

the Chief Commissioner held that Sis Ram's claim was within time only for two months and remanded the case for adjudication of the amount due to him. Sis Ram filed a writ petition challenging the order of the Chief Commissioner, which was allowed by the learned Single Judge by the same order. Letters Patent Appeal 30-D of 1962 has been preferred by Charnji Lal Gupta and Letters Patent Appeal No. 42-D of 1962 by the Chief Commissioner, Delhi, challenging the order of the learned Single Judge. In view of my decision as to the jurisdiction of the Chief Commissioner these two appeals must also fail and are dismissed with no order as to costs:

GURDEV SINGH, J.—I agree.

K. S. K.

FULL BENCH

Before Mehar Singh, C.J., Harbans Singh and Daya Krishan Mahajan, JJ.

SARDOOL SINGH,—*Appellant.*

versus

HARI SINGH AND OTHERS,—*Respondents.*

F.A.O. 103 of 1962

November 8, 1966.

Registration Act (XVI of 1908)—S. 17—Award affecting immovable property of the value of or above Rs. 100—Whether requires registration before it can be made a rule of the Court.

Held, that an award, after the coming into force of the Indian Arbitration Act, X of 1940, does not require registration before it can be made a rule of the Court for the following reasons :—

- (i) Under section 17 of the Arbitration Act an award has to be made a rule of the Court and the Court will pronounce judgment on the basis of the award and a decree shall follow, that is to say, the award by itself is of no effect. It follows that an award as such does not purport or operate to create any right, title or interest in the property dealt

Charanji Lal v. Lajja Ram, etc. (Kapur, J.)

with by it within the meaning of section 17(1)(b) of the Registration Act. The award is a useless document unless it is made a rule of the Court! and once it is made a rule of the Court, it being a decree of a competent Court does not require registration. So far as a Court decree is concerned, it fulfils each one of the objects of registering documents. The only exception, where a decree requires registration, is where it deals with property outside the subject-matter of the controversy. But otherwise decree dealing with property, which are subject-matter of the controversy, do not require registration;

(ii) If an award is registered, it is still a waste paper unless it is made a rule of the Court. Thus registration does not, in any manner, add to its efficacy or give it any added, competence. Section 32 of the Arbitration Act is specific for no right can be founded on an award as such after coming into force of the 1940 Arbitration Act; and

(iii) The Court has undoubtedly the power, under section 16 of the Arbitration Act, to remit the award from time to time. If registration of an award is an essential pre-requisite before it can be made a rule of the Court under section 17, every time an award is remitted and a new award is made, the new award will require registration. The result would be that, in the same controversy, there can be not only one registration but a number of registrations regarding the same title, a situation which is not even envisaged by the Registration Act.

Case referred by the Hon'ble Mr. Justice Harbans Singh on 15th July, 1966 for decision of the important question of law involved in the case. The case was sent back to the Single Bench after deciding the question raised in the case by the Full Bench consisting of the Hon'ble the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice D. K. Mahajan on the 8th November, 1966. The case was finally decided by the Hon'ble Mr. Justice Harbans Singh on 8th February, 1967.

First Appeal from the order of Shri Mahesh Chandra, Sub-Judge, 1st Class, Karnal dated the 14th June, 1962 dismissing the objections of respondent No. 1 and directing that the award be made the rule of Court and decree be drawn up in terms of the award on filing of the necessary stamp on the value of Rs. 22,000 by the petitioner, and parties are left to bear their own costs.

H. L. SIBAL WITH S. C. SIBAL AND M. S. JAIN, ADVOCATES, for the Appellants.

S. K. JAIN WITH RAM RANG, ADVOCATES, for the Respondents.

JUDGMENT OF FULL BENCH

MAHAJAN, J.—This case has been referred by my learned brother, Harbaus Singh, J., to a Full Bench in view of the conflict of opinion in the various High Courts on the question—

“Whether an award affecting immoveable property of the value of or above Rs. 100 requires registration before it can be made a rule of the Court?”

