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cases and making the executors personally liable to pay them. Since we have varied the decree in a material point we consider that the whole question as to costs is open to us.

The parties respectively will have their costs out of the estate in the Court below and will pay their own costs, respectively, of the appeal as it has in part succeeded and in part failed. We do not, under the circumstances, make any order as to attorney and client costs.

Decree varied.

Attorneys for the appellants (defendants Nos. 1 and 2):—Messrs. *Bháishankar and Kánga.*

Attorneys for the respondent No. 1 (plaintiff):—Messrs. *Chítnis, Motilál and Málvi.*

Attorney for other respondents:—Mr. *Bálkrishna V. N. Kirtikar.*

ORIGINAL CIVIL.

Before Sir Charles Farran, Kt., Chief Justice, and Mr. Justice Strachey.

1896. January 10.

TEJPUR DEWCHAND AND ANOTHER, PLAINTIFFS, *v.* MAHOMED JAMA'L AND OTHERS, DEFENDANTS.*

Arbitration—Application to file award—Civil Procedure Code (Act XIV of 1882), Secs. 525, 526—Objections as to the factum or validity of submission and award—Sections 521 and 522 of the Civil Procedure Code (Act XIV of 1882)—Practice—Procedure.

Where on an application to file an award under sections 525 and 526, Civil Procedure Code (Act XIV of 1882), objections, which in the opinion of the Court are not merely frivolous or colourable, are raised to the factum or validity of the submission and award, the Court has no jurisdiction to deal with them and must refer the parties to a regular suit.

Samal v. *Jaishankar*(1) and *Surjan* v. *Bhikári*(2) followed.

Amrit Ram v. *Dasrat Ram* (3) not followed.

CASE stated for the opinion of the High Court, under section 69 of the Presidency Small Cause Courts' Act (XV of 1882), by C. W. Chitty, Chief Judge:—

"This was a suit brought by the plaintiffs, who were father and son, against the three defendants to recover Rs. 1,228-8 as

* Small Cause Court Suit, No. 243/16989 of 1895.

(1) I. L. R., 9 Bom., 254. (2) I. L. R., 21 Cal., 213.

(3) I. L. R., 17 All., 21.

damages for breach of contract to deliver cotton. The first defendant is brother of the second and son of the third defendant.

"On the suit being called on before me for hearing on the 8th August, 1895, the plaintiffs' solicitor presented an application stating that the matter in question in the suit had been referred to the arbitration of one Purshotam Sivji, who had made his award, and asking that the submission paper and the award might be recorded as a settlement of the suit under section 375 of the Code of Civil Procedure, or that, in the alternative, the award might be filed under section 525.

"After hearing the solicitor for the plaintiffs and counsel for the first defendant and the pleader of the first and second defendants I took time to consider the point. On the 12th August I delivered judgment to the effect that the submission paper and the award could not possibly be recorded as a compromise of the suit under section 375 for many reasons, but more especially because (1) the first plaintiff and second and third defendants were no parties to the alleged arbitration and were not bound by it, and (2) it would preclude the defendants from raising any objections they might have to the validity of the award. I was of opinion that the plaintiffs were entitled to a notice under section 525 calling on the first defendant to show cause why the award should not be filed.

"I should mention that the submission, although in the body of it purporting to be made by the three defendants, was only signed by the first defendant, the second plaintiff being the only signatory on the part of himself and his father. The award purports to be made against all the three defendants. In accordance with my decision a notice was issued against the first defendant, and on the 26th August it came on for hearing. The first defendant by his counsel raised the following objections:—(1) that the matters in dispute were not duly or legally referred to arbitration; (2) that the submission, if any, was imperfect and illegal; (3) that what was sought to be filed was not an award; (4) that the submission, if any, was revoked before the making of the alleged award; (5) that the arbitrator was guilty of misconduct, and (6) that the award was made without any investigation.

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"After hearing the arguments on part of the first defendant and the plaintiffs I delivered judgment and held, on the authority of the cases cited, I was justified in refusing to file the award and in referring the plaintiffs to a substantive suit on the award. The objections taken by the first defendant appeared to me serious and substantial and to go to the very root of the matter as to whether there had been any binding submission or award. They did not appear to me to be merely frivolous or colourable objections raised for the purpose of hampering the plaintiffs. The cases on which I relied were *Sámal Nathu* v. *Jaishankar Dalsukhrám*[1]; *Hirjibhai* v. *Jamsetji*[2]; *Venkatesh* v. *Chanapgávda*[3] and *Bijádhur* v. *Monohur*[4].

