

Siri Ram
 v.
 Jagan Nath
 and others

 Kapur, J.

- (2) an execution application can be made even though no decree-sheet has been drawn up and no stamp-duty has been paid; the impediment because of section 35 of the Stamp Act is that such a decree cannot be executed;
- (3) an application can be a step in aid even though no execution proceeding is pending;
- (4) an application made to the Court for determination of the amount of stamp-paper is a step in aid of execution and would stop the running of time and give a fresh period of limitation as from the date the application was made;
- (5) even if I were to come to the conclusion that no application for execution could be made before the decree was engrossed on a stamp-paper, the application made on the 8th of March 1952 was a step in aid and would stop the running of time; and
- (6) the application made was in accordance with law and falls within the rule laid down by Sir Shadi Lal, C. J., in *Ghanaya Lal v. Nathu Ram* (1).

I would therefore dismiss this appeal with costs.

REVISIONAL CIVIL

Before Bhandari, C. J.

KARTAR SINGH,—Petitioner

versus

MEHR SINGH, ETC.,—Respondents

Civil Revision No. 364-D of 1953.

1956 *Arbitration Act (X of 1940)—Section 34—Requirements of—Suit when can be stayed.*

On the 24th March, 1944, five persons entered into partnership and the deed of partnership contained an arbitration clause according to which all differences arising among

(1) I.L.R. 12 Lah. 153, 156

the partners were to be referred to arbitration. On the 7th August, 1945, another agreement superseding the agreement of 24th March, 1944, was entered into and the partnership is stated to have been dissolved. On the 13th August, 1948, M. S. one of the partners brought a suit for dissolution of partnership and rendition of accounts. K. S. defendant pleaded that the partnership had already been dissolved and that the arbitration clause had been superseded by the agreement, dated the 7th August, 1945. The trial court held that a dispute had arisen in terms of the agreement, dated the 24th March, 1944, and directed that the matter be referred to arbitration. K. S. appealed and the decision of the trial court was affirmed. K. S. moved the High Court in revision.

Held, that an agreement to submit an existing or prospective dispute to arbitration rests upon the consent of parties and may like any other agreement be amended, modified, rescinded or revoked by mutual consent or by acts or conduct of the parties. The question whether the parties did in fact enter into a new agreement in substitution of the original agreement or whether the terms of the new agreement have been performed as satisfaction must be determined by the Court before it proceeds to enforce the arbitration clause.

Petition under section 44, Punjab Courts Act for revision of the order of Shri Sultan Singh Jain, Additional District Judge, Delhi, dated the 24th August, 1953, affirming that of Shri Y. L. Taneja, Commercial Sub-Judge, Delhi, dated the 11th February, 1952.

N. S. BINDRA, for Petitioner.

DARBARI LAL, for Respondent.

JUDGMENT

BHANDARI, C. J.—This petition raises the question Bhandari, C. J. whether the Courts below were justified in staying the proceedings of the suit under the provisions of section 34 of the Arbitration Act.

Kartar Singh v. Mehr Singh, etc. On the 24th March, 1944, five persons executed a deed of partnership containing an arbitration clause according to which all differences arising amongst the partners with regard to the partnership business were to be referred to an arbitrator nominated by the majority of the partners. On the 7th August, 1945, they are alleged to have entered into another agreement in supersession of the earlier agreement and to have dissolved the partnership. On the 13th August, 1948, Mehr Singh who is one of the five partners brought a suit for dissolution of partnership and rendition of accounts against the remaining partners. Kartar Singh, defendant, pleaded that the partnership between the parties had already been dissolved by mutual agreement, that the original agreement containing the arbitration clause has been superseded by the agreement dated the 7th August, 1945, that the partnership accounts had been gone into and settled, that the partnership had come to an end and that there was in existence no dispute which needed to be settled either by an arbitrator or by a Court of law. The trial Court came to the conclusion that a dispute had arisen in regard to the partnership business and directed that dispute be referred to an arbitrator nominated by a majority of the partners before any action could be taken in a Court of law. This decision was upheld by the lower appellate Court and Kartar Singh has come to this Court in revision.

An agreement to submit an existing or prospective dispute to arbitration rests upon the consent of parties and may like any other agreement be amended, modified, rescinded or revoked by mutual consent or by acts or conduct of the parties. An arbitration agreement may, for example, be superseded by a new agreement which has the effect of extinguishing the existing agreement or by the performance of the terms of the new agreement entered into in satisfaction of the prior agreement. The question whether the parties did in fact enter into a new agreement in substitution of the original agreement or whether the

terms of the new agreement have been performed as Kartar Singh satisfaction must be determined by the Court before ^{v.} it proceeds to enforce the arbitration clause. If accord and satisfaction is by substituted agreement it is a question of construction of that agreement whether it <sup>Mehr Singh,
etc.</sup> _{Bhandari, C. J.} also extinguishes all pre-existing rights and obligations and totally discharges the original contract.

The position as I see is simply this. If the parties did in fact come to an agreement on the 7th August, 1945, by virtue of which the original agreement was extinguished or if the parties came to an agreement which required the performance of certain acts in satisfaction of the original agreement and the terms of the said agreement were fully performed, it is obvious that the later agreement superseded the agreement containing the arbitration clause. If on the other hand no agreement was entered into on the 7th August, 1945, or if the agreement which was entered into on that date did not supersede the earlier agreement or did not result in accord and satisfaction then it is equally clear that the arbitration clause contained in the earlier agreement would remain alive and continue to operate.

For these reasons I would accept the petition, set aside the orders of the Courts below and remand the case to the trial Court with the direction that it should decide (1) whether the parties to this litigation entered into an agreement on the 7th August, 1945, and if so (2) whether this agreement extinguished the agreement dated the 24th March, 1944 or constitutes a bar to the enforcement of the arbitration clause contained in the earlier agreement. If the answers to both the questions are in the affirmative, the matter cannot be referred to an arbitrator and must be decided by a Court of law.

There will be no order as to costs.

The parties have been directed to appear before the trial Court on the 19th November, 1956.