The Patna High Court in *Seonarain Lal v. Prabhu Chand* (1), has taken the view that registration is not a *sine qua non* for the award being made a rule of the Court under the 1940 Arbitration Act. A contrary view has been taken by a Division Bench of the Andhra Pradesh High Court in *Srinivasa Rao v. V. Narasinha Rao* (2) and also by a Division Bench of this Court in *Shambhu Nath v. Gokal Chand* (3). This view is also shared by the Gujarat High Court in *Ichharam Damodardas v. Kantilal Nathubhai* (4).

It is not necessary to set out the facts the question to be settled being purely a legal one.

After hearing the learned counsel for the parties at considerable length, it appears that the view of the Patna High Court in *Seonarain Lal's case* is correct and legally sound. I am in respectful agreement with the entire line of reasoning in the Patna case barring the underlined observation:—

“..... an award is only effective when a decree follows the judgment on the award, *such an award may be covered by the exception mentioned in section 17(2)(vi) (any decree or order of a Court) of the Registration Act.*”

If these observations are meant to convey that award as such is covered by the exception (vi) of section 17 (2) of the Registration

(1) A.I.R. 1958 Patna 252.

(2) A.I.R. 1963 Andh. Prad. 193.

(3) A.I.R. 1952 Punj. 146.

(4) A.I.R. 1963 Guj. 28.

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

Act, I am unable to agree. But the decree that follows the award when it is made a rule of the Court, no exception can be taken to the view that such a decree is covered by the exception.

In order not to cover the same ground again, it will be proper to set out in detail the entire reasoning in *Seonarain Lal's case*. There are two additional reasons which have also weighed with me in coming to the same conclusion. These reasons will be set out after the relevant passages from *Seonarain Lal's cases*—

(His Lordship read paras 5 to 15 of the judgment and continued).

The Additional reasons may now be stated. They are:—

(1) If an award is registered, it is still a waste paper unless it is made a rule of the Court. Thus registration does not, in any manner, add to its efficacy or give it any added competence. Section 32 of the Arbitration Act is specific for no right can be founded on an award as such after coming into force of the 1940 Arbitration Act;

and (2) It is not disputed and indeed it could not be that the Court has the power, under section 16, to remit the award from time to time. If registration of an award is an essential pre-requisite before it could be made a rule of the Court under section 17, every time an award is remitted and a new award is made, the new award will require registration. The result would be that, in the same controversy, there can be not only one registration but a number of registrations regarding the same title, a situation which is not even envisaged by the Registration Act.

In view of the aforesaid two reasons and the reasons in *Seonarain Lal's case*, there can be no manner of doubt that an award, after the coming into force of the Indian Arbitration Act of 1940, does not require registration before it can be made a rule of the Court.

In this context, it will also be advisable to examine the purpose of the Registration Act. The Act provides for the creation pre-appointed evidence of transactions by getting the same

entered in a public record by a competent official whose duty is to attend the parties during the registration and see that the proper persons present are competent to act and are identified to his satisfaction *Gangamoyi Debi v. Triluckhya Nath Choudhry and another* (5). The objects of registering a document are:—

- (i) to give notice to the world that such a document has been executed; *Saiyed Mahmud v. Muhammad Zubair* (6); *Hemanta Kumari Debi v. Midnapur Zamindari Co.*, (7); *Narasamma v. Subbasayudu and others* (8); *Baij Nath Tewari v. Sheo Sahoy Bhagut and others* (9);
- (ii) to prevent fraud and forgery; *Bharat Indu v. Hamid Ali Khan* (10); *Alexander Mitchell v. Mathra Das and others* (11); and
- (iii) to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which the title to the property may be affected. *Tilakdhari Lal v. Khedan Lal* (12); *In re East Bengal Sugar Mills, Ltd.* (13).

If these objects are kept in view, it will be apparent that the registration of an award does not serve any one of them. The award is a useless document unless it is made a rule of the Court; and once it is made a rule of the Court, it being a decree of a competent Court does not require registration. So far as a Court decree is concerned, it, to revert back to the object of the Registration Act, fulfils each one of those requirements. The only exception, where a decree

(5) I.L.R. 33 Cal. 537=33 Ind. App. 60(P.C.).