"I am aware that it was decided in the case of *Dándekar* v. *Díndekar's*[5] that to show cause means not merely to allege but to prove it. But I was of opinion that that case did not preclude me from exercising the discretion which would appear to be left to the Judge by sections 525 and 526. That section provides no procedure for an elaborate investigation into difficult questions of law and fact.

"As I was delivering judgment, and had in fact expressed my opinion, the plaintiffs' solicitor interrupted me and asked for a case to be stated. Though technically speaking he was too late in his application, I do not wish to deprive the plaintiffs of the satisfaction of obtaining the higher opinion. I, therefore, submit this question for the consideration of their Lordships:—

"(1) Whether, after issuing a notice under section 525, the Court was bound to go into evidence on the objections raised?

"(2) Whether, under the circumstances above stated, I was justified in refusing to file the award and in referring the plaintiffs to a substantive suit?

"The plaintiffs have deposited in Court Rs. 68, the first defendant's costs of the day, and Rs. 50 to meet the costs of reference."

Raikes appeared for the plaintiffs.

(1) I. L. R., 9 Bom., 254.
(2) P. J., 1890, p. 250.
(3) I. L. R., 17 Bom., 674.
(4) I. L. R., 10 Calc., 11.
(5) I. L. R., 6 Bom., 663.

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Lang (Advocate General) for the defendants.

The following cases were cited and commented upon:—*Samal Nathu* v. *Jaishankar Dalsukhrám*[1]; *Hirjibhai* v. *Jamsetji*[2]; *Bijadhur* v. *Monohur*[3]; *Venkatesh* v. *Chanapgavda*[4]; *Dándekar* v. *Dándekars*[5]; *Jagan Náth* v. *Mannu Lál*[6]; *Amrit Ram* v. *Dasrat Ram*[7]; *Surjan Raot* v. *Bhikári Raot*[8].

FARRAN, C. J.:—The questions submitted to us upon this reference arise under the following circumstances. The plaintiffs, who are partners, filed a suit in the Small Cause Court to recover damages from the defendants for breach of a contract to deliver cotton. The defendants were three partners carrying on business in the name of Mahomed Jamál, which was also the name of the first defendant. On the suit being called on, the plaintiffs made an application to the Court stating that the suit had been privately referred to arbitration, and that an award had been made and (*inter alia*) asking that the award might be filed under sections 525 and 526 of the Civil Procedure Code. It then appeared that the alleged submission had been signed by the defendant Mahomed Jamál alone, although in its body it purported to be made by all the three defendants. The award purported to be made against all the three defendants. The learned Judge directed a notice to issue under section 525 to the defendant Mahomed Jamál. That defendant appeared, and while admitting his signature to the submission paper raised several objections as to its legal validity and its binding effect upon him, and as to the award, of which it is sufficient to say that to the Judge they "did not appear to be merely frivolous or colourable objections raised for the purpose of hampering the plaintiffs". The learned Judge, considering that he had a discretion in the matter, and that sections 525 and 526 provided no procedure for an elaborate investigation into difficult questions of law and fact, refused to file the award, and referred the plaintiffs to a regular suit. The fifth and sixth objections related to the conduct of the arbitrator. The rest were objections to the validity of the sub-

(1) I. L. R., 9 Bom., 254.
(2) P. J., 1890, p. 250.
(3) I. L. R., 10 Calc., 11.
(4) I. L. R., 17 Bom., 674.
(5) I. L. R., 6 Bom., 663.
(6) I. L. R., 16 All., 231.
(7) I. L. R., 17 All., 21.
(8) I. L. R., 21 Calc., 213.

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mission and award independent of the character of the arbitrator's proceedings.

The questions submitted are :—

1. Whether, after issuing a notice under section 525, the Court was bound to go into evidence on the objections raised ?

2. Whether, under the circumstances stated, the Judge was justified in refusing to file the award and in referring the plaintiffs to a substantive suit ?

