

but he found that there was no tubewell on the spot and none was acquired by the State Government. In his application under section 18 of the Act the claimant claimed a sum of Rs. 8,000 on account of the price of the tubewell. The learned Additional District Judge has observed that the entries in the Khasra Girdawaris support the statement of Shri Preet Mohinder Singh, the father of the claimant, about the existence of a tubewell on the land but there was no evidence as to the value of the tubewell and, therefore, its price could not be determined. He allowed Rs. 2,000 on account of compensation for a well and in view of what has been stated by the learned Additional District Judge, there is no scope either for enhancement or reduction in the amount.

The only other claim relates to a building on the acquired land. The claimant demanded Rs. 3,000 for the same but the Collector awarded a sum of Rs. 700 only. Shri Raj Kumar Goel, Draftsman, prepared plan, Exhibit P. 5, and estimated the cost of construction of the building as Rs. 1,850 in his report, Exhibit P. 6. He appeared as P.W. 4 to support his report. That report was accepted in the absence of any rebuttal on behalf of the State of Punjab. There is, therefore, no scope either for enhancement or reduction in the amount of compensation for the building.

As a result of the above discussion, we find no merit in these appeals which are dismissed but the parties are left to bear their own costs.

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B.S.G.

APPELLATE CIVIL

Before M. L. Verma, J.

THE CONTROLLER OF STORES, PUNJAB, CHANDIGARH  
AND ANOTHER,—Appellants

versus

M/S KAPOOR TEXTILE AGENCIES, CLOTH MERCHANTS  
AND COMMISSION AGENTS,—Respondents.

F.A.O. No. 197 of 1973.

January 24, 1975.

*Arbitration Act (X of 1940)—Sections 2 and 39—Interpretation of—Arbitration agreement providing for appointment of an arbitrator by one of the parties—Court not appointing the arbitrator named*

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*by such party, but some other person—Appeal against the Court's order—Whether lies—Party to arbitration agreement naming a particular person as arbitrator—Appointment of another person by the Court at the instance of the pleader of the party—Whether valid—Suits valuation Act (VII of 1887)—Section 11—No dispute over valuation of a suit—Objection regarding pecuniary jurisdiction of Court to decide the suit on admitted valuation—Whether can be raised at any time.*

*Held*, that sub-section (4) of section 20 of the Arbitration Act, 1940 consists of two parts; first part deals with the filing of arbitration agreement and the second with the making of order of reference to the arbitrator appointed by the parties, whether in agreement or otherwise, or where the parties cannot agree upon an Arbitrator, to an Arbitrator appointed by the Court. The existence and the validity of the arbitration agreement and the question as to whether the dispute or difference which has arisen between the parties is covered by arbitration agreement are within the scope of the words 'filing of arbitration agreement'. When a person is named in the arbitration agreement, his appointment as such is included in the words 'filing of arbitration agreement'. The non-appointment of such a person or the appointment of a person other than such named person tantamounts to refusing to file arbitration agreement. If none is named in the arbitration agreement, the appointment of an Arbitrator does not tantamount to filing or refusing to file arbitration agreement. Hence where arbitration agreement provides for the appointment of an Arbitrator by one of the parties to such an agreement and such party names a particular person for appointment as Arbitrator, and the Court instead of appointing such named person to be the Arbitrator appoints somebody else, it does amount to refusing to file the agreement and an appeal lies against such an order of appointment under clause (vi) section 39(1) of the Act.

*Held*, that power to make an appointment as Arbitrator in the first instance in the absence of any instruction to the contrary is one thing and power to undo the appointment made by a party is another thing. A pleader has no authority to revoke the appointment of an Arbitrator made by his party without instruction from him and to agree to the appointment of a new Arbitrator in his place by way of substitution. Where a party to the arbitration agreement in accordance with the terms of arbitration clause names a particular person for appointment as an arbitrator, and the pleader of the party agrees to the appointment of another person as Arbitrator in place of the named person such appointment is invalid.