(6) I.L.R. 31 All. 523.

(7) I.L.R. 47 Cal. 485 (P.C.).

(8) I.L.R. 18 Mad. 364.

(9) I.L.R. 18 Cal. 557 (F.B.).

(10) I.L.R. 42 All. 487 (P.C.).

(11) I.L.R. 8 All. 6 (P.C.).

(12) I.L.R. 48 Cal. 1(P.C.).

(13) I.L.R. (1944)1 Cal. 118(D.B.).

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

requires registration, is where it deals with property outside the subject-matter of the controversy. But otherwise decrees dealing with property, which are subject-matter of the controversy, do not require registration. On this proposition, there is no dispute.

I may also mention that there is a consistent course of decisions before the 1940 Act that an award in an arbitration through Court or with the assistance of the Court did not require registration before its being made a rule of the Court. See in this connection the decision in (*Firm*) *Hassanand Naraindas v. Jodhomal Chengomel and others* (14), wherein it was observed as follows:—

“Now, it appears to us that a distinction must be drawn between awards made with and award made without the intervention of the Court; that where an award is made with the intervention of the Court, the award is part of a judicial proceeding and comes within the general principle laid down by the Privy Council in *Bindessi Naik v. Ganga Saran Sahu* (15), and does not require registration; and that an award made without the intervention of the Court does require registration. * * *”

Also see the decision in *Jitendra Nath De and another v. Nagendra Nath De* (16). No decision taking a contrary view has been cited before us. But if an award was not made a rule of the Court, its efficacy was not affected without registration because before the year 1940, a suit could be based on the award itself, it being the final repository of the rights of the parties. In the presence of the award, the parties could not fall back upon the original cause of action. But after the 1940 Act, if it is not made a rule of the Court, a suit is not barred on the original cause of action. But it cannot be enforced by a suit. In this connection, reference may be made to the following decisions:—

(1) *Kashinathsa Yamosa Kabadi v. Narsinga Bhaskarsa Kabadi* (17).

(14) A.I.R. 1936 Sind. (F.B.).

(15) I.L.R. 20 All. 171(2).

(16) A.I.R. 1934 Cal. 815=I.L.R. 62 Cal. 201.

(17) A.I.R. 1961 S.C. 1077.

(2) *Chandrabhaga Sadashiv Veralkar v. Bhikachand Hansali* (18); and

(3) *Ratanji Virbal and Company v. Dhirajlal Manilal* (19).

The view, that I have taken of the matter, finds support from a Full Bench decision of the Andhra Pradesh High Court in *Sait Pamandass Sugnaram v. T. S. Manikyam Pillai and others* (20). The relevant part of the aforesaid decision is set out below for facility of reference:—

“The object of the Legislature in codifying and enacting a comprehensive Code relating to arbitration was to provide simple, speedy and cheap settlement of differences in the interests of trade and commerce and provide a summary method of disposing of objections to awards. It is with a view to attaining the above objects that the law requires that questions relating to the existence or validity of any award shall be by means of applications within the particular period of time mentioned in Article 178 of the Limitation Act. A party to an award cannot afford to lie by and not take steps to get the award filed in Court and get it declared as valid and binding and after the lapse of a considerable period of time produce the award in answer to a suit that may be filed against him. It would amount to circumventing the provisions of law. A perfectly just claim may be sought to be resisted by the setting up of an award, having been made at some remote time and it might have become impossible by sheer lapse of time to establish the invalidity or unenforceability of such award and the defendant would be enabled to escape liability merely on this ground. It is to avoid a contingency like this that the Arbitration Act requires that the process of making it a rule of Court and a decree passed thereon, should be gone through. If, therefore, a defendant has not taken steps to have an award filed and gone through the

(18) 61 B.L.R. 364.

(19) A.I.R. 1942 Bom. 101.

(20) A.I.R. 1960 Andh. Prad. 59.

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

formalities enjoined by the specific provisions of the Arbitration Act, it is not open to him to set up the award as a bar to an action that may be brought against him.

No party can be prejudiced by the mere existence of an award. It does not become operative and enforceable until it has been filed in Court and the Court adjudicates about its validity.