The decisions of this Court on which the learned Judge of the Small Cause Court relied are *Sámal Nathu* v. *Jaishankar Dalsukhrám*(1), *Hirjibhai* v. *Jamsetji*(2) and *Venkatesh* v. *Chanappgavda*(3), while he distinguished *Dándekar* v. *Dándekars*(4). The former judgments have been referred to with approval by three of the five Judges of the Calcutta High Court who decided the Full Bench case of *Surjan Raot* v. *Bhikári Raot*(5). The Full Bench unanimously ruled in that case that when an application is made to a Court for filing a private award, and objections are raised, and the objections are such as fall within section 521 of the Civil Procedure Code, the Court is not bound to hold its hand and reject the application, but it is the duty of the Court to inquire into the validity of the objections raised and thereupon to determine whether the award should be filed or not. Three of the Judges, however, further expressed their opinion that where in such an application an objection is taken that the matters in dispute were never referred to arbitration and is, therefore, not on one of the grounds mentioned in section 521, the Court has no jurisdiction to deal with it, but should reject the application and refer the parties to a regular suit. The objections taken to the award in *Sámal Nathu* v. *Jaishankar* (*supra*) and in the case in the Printed Judgments of 1890. were objections which went to the root of the submission, while those taken in *Dándekar* v. *Dándekars* were objections to the conduct of the arbitrators, and, as such, clearly fell within the section 520 or 521 of the Code.

(1) I. L. R., 9 Bom., 254.
(2) P. J., 1890, p. 250.
(3) I. L. R., 17 Bom., 674.
(4) I. L. R., 6 Bom., 663.
(5) I. L. R., 21 Calc., 213.

In the present case the main objections were of the former character, and the Judge rightly considered that the case was governed by *Sámal Nathu* v. *Jaishankar Dalsukhrám* (*supra*).

The Full Bench decision of the Allahabad High Court in *Amrit Ram* v. *Dasrat*[1] which gives a more extended application to the words of section 526 than has hitherto been applied to them, has, however, been cited to us, and we are asked, upon the reasoning contained in that judgment, to dissent from the ruling of our own Court in *Sámal Nathu* v. *Jaishankar* (*supra*) and *Venkatesh* v. *Chanapgavda* (*supra*), and the question before us is whether we ought to do so and refer the matter to a Full Bench. Before considering it I may say that I entirely agree with the ruling of the Full Bench of the Calcutta High Court in *Surjan Raot* v. *Bhikári Raot* (*supra*) to which I have referred. It appears to me that the Legislature intended that the Court, when dealing with an award made without the intervention of a Court, should institute the same inquiries, and that the order made upon such inquiry should be final or be subject to correction by a Court of appeal in the same way and to the same extent only as if the award had been made under an order of reference by the Court, and that they have expressed that intention with clearness in the 526th section of the Code. The only difference between the procedure in the two cases is that the inquiry in the latter case takes place after the award has been filed *ex parte*, while in the former it takes place before the filing.

I think, however, that notwithstanding the decision in *Amrit Ram* v. *Dasrat* (*supra*) we ought not to depart or dissent from the rulings of our Court which I have mentioned. The inquiry which the Legislature has directed the Court to embark on by sections 525 and 526 of the Code is, I cannot doubt, an inquiry such as the Court dealing with objections made under section 522 could be called upon to make. The latter inquiry from the very nature of the case cannot embrace an inquiry into the factum or validity of the submission or order of reference. It is in terms confined to events taking place subsequent to such order. The

(1) I. L. R., 17 All., 21.

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existence of such an order is assumed as a fact. So, too, the existence of a submission appears to me to be assumed by the Legislature in sections 525 and 526, and the Court is only directed to inquire into events subsequent to such submission. The enactment that, if "no ground such as is mentioned or referred to in sections 520 or 521 be shown against the award, the Court shall order it to be filed" read in its ordinary sense means, I think, "if no ground of the nature of those mentioned or referred to in sections 520 or 521 be shown," and it is only by a somewhat forced interpretation of the section that it can bear the meaning attributed to it by the Allahabad High Court. If it were necessary to read it in that forced sense, in order to give effect to a plain intention of the Legislature, I should not hesitate so to read it; but I see no reason for straining words in the present instance. The reasoning of the Court in *Sámal* v. *Jaishankar* (*supra*) goes far to show that the intention of the Legislature is not that which such an interpretation would attribute to it. But, whether that be so or not, I think that the present is peculiarly a case to which the maxim *stare decisis* is applicable. It is not a case of declining jurisdiction, but of holding that a particular procedure is not applicable to circumstances apparently not contemplated by its framers. I would answer both questions accordingly, the first in the negative and the second in the affirmative. Costs of reference costs in cause.