*Held*, that section 11 of the Suits Valuation Act, 1887 is limited to cases of under-valuation and over-valuation and is not applicable

to the cases where the suit or the subject-matter has been properly valued but the same has been heard and decided by a court which on the face of it has no jurisdiction to proceed with it. In other words where there is no dispute as to valuation but the dispute is that on valuation given by the plaintiff or the applicant, the Court trying it has no jurisdiction, section 11 of the Act does not apply and the objection to the pecuniary jurisdiction of such court can be taken at any time.

*First Appeal from the order of Shri Dhian Singh, Sub-Judge III Class, Patiala, dated the April 25, 1973, appointing Shri Kuldip Singh P.C.S., Executive Magistrate, Patiala, as Arbitrator and directing the parties to appear before the arbitrator on May 10, 1973.*

J. S. Wasu, Advocate-General (Punjab), *for the appellants.*

J. V. Gupta, Advocate, *for the respondents.*

#### JUDGMENT

VERMA, J.—The respondents entered into contract for the supply of uniform cloth (Khaki Drill) for the year 1970-71 to the appellants. An agreement was executed in that respect on September 7, 1970. Besides other terms and conditions, it contained an arbitration clause, to the effect, that if any question, difference or objection whatsoever would arise in any way connected with or arising out of the aforesaid agreement, it would be referred for arbitration to any officer appointed by the Government of Punjab and the decision given by the Arbitrator would be final and binding upon the parties. In terms of the agreement, the respondents supplied Khaki Drill to the Controller of Stores on the contract rate. The delivery of the said Khaki Drill, costing Rs. 15,456, had been accepted by the General Manager, Punjab Roadways, Ludhiana. Some of the Khaki Drill, on inspection, was rejected by the Director, State Transport, Punjab. Thereafter, the respondents were required to supply further Khaki Drill. They notified their willingness to do so subject to payment of the dues outstanding against the appellants. Therefore, the differences arose between the parties about the dues which were outstanding against the appellants. As such, the respondents approached the appellants to refer the matter for arbitration and when they did not pay heed to their request they made application under section 20 of the Arbitration Act (hereinafter called the Act) to the Court for filing of the

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arbitration agreement and appointment of the Arbitrator. The said application was heard by the Subordinate Judge III Class, Patiala. The appellants did not dispute the broad facts of the case and indicated that they had no objection if the differences relating to the matters in dispute were referred for arbitration to Shri Bhagwant Kishore or Shri L. R. Khosla, Deputy Director of Industries, Punjab, Chandigarh. The respondents did not accept Shri Bhagwant Kishore or Shri L. R. Khosla as Arbitrator and pleaded that some independent person be appointed as Arbitrator. Hence, the following issues were settled :—

- (1) Whether the applicant has sufficient cause for the appointment of an Arbitrator, if so, who should be appointed Arbitrator ? O. P. Parties.
- (2) Relief.

Despite obtaining two adjournments, the parties did not produce any evidence. On April 25, 1973, when the arguments were being heard, the learned counsel appearing for the respondents and the learned Assistant District Attorney appearing for the appellants agreed that the matters in dispute might be referred for arbitration to Shri Kuldip Singh, P.C.S., Executive Magistrate, Patiala. It was in that situation that the learned Subordinate Judge appointed him (Shri Kuldip Singh) as Arbitrator and the parties were directed to appear before him. Aggrieved by the said order, the appellants have come to this Court in appeal.

2. Shri J. V. Gupta, learned counsel for the respondents, raised a preliminary objection that the appeal was incompetent on two ground, (1) that the Arbitrator had been appointed with the consent of the parties and, therefore, the appeal was barred *vide* section 96(3), Civil Procedure Code, and (2) that the impugned order was not appealable. In my opinion, the said objection is not well-founded. Section 96(3) bars an appeal from a decree which has been passed with the consent of parties. Firstly, the impugned order cannot be said to be 'decree'. It is clear from clause (vi) of section 39(1) of the Act that it provides appeals against orders and not against decrees. Secondly, as would be seen hereinafter, the consent given by the

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learned Assistant District Attorney to the appointment of the Arbitrator cannot be taken as valid so as to bind the appellants. Therefore, when it is an appeal against an order and not against a decree and the impugned order cannot be said to have been passed with the consent of the appellants, the first ground taken for raising the preliminary objection is not tenable.