Learned counsel for the respondent argued that after the award was passed in this case, the said award operated to merge and extinguish all claims which were the subject-matter of the submission to arbitration and, therefore, once where the claim had been extinguished, it was no longer open to bring a fresh suit on the same cause of action. There can be no doubt that under the law prior to the passing of the Arbitration Act of 1940, a valid award operated to extinguish all claims, which were the subject-matter of the reference to arbitration and the award alone furnished the basis by which the rights of the parties could be determined and any action on the original cause of action was barred. The Arbitration Act of 1940 effected a change in that, it prescribed the procedure for getting an award enforceable. The effect of this change was that the passing of the award by itself did not extinguish the rights of the parties until such award was subjected to the process mentioned in the Act. The decisions relied upon by the learned counsel were cases which related to awards prior to the Act of 1940. Those rulings must be held to be not applicable now. They cannot apply to the present case."

The stage is now set to consider the decisions that have taken a contrary view, namely, that an award, if it affects immovable property of the value of Rs. 100 or more, requires registration before it could be made a rule of the Court.

The first decision in point is the decision of this Court in *Shambhu Nath and other v. Gokal Chand and other* (3), by Weston, C.J., and Falshaw, J. (as he then was). In this case, the trial Court had held that the award required registration because it dealt with property of the value of Rs. 100 or more. On appeal to this Court, the

learned Single Judge of this Court held that the award in respect of immoveable property did nothing more than recite what according to the arbitrator was a pre-existing fact and, therefore, in view of the Privy Council decision in *Bageshwari Charan Singh v. Jagarnath Kauari* (21), it did not require registration. On an appeal under clause 10 of the Letters Patent, Chief Justice, Weston, who spoke for the Court, observed:—

“I think, therefore, that the declaration made by the arbitrator was something which in itself created title and the award, therefore, required registration.”

No arguments were addressed in this case on the basis of the change brought about by the Arbitration Act of 1940, nor was the position of law examined in that perspective. The matter was merely approached from the point of view of the Registration Act alone. This decision, therefore, with utmost respect to the learned Judges, is not correct in law.

The next decision is of the Andhra Pradesh High Court in *Indurthi Srinivasa Rao v. Indurthi Venkata Narasimha Rao and another* (2), decided by Umamaheswaram and Chandrasekhara Sastry, JJ. After taking into account the provisions of sections 17(1) (b) and 17(2) (vi) and the amendment made by section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, whereby, the word ‘award’ was deleted from section 17(2) (vi) of the Registration Act and the observations of Mulla, in his commentary on the Indian Registration Act, 5th Edition, page 103, it was observed as follows:—

“That the award requires to be registered after the Amendment Act is clearly laid down by the High Courts of Allahabad, Andhra, Calcutta, Madras, Nagpur and Punjab. In *Chavakula Yanadama v. Chavakula Venkateswarlu* (22). Wadsworth, J., delivering the judgment of the Bench, held at page 170, column 1, as follows:—

‘Since the amendment of the Registration Act in 1929, an arbitrator’s award is not excluded from the operation

(21) I.L.R. 11 Patna 272 (P.C.).

(22) A.I.R. 1947 Mad. 168.

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

of section 17. The only question is whether the award now under consideration does itself create, declare, assign, limit or extinguish any right, title or interest in immoveable property, or whether it merely creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest. If the latter is the case, then sub-clause (v) of clause (2) of section 17 will exempt the award from the necessity of registration.'

This decision of the Madras High Court is binding on us having regard to the Full Bench decision of the Andhra High Court in *Subbarayudu v. State of Andhra* (23). The decision of a single Judge of the Andhra High Court is to the same effect and it is reported in *Raghavareddi v. Venkatarreddi* (24), Subba Rao, C.J., (as he then was), held at page 23 as follows:—

'A combined reading of section 17 and section 49, Registration Act, clearly shows that an unregistered partition deed or an award cannot affect any immoveable property comprised therein.'