STRACHEY, J. :—I agree with the learned Chief Justice that we ought to follow the decisions of this Court in *Sámal Nathu* v. *Jaishankar Dalsukhram*[1], *Hirjibhai* v. *Jamsetji*[2] and *Venkatesh* v. *Chanapgavda*[3]. I think with West, J., in the first of these cases, and with Prinsep, J., in *Surjan Raot* v. *Bhikári Raot*[4], that sections 525 and 526 of the Code are obscure on the question which we are considering. To such a state of things the rule of *stare decisis* is applicable. We ought to follow the decisions of our own Court, unless we are clearly satisfied that they are wrong; and I certainly do not pretend to be so satisfied in the present case.

(1) I. L. R., 9 Bom., 254.
(2) P. J. for 1890, p. 250.
(3) I. L. R., 17 Bom., 674.
(4) I. L. R., 21 Calc., at p. 225.

If the question were *res integra*, I think that there would be strong reasons for adopting the conclusion arrived at by the Full Bench of the Allahabad High Court in *Amrit Ram* v. *Dasrat Ram*[1]. It is common ground that sections 525 and 526 apply only when there has been a submission to arbitration without the intervention of a Court of Justice, and when an award has been made thereon. It appears to me that the effect of the sections read together is that, where there has been such a submission and award, any person interested in the award has an absolute right to have it filed, unless the other parties show against it some ground such as is mentioned in section 520 or 521. The right to have the award filed, except where such ground is shown, depends exclusively upon the conditions specified in section 525, a submission, an award, and an interest in the award, and cannot be denied to any one who shows that those conditions exist. It seems to follow that a person claiming the right is entitled to prove it if it is denied; and that to say that the right exists where there has been a submission and an award, but that upon a mere denial of either the Court is not to enforce it, is very like a contradiction in terms. The absence of challenge or denial is not specified as a condition of the right. The sections do not say that where there is an admitted submission and an admitted award, any person admittedly interested in the award has a right to have it filed, unless cause is shown to the contrary. They say that where a matter *has been* referred to arbitration out of Court, and an award *has been* made, the right of a person interested in the award, to have it filed, subject to certain objections, follows. Apart from the decisions I should have thought that a mere denial by the other parties could not, more than in any other case, destroy or defeat the right or prevent the party claiming it from proving the conditions upon which it depends. I should have thought that the effect of the denial would be to put the existence of the submission or the award in issue in the suit in which, under the second paragraph of section 525, the applicant is plaintiff and the other parties defendants. Upon that issue it would be for the plaintiff to establish his right to have the alleged award filed, by proving that there had been a submission and an

(1) I. L. R., 17 All., 21.

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award thereon, in which he was interested. If he succeeded, then, in the absence of cause shown by the defendants upon any of the grounds mentioned in section 520 or section 521, the Court would be bound to order the award to be filed. It has been said that no provision is made for such an inquiry, but only for an inquiry into the matters referred to in sections 520 and 521. In *Micharaya Guruvu* v. *Sadasiva Parama Guruvu*(1), it was held by Turner, C. J., and Muttussami Ayyar, J., "that the power to file the award includes the power to inquire if there was a submission to arbitration." But even if the provisions giving the right to have the award filed, do not imply a duty in the Court to decide, in the event of dispute, whether the right exists, is not such an inquiry in effect provided for by treating the application as a suit between the applicant and the other parties? According to Petheram, C. J., in *Surjan Raot* v. *Bhikári Raot* (p. 223), "everything which could be pleaded as an answer to an action to enforce the award could be pleaded as an answer to the petition to file the award." When once the submission and the award have been established by admission or proof, but not till then, the inquiry under section 526 appears to me to be co-extensive with that under section 522, in which, the reference having been made by the Court itself at an earlier stage of the proceedings, there can of course be no question as to its existence. It has been said that an objection that there was no submission or no award may give rise to a long inquiry into difficult questions of law and fact, and that the Legislature cannot have intended that a subordinate Court should be competent to decide such questions upon an application to file an award, and without appeal. An exactly similar objection was the ground upon which it was at one time held that the Court could not under section 526 even consider the validity of cause shown against an award within the provisions of sections 520 and 521, but must refuse to file the award, if such cause were merely alleged and not proved. See the judgment of Melvill, J., in *Dándekar* v. *Dándekars*(2). That objection is not now accepted as conclusive. Again, it is not clear that, if a Court is competent under sections 525 and 526 to decide whether there was, in fact, a submission or an award, its

