a power to take executive action to administer and manage the affairs and to control and regulate the working of the University.