According to the learned Chief Justice, the non-registration invalidates the transaction altogether and cannot be looked at under the terms of section 49 of the Registration Act. The same view was taken by the Allahabad High Court in *Jag Mohan Singh v. Bisheshar Singh* (25), and by the Punjab High Court in *Shambhu Nath v. Gokal Chand* (3).

The next decision that might be usefully referred to in this connection is the decision of the Calcutta High Court in *Nani Bala v. Ram Gopal* (26). The learned Judges considered the effect of the

(23) I.L.R. 1955 Andh. 1=A.I.R. Andh. Prad. 87(F.B.).

(24) A.I.R. 1955 Andh. Prad. 22.

(25) (1950) 5 D.L.R. (All.) 250.

(26) A.I.R. 1945 Cal. 19.

Arbitration Act of 1940 on the question as to whether an award requires to be registered or not. At page 22, column 2, the learned Judges observed as follows:—

'No doubt by the Arbitration Act of 1940 the law governing a private award dealing with mofussil properties have been placed on the same footing as an award dealing with properties situate in Presidency Towns with the result that the supervising powers of the civil Court with regard to these awards have been enlarged and the procedure for filing such awards and the subsequent proceedings in the civil Court have been changed, but those changes do not affect the question which we are now dealing with because the provisions of section 17 of the Registration Act have not undergone any change by way of further amendment since 1929. The authority of the decision in *Jitendra Nath De v. Nagendra Nath De* (16), in so far as it decides that a private award has to be registered before it can be filed in the civil Court for the purpose of obtaining a decree thereon has not been shaken by the repeal of schedule 2, Civil Procedure Code, and the enactment of the Arbitration Act of 1940'.

We are inclined to share the view of the Calcutta High Court that even after the passing of the Arbitration Act, a private award requires to be registered. The observations of Kapur, J. in *Champalal v. Mst. Samrathbai* (27), also lend support to this conclusion. * * *"

The learned Judges then preferred to follow the earlier view of the Patna High Court in *Chhati Lal v. Ram Chariter* (28), and declined to follow the later Full Bench decision of the Patna High Court in *Seonarain Lal's case*; and the reasons given by the learned Judges why they did not follow the decision in *Seonarain Lal's case* may better be stated in their own words. These reasons are as follows:—

"* * * * *

In holding that the private award does not require to be registered, the Full Bench of the Patna High Court in *Seonarain Lal v. Prabhu Chand* (1), has also not taken into consideration the word 'purport' in section 17(1)(c) of the registration Act. Reliance is only placed on the words that the

(27) A.I.R. 1960 S.C. 629.

(28) A.I.R. 1941 Pat. 215.

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

award does not operate to declare or create or assign any interest in immoveable property. There can be no doubt that on a reading of the award filed in this case the document purports to create an interest in immoveable property. According to the preponderance of authority the document also operates to create an interest in immoveable property. In the award it is provided that for the services performed by the 1st respondent he was entitled to be allotted particular properties in addition to his share. We are clear on a reading of the document that it not only purports to create but also operates to create an interest in immoveable property. We accordingly hold that the award not being duly stamped and registered, the learned District Judge was perfectly right in setting aside the award."

It will be apparent from the above decision in *Indurthi Srinivasa Rao's case* that it has not taken into account the two additional considerations that I have already set out. Moreover, the Division Bench has not given due weight to a Full Bench decision of its own Court. As observed by their Lordships of the Supreme Court in *Jai Kaur and others v. Sher Singh and others* (29), it was not open to a Division Bench to differ from a Full Bench decision without referring the matter to a larger Bench. Apart from this, it will appear that the learned Judges were swayed more by the provisions of the Registration Act and particularly by the amendment of section 17(2)(vi) of the Registration Act by the Transfer of Property (Amendment) Supplementary Act, 1929, wherein the word 'award' was omitted from sub-clause (vi) of section 17(2) of the Registration Act. They did not take into consideration the full impact of the 1940 Arbitration Act. The decisions relied upon by them in support of the view taken in favour of registration of an award affecting immoveable property of the value of rupees one hundred or above, excepting two, in fact, did not consider the change brought about by the 1940 Arbitration Act and were mainly cases where the question had arisen as to the admissibility of the award in a suit and the decision on admissibility rested on the basis of section 17(1) read with section 49 of the Registration Act. The question whether award could be