(1) I. L. R., 4 Mad., 319. (2) I. L. R., 6 Bom., at p. 665

decision upon the question is necessarily final. Upon the award being filed, judgment and decree according to the award follow, and under section 522 "no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award." But it has been held, in several cases, that section 522 presupposes the existence of a valid award as the basis of the decree; that it does not apply to a case in which there has been no award in law or in fact, and that the decree may be appealed against on that ground—*Suppu* v. *Govindacharyar*[1]; *Debendra Nath Shaw* v. *Aubhoy Churn Bagchi*[2]—explaining the judgment of the majority of the Full Bench in *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*[3]; *Lachman Das* v. *Brijpal*[4]; *Bindessuri Pershad Singh* v. *Jankee Pershad Singh*[5] and *Joy Prokash Lall* v. *Sheo Golam Singh*[6]. In the last mentioned case, it was held that an appeal would lie from a decree given in accordance with the award where the objection was that all the parties to the suit had not agreed to the reference.

I agree with the learned Chief Justice that objections, denying the existence of the submission and the award, are not, within the meaning of section 526, grounds such as are mentioned or referred to in section 520 or section 521. If they were such grounds, it would under section 526 be for the defendant to prove them; but I think that here, as in other cases, where the right claimed by the plaintiff is denied, it is for the plaintiff to establish it by proving the existence of the conditions upon whch it depends. Upon the issue being raised, it is for him to prove that there has been a submission and an award, and it is not until this has been proved, or admitted, that the defendant under section 526 has to show against the award any of the grounds mentioned in section 520 or section 521. If this is so, the question whether there has been a submission and an award must be determined before any inquiry into objections under section 520 or section 521 can commence, and, therefore, cannot fall within the scope of such objections. The Allahabad High

(1) I. L. R., 11 Mad., 85.
(2) I. L. R., 9 Calc., 905.
(3) 8 B. L. R., 315.
(4) I. L. R., 6 All., 174, Full Bench.
(5) I. L. R., 16 Calc., 482.
(6) I. L. R., 11 Calc., 37.

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Court express the opinion that an objection that there was no agreement to refer any question to arbitration would not only be *ejusdem generis* with, but would be one of the precise grounds mentioned in clause (*a*) of section 520. But the meaning and scope of section 520 cannot be altered or enlarged by its incorporation in section 526: if in cases not falling within section 526 it does not include such an objection, it cannot do so in cases to which section 526 applies. That section 520, in cases not falling within section 526, assumes a reference to arbitration as an established fact, and does not include an objection that there has been no reference, follows not only from the fact that the reference which it speaks of has been made by the Court's own order, but from the provision for a remission of the award to the reconsideration of the arbitrators, where any of the objections contemplated by the section are made good. That provision would be meaningless if one of those objections was that there had been no reference and no award to be remitted.

While these are the conclusions to which, in the absence of authority, I should probably have come, there is in this Court very strong authority for a more restricted reading of sections 525 and 526. I do not, of course, deny that there is great force in the reasoning of West, J., in *Sámal Nathu* v. *Jaishankar Dalsukhrám* and in the considerations referred to by the learned Chief Justice. Upon the construction of the sections there is, no doubt, much to be said for the view that the Legislature intended to provide a summary procedure for the enforcements of awards as to the existence of which there was no substantial or *bonâ fide* dispute, and did not intend that in all cases, however contentious, a person seeking to enforce an award should be exempt from the necessity of bringing a regular suit and paying full Court-fee on his plaint. In these circumstances, following the previous decisions of this Court, I agree to the answers proposed by the learned Chief Justice to the questions referred.

Attorneys for plaintiffs:—Messrs. *Bicknell, Merwánji and Motilál.*

Attorneys for defendants:—Messrs. *Mathubhai and Jamietrám.*