3. Clause (vi) of sub-section (1) of section 39 of the Act provides appeal against filing or refusing to file an arbitration agreement. Mr. J. V. Gupta has been of the view that the appeal could be maintainable against an order of filing or refusing to file an arbitration agreement only, but no appeal lies against the order appointing an Arbitrator. The respondents averred in the application under section 20 of the Act that there was arbitration agreement. The appellants did not dispute that fact and had no objection against referring the dispute for arbitration. So, the parties were not at issue with regard to existence or validity of the arbitration clause or respecting the dispute between them being referred for arbitration. As such, argues Mr. Gupta, that the Court was justified in referring the dispute between the parties for arbitration *vide* order XV, rule I, Civil Procedure Code; and that part of the order is unassailable because the appellants did not oppose the reference of the dispute for arbitration. However, according to Mr. Gupta, though the order respecting the filing of the arbitration agreement, which, as indicated above, was unopposed, was appealable yet the appointment of Shri Kuldip Singh, Executive Magistrate, Patiala, as Arbitrator had nothing to do with the filing of the award and, as such, no appeal was competent against that part of the impugned order. I have not been able to agree with him. True sub-section (4) of section 20 of the Act consists of two parts, firstly, filing of the arbitration agreement, and, secondly, the making of order of reference to the Arbitrator appointed by the parties, whether in agreement or otherwise, or where the parties cannot agree upon an Arbitrator, to an Arbitrator appointed by the Court. It is, therefore, essential to consider as to what is the extent and scope of the words 'filing of arbitration agreement and the question as to whether the dispute or difference, which has arisen between the parties, is covered by it (arbitration agreement) are within the scope of the said words, the appointment of Arbitrator may or may not be within the scope of the words. When a person is named in the arbitration agreement, his appointment as such

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would be included in the words of 'filing of the arbitration agreement'. Non-appointment of such a person (the one who is named in the arbitration agreement) or appointment of a person other than him would tantamount to refusing to file arbitration agreement and, therefore, appeal is competent against such order under clause (vi) of sub-section (1) of section 39 of the Act. So was observed in *Union of India v. M. S. Grewal & Co.* (1). If none is named in the arbitration agreement, the appointment of an Arbitrator would not tantamount to filing or refusing to file arbitration agreement and in such a case appeal against the appointment of such an Arbitrator may not be competent. The arbitration agreement, in the case in hand, provided that in the event of dispute or difference arising between the parties, the same was to be referred for arbitration to any officer appointed by the Punjab Government. The State of Punjab in reply .....to the application under section 20 of the Act, stated that the dispute might be referred for arbitration to Shri Bhagwant Kishore or Shri L. R. Khosla, Deputy Director, Industries, Punjab, Chandigarh. Thus, when the arbitration agreement and the reply put in by the State of Punjab are read together, it would be clear that the Arbitrator named by the Punjab Government according to the arbitration agreement was Shri Bhagwant Kishore or Shri L. R. Khosla. The Court did not appoint either of them and instead it (the Court) appointed Shri Kuldip Singh, Executive Magistrate, Patiala, as Arbitrator. That would certainly amount to refusing to file the agreement and, as such, the appeal lay against the said part of the judgment, i.e., with regard to the appointment of Shri Kuldip Singh as Arbitrator, under clause (vi) of section 39(1) of the Act and the second ground of the preliminary objection is again without any substance. It follows that there is no force in the preliminary objection and the same is overruled.

4. Shri J. S. Wasu, Advocate-General, Punjab, challenged the impugned order on two grounds. firstly, that the subject-matter of the impugned order was beyond the pecuniary jurisdiction of the Court which passed it, and, secondly, it (the Court) could not appoint any person other than Shri Bhagwant Kishore or Shri L. R. Khosla, Deputy Director, Industries, Punjab, Chandigarh. as Arbitrator and the learned Assistant District Attorney had no authority to agree to

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(1) A.I.R. 1968 Calcutta 333.