taken into consideration in view of the provisions of section 32 of the Arbitration Act was not considered because in the circumstances of those cases the question never arose. The decision of the Madras High Court in *Chavakula Yanadamma v. Chavakula Venkateswarlu* (22), is exactly on the same lines as the decision of this Court in *Shambhu Nath's case*. The only difference is that in the Madras case the question of registration did not arise in an application to make the award a rule of the Court. In a suit filed for a declaration as to title to certain properties in lieu of maintenance, an award was sought to be relied upon. The award was ruled out of evidence for want of registration and it was in this situation that it was held that the award could not be admitted into evidence for want of registration as it affected properties of the value of more than rupees one hundred. But if this decision is taken to lay down the rule that an award, before it could be made a rule of the Court, requires registration, it is open to the same criticism as *Shambhu Nath's case* decided by this Court. Same observations will apply to the decision of the Calcutta High Court in *Nani Bala's case* which is *pari materia* with *Shambhu Nath's case*; but for one matter, namely, that the learned Judges did notice the provisions of the 1940 Arbitration Act, but in spite of that stuck to the view that the private award, before it could be made a rule of the Court, required registration because the 'award' had been deleted from section 17(2) (vi) of the Registration Act by the amendment of the Transfer of Property Act in 1929. The next decision, on which the learned Judges relied, is of Subha Rao, C.J. (as he then was) in *Kalathooru Raghavareddi v. Kalathooru Venkatarreddi* (24). This case is *pari materia* with the decision of the Madras High Court in *Chavakula Vanadamma's case*. Here again the award was set up to support a claim in a suit and it was rightly held that if the award was sought to be relied upon in a suit as evidence, it would be inadmissible without registration. The next decision relied upon is that of this Court in *Shambhu Nath's case*. That decision undoubtedly was given in a case where the award was sought to be made a rule of the Court and it was not permitted to be made a rule of the Court for want of registration. I have already dealt with this decision and it is not necessary to repeat what I have already stated, namely, that it does not lay down a correct rule of law. The next case relied upon is the decision of the Allahabad High Court in *Jag Mohan Singh v. Bisheshar Singh* (25). In this case, it was held that an unregistered award cannot be made a rule of the Court in application under the Arbitration

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

Act of 1940, if it affected immoveable property of the value of Rs. 100 or more. The reason for this view was stated by the learned Judges as follows:—

“That the award required registration by reason of the provisions of section 17(1) (b) of the Registration Act and by virtue of section 49(c) of that Act, it could not be received as evidence in a transaction affecting immoveable property. Accordingly there was nothing before the Court it could uphold or set aside.”

Suffice it to say that this decision does not give any reasons besides the provisions of the Registration Act. None of the considerations, which have prevailed with us for taking the contrary view, were either urged before or taken notice of by the learned Judges of the Allahabad High Court. In my opinion, this decision does not lay down the correct rule of law for the reasons already stated.

Finally the learned Judges relied upon the following observations of Kapur, J., in *Champalal v. Mst. Samrathbai* (28):—

“What is prohibited is that an unregistered award cannot be taken into evidence so as to effect immoveable property falling under section 17 of the Registration Act. That the award required registration was rightly admitted by both parties.”

That decision, however, is of no help because in that case it was held that the award did not require registration. It was further held that the award could be filed even if it was not registered. Moreover, the award in that case was made a rule of the Court and was followed by a decree. An appeal to the High Court had failed and so did the further appeal to the Supreme Court. It will be apparent from the decision of the Supreme Court that the point, that arises for determination in the present case, did not arise and was not considered. The observations of Kapur, J., cannot be said to conclude the matter so far as the question of registration of an award before its being made a rule of the Court are concerned. With utmost respect to the learned Judges, I have not been able to see how, after the coming into force of the 1940 Arbitration Act, an award which otherwise is a useless document even if registered requires registration when the only way to make it effective is to make it a rule of the Court. I have already given my reasons in

detail for taking the view that an unregistered award does not require registration for the purposes of making a rule of the Court under the 1940 Arbitration Act.

The next decision is the Single Bench decision of the Gujarat High Court in *Iohharam Demodardas v. Kanti Lal Nathubhai* (4). In this case, the learned Judge has taken exception to the Full Bench decision of the Patna High Court in *Seonarain Lal's case* and the reasons that have given for the contrary view are as follows:—

“No doubt, as observed by the learned Judges of the Patna High Court, an award under the Act has to be followed by a judgment and decree, and unless it is so followed, it cannot be enforced in a Court of law. *But, that does not mean that the award by itself is of no effect.* Section 3 of the Act provides as follows:—

‘An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.’

Clause 7 of the First Schedule to the Arbitration Act provides that:—

‘the award shall be final and binding on the parties and persons claiming under them respectively.’

In view of these two provisions an award becomes binding on the parties to the arbitration agreement and on the persons claiming under them, and if the award provides that a charge is kept on the immoveable property worth more than Rs. 100, it becomes final and binding on the parties to the arbitration agreement and on the persons claiming under them. If the parties to the arbitration agreement accept the award and do not deem it necessary to go to a Court of law, they can enter into subsequent transactions relying on the charge created by the parties to the arbitration agreement. The subsequent document can be enforced in a Court of law, although the award on which it is

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

based is not enforceable in the Court of law. In *Dewaram v. Harinarain* (30), it is observed as follows:—

'The matter may be looked at from another point of view.

Supposing the parties to an award are satisfied with it and enter into possession of the property respectively awarded to them and the value is over Rs. 100 and no dispute arises between them, they are not bound to go to Court under the provisions of the Arbitration Act. They are satisfied with the award and they do not want any Court to pronounce a decree in accordance with the award. Has title to the property passed to the parties without the award being registered so that such a party can transfer the title to a third party by sale, gift or otherwise? In my opinion, the answer is clear that no title to immoveable property of the value of about Rs. 100 can pass by the award—it is a non-testamentary instrument—without the document being registered.'

Now, this decision has not been followed and has been differed from in *Seonarain Lal v. Prabhu Chand* (1), which is a judgment of a Division Bench of three Judges. But the argument advanced in *Dewaram v. Harinarain* (30), has not been answered in the subsequent Patna case of 1958. It is contended by the learned counsel for the applicant that the decision in *Dewaram v. Harinarain* (30), has been overruled by the Division Bench of the Patna High Court in *Seonarain Lal v. Prabhu Chand* (1). There is nothing in the judgment of the Full Bench (Division Court of three Judges) to show that they have overruled the decision in *Dewaram v. Harinarain* (30). No doubt, they have differed from the view taken in *Dewaram v. Harinarain* (30). But the power to overrule such decisions rests only with the Supreme Court and none else. It is contended by the learned counsel for the opponents that there are two judgments of Division Courts of the Patna High Court in *Dewaram v. Harinarain* (30), and

(30) I.L.R. 26 Pat. 437 at p. 441=A.I.R. 1948 Pat. 320 at p. 321.

Jagdish Mahton v. Sundar Mahton (31), and that although these two judgments have not been followed by the Division Bench of three judges of the same High Court, this is a case in which the view of the Division Bench of two Judges should be taken as against the view taken by three Judges of the Full Bench. But it is not necessary to go into this question. The Division Bench of three Judges in *Seonarain Lal v. Prabhu Chand* (1), has not referred to the provisions of section 3 of the Act and clause 7 of the First Schedule to the Act. If they had done so, perhaps they might have come to a different conclusion. Although the provisions of section 3 of the Act and clause 7 in Schedule 1 of the Act have not been referred to in *Yanadamma v. Venkateswarlu* (22), at page 170, they have observed as follows:—

‘When there is a dispute between parties and that dispute is referred to an arbitrator whose decision the parties agree to accept, there is, in fact, a contract between these parties, the final terms of which will embody the decision of the arbitrator on the point referred to him. If the nature of the contract between the parties is such that it actually declares or creates or assigns any interest in immoveable property, the award just like any other contract having the effect, must be registered. If, however, the contract between the parties merely relates to the terms on which one party shall have the right to demand from the other party a future conveyance of property, then the award which settles the terms upon which this future conveyance should be made, is nothing more than part of an agreement to convey, and it is well settled that an agreement to convey in future falls under the exception in section 17(2) (v), Registration Act.’