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the appointment of Shri Kuldip Singh as Arbitrator. It was not disputed that the jurisdictional value of the subject-matter of the application under section 20 of the Act was Rs. 15,456 and it was admittedly beyond the pecuniary jurisdiction of the Court, the same being of Subordinate Judge III Class. Relying on section 11 of the Suits Valuation Act, Mr. J. V. Gupta argued that the objection respecting the lack of pecuniary jurisdiction of the Court that passed the impugned order could not be raised, because such an objection had not been taken in the Court below. On a careful reading of section 11 of the Suits Valuation Act, I feel that it (section 11) is limited to cases of under-valuation and over-valuation and is not applicable to cases where the suits or the subject-matter has been properly valued but the same has been heard and decided by a Court, which on the face of it has no jurisdiction to proceed with it. To put it differently, where there is no dispute as to valuation but the contention is that on valuation given by the plaintiff or the applicant the lower Court had no jurisdiction, section 11 of the Suits Valuation Act does not apply and the objection can be taken at any time. Besides that, I feel that the learned Subordinate Judge being of class III, having no pecuniary jurisdiction to proceed with the matter, did not approach it from the right angle and it had prejudicially affected the disposal of the case on merits. As observed in *Kashi Ram v. Mt. Guddo* (2), power to make an appointment of an Arbitrator in the first instance in the absence of any instructions to the contrary is one thing and power to undo the appointment made by a party is another thing. Therefore, a pleader has no authority to revoke the appointment of an Arbitrator or Arbitrators made by his party without instructions from him and to appoint a new Arbitrator in substitution. As indicated above, the arbitration clause contains specifically that the Arbitrator was to be appointed by the Punjab Government, and in the reply to the application under section 20 of the Act the State of Punjab indicated that Shri Bhagwant Kishore or Shri L. R. Khosla, Deputy Director of Industries, Punjab, Chandigarh, might be appointed as the Arbitrator to whom the disputes could be referred for decision. The impugned order reveals that it was during the course of arguments that the learned Assistant District Attorney appearing for the appellants had agreed that the dispute could be referred for arbitration to Shri Kuldip Singh, Executive Magistrate, Patiala. So, it cannot be maintained that during the course of arguments he could possibly have any instructions from the

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Daropti wife of Shri Daya Ram *v.* Chandgi Ram son of Phul Chand,  
etc. (Dhillon, J.)

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appellants to agree to the appointment of Shri Kuldip Singh, Executive Magistrate, Patiala, as Arbitrator in place of Shri Bhagwant Singh or Shri L. R. Khosla, who had been named by the State of Punjab as Arbitrators. That would show that the consent given by the Assistant District Attorney to the appointment of Shri Kuldip Singh as Arbitrator was unwarranted and was invalid.

5. It, thus, follows that there is merit in the attack of Shri J. S. Wasu directed against the validity and correctness of the impugned order. So, I find that the impugned order is erroneous and cannot be upheld.

Consequently, I allow this appeal, set aside the impugned order and send the case to the Senior Subordinate Judge, Patiala, with the direction that he would either himself proceed to decide the case or he may entrust the same to any Subordinate Judge competent to deal with it. The costs of the appeal will abide the result. The parties have been advised, through their counsel, to appear in the Court of the Senior Subordinate Judge, Patiala, on February 21, 1975.

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B.S.G.

MISCELLANEOUS CRIMINAL

*Before B. S. Dhillon, J.*

DAROPTI WIFE OF SHRI DAYA RAM,—*Petitioner*

*versus*

CHANDGI RAM SON OF PHUL CHAND, ETC.,—*Respondents.*

Criminal Misc. No. 3485-M of 1974.

January 31, 1975.

*Code of Criminal Procedure (Act No. 2 of 1974)—Section 209—Complaint case for an offence exclusively triable by the Court of Sessions—Magistrate after recording preliminary evidence summoning the accused for trial—Such Magistrate—Whether has no option but to commit the accused for trial to the Court of Sessions without recording prosecution evidence afresh.*