Even in the case of an ordinary sale-deed of immoveable property, it cannot be enforced without filing a suit, but that does not mean that the sale-deed has no effect by itself. Similarly, an award under the Act is not enforceable

(31) I.L.R. 27 Pat. 86—A.I.R. 1949 Pat. 393.

Sardool Singh, *v.* Hari Singh and others, Mahajan, J.

unless it is filed in a Court and followed by a judgment and decree of the Court. But, that does not mean that the award itself has no effect. It is final and binding between the parties to the arbitration agreement, and it has, therefore, great effect to that extent. I, therefore, hold that under the Arbitration Act of 1940, if an award creates a charge on immoveable property worth Rs. 100 or more, it would require registration. To take any other view would result in making easy evasion of the provisions of the Registration Act."

With utmost respect of the learned Judge, I am unable to follow his reasoning. It is rather curious that the final view of the Patna High Court by a Full Bench was given a go-by and it was taken that the correct view had been taken by an earlier Division Bench of that Court. It appears that the learned Judge also did not take into account the provisions of section 32 of the Arbitration Act. Moreover, the reasons that I have given for not following the view of the Andhra Pradesh High Court in *Indusrthi, Srinivasa Rao's* case fully apply to this case and thus need not be repeated. The additional reason given on the basis of clause 7 of the Schedule read with section 3 of the Arbitration Act does not advance the argument as to the compulsory registration of the award. Clause 7 of the Schedule merely implies a term in the Arbitration agreement. It is well-known that all awards are final and binding on the parties provided they can be given legal effect to. I have already noticed the position of law before the 1940 Arbitration Act. The awards were the final repository of the rights of the parties and could be enforced by a suit if they had not been made a rule of the Court. *Kashinathsa Jamosa Kahadi v. Narsingasa Bhaskarasa Kahadi* (17), at page 1083. But the position has materially changed after the 1940 Arbitration Act. The award is not at all enforceable by a suit. The question whether it could be made use of in defence has been left open by the Supreme Court *Kashinathsa Jamosa Kahadi v. Narsingasa Bhaskarasa Kahadi* (17) and there is a sharp conflict of judicial opinion in the various High Courts on this matter. So far as the present case is concerned, this question does not arise and, therefore, nothing need be said on this aspect of the matter.

After considering the entire matter in all its facts, I am clearly of the view that an award under the 1940 Arbitration Act does

not require registration before its being made a rule of the Court. This answers the principal question for which the reference to a Full Bench was necessitated. The case will now go back to the learned Single Judge for decision on the remaining questions.

MEHAR SINGH, C.J.—I agree.

HARBANS SINGH, J.—I agree.

B.R.T.

FULL BENCH

Before Mehar Singh, C.J., Shamsher Bahadur and Prem Chand Pandit, JJ.

RANJIT SINGH,—Petitioner

versus

COMMANDANT, P.A.P., JULLUNDUR AND OTHERS,—Respondents.

Civil Writ No. 2061 of 1963.

December 23, 1966.

Constitution of India (1950)—Art. 311(2)—Forfeiture of two years' approved service permanently and consequent reduction in pay—Whether amounts to reduction in rank.

Held, that the forfeiture of two years' approved service permanently and consequent reduction in pay of a Head Constable does not amount to reduction in rank within the meaning of sub-section (2) of Article 311 of the Constitution of India. The reason is that he continues to remain a Head Constable and in the rank of Head Constables. By the lowering of his seniority or by the lowering of his pay by two steps in the time scale, he does not cease to remain in the rank of Head Constables.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 8th December, 1965 to a Full Bench for decision of the important question of law involved in the case. The case was finally decided by Full Bench consisting of the Hon'ble Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice P. C. Pandit on 23rd December, 1966.