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sanction of the Court will not be set aside upon slight grounds: but, if the approval of the Court has been obtained by misrepresentation, or by the withholding of material information, through the absence of which the information furnished is misleading, the Court will treat such misrepresentation or withholding as fraud and will act accordingly." The plaintiff's purchase is therefore vitiated by the fraud practised on the Court.

For these reasons we confirm the decree of the lower appellate Court with costs.

Decree confirmed.

R. R.

FULL BENCH.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Russell, Mr. Justice Batty and Mr. Justice Aston.

MANILAL HARGOVANDAS (ORIGINAL PLAINTIFF), APPLICANT, *v.* VANMALIDAS AMRATLAL (ORIGINAL DEFENDANT), OPPONENT.*

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Civil Procedure Code (Act XIV of 1882), section 525—Reference to arbitration—Award—Question whether the matter had been referred and an award had been made—Question which the Court can and ought to decide.

When an application is made under section 525, Civil Procedure Code (Act XIV of 1882), to file an award as an award made in the matter which had been referred to arbitration, the question, if raised, whether the matter had been referred and an award had been made thereon, is one which the Court to which the aforesaid application has been made can and ought to decide.

Samal Nathu v. *Jaishankar*(1) explained.

The principle of *Stare decisis* is of undoubted value in its bearing on the law of property, but the doctrine is not of the same importance in the department of procedure when the practice of one Court is to be brought into conformity with the settled practice of other Courts and the plain terms of the Code.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of N. V. Samant, Additional Second Class Subordinate Judge

*Application No. 7 of 1905, under the extraordinary jurisdiction.

(1) (1884) 9 Bom. 254.

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of Ahmedabad, rejecting an application for the filing of an award.

The plaintiff applied under section 525 of the Code of Civil Procedure that an alleged award in which he was interested should be filed. The defendant objected to the award on the ground, *inter alia*, that he had not executed the Panchatnama (deed of reference). Owing to the said objection, the Subordinate Judge held that he had no jurisdiction to inquire into the matter, and declined to file the award following the decisions in *Samal Nathu* v. *Jaishankar* (1); *Venkatesh Khando* v. *Chanapgavda*(2); *Dhanjibhai* v. *Mathurbhai* (3); and *Hirjibhai* v. *Jamsetji*(4).

The plaintiff applied under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882), urging that the Subordinate Judge was wrong in holding that he had no jurisdiction to make an inquiry on the ground that the defendant had denied the execution of the Panchatnama (deed of reference), that he erred in assuming that the objection raised by the defendant was not "obviously unfounded" and in declining to consider the matter on that ground, that his view as to the power and duty of the Court under sections 525 and 526 of the Civil Procedure Code was wrong and that the decided cases showed that the Court ought to consider the objection and to proceed to decide the matter after recording such evidence as the parties might offer. A *rule nisi* having been issued calling on the defendant to show cause why the order of the Subordinate Judge should not be set aside, the case was argued on the 4th April 1905 before a Division Bench composed of Chandavarkar and Aston, JJ., who referred for the consideration of a Full Bench the following question:—

> Whether when an application is made under section 525, Civil Procedure Code, to file an award as an award made in the matter which has been referred to arbitration, the question, if raised, whether the matter has been referred to arbitration and an award has been made thereon, is one which the Court to which the aforesaid application has been made can and ought to decide.

The reference was argued before a Full Bench consisting of Jenkins, C. J., and Russell, Batty and Aston, JJ.

(1) (1884) 9 Bom. 254.
(2) (1892) 17 Bom. 674.
(3) (1903) 28 Bom. 287.
(4) (1890) P. J. 250.

L. A. Shah appeared in support of the rule for the applicant (plaintiff) :—On the point referred there is a conflict of decisions of the Bombay High Court on the one side and the Calcutta, Madras and Allahabad High Courts on the other. We submit that the question should receive an answer in the affirmative. The Madras High Court adhered to the view we contend for from the very first. In Allahabad the decision of the Full Bench in *Amrit Ram* v. *Dasrat Ram*[1] settled the point. The view of the Calcutta High Court was at first the other way, but the ruling of the Full Bench of that Court in *Mahomed Wahiduddin* v. *Hakiman*[2] brought their view in accord with that prevailing at Madras and Allahabad. Section 525 of the Civil Procedure Code is clear on the point. When any matter is referred to arbitration and the defendant denies the fact of reference, the Court should have the power to determine the question like any other question of fact, otherwise the jurisdiction of the Court would be entirely at the mercy of the defendant.

[RUSSELL, J.—The last clause to section 525 clearly contemplates an inquiry by the Court.]

It has been held that in the case of any dispute as to the fact of an agreement under section 393 of the Civil Procedure Code, the Court has the power and ought to inquire into the question at issue between the parties.

Section 526 of the Code does not in any way support the construction in favour of limiting the jurisdiction of the Court. It has been held that the defendant must prove objections such as are mentioned in that section and it would not be straining the words of the section to say that the expression "ground such as is mentioned or referred to in section 520 or section 521" does not exhaust the objections which the defendant may show against an application under section 525. The object of section 526 is only to state in what cases the orders shall be final. Section 523 of the Code also tends to show that the Legislature contemplated that Courts should consider the question of the *factum* of the agreement when there is any dispute about it between the parties.

(1) (1894) 17 All. 21. (2) (1898) 25 Cal. 757.

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The following cases were cited :—

Micharaya Guruvu v. *Sadasiva Parama Guruvu*(1), *Chintamallayya* v. *Thadi Gangireddi*(2), *Bijadhur Bhugut* v. *Monohur Bhugut* (3), *Surjan Raot* v. *Bhikari Raot*(4), *Mahomed Wahiduddin* v. *Hakiman*(5).

There is nothing in the terms of section 525 or in the policy of the Code to favour the view adopted by the Bombay High Court. We submit that the ruling in *Samal Nathu* v. *Jaishankar Dalsukram*(6), followed in *Hirjibhai* v. *Jamsetji*(7), *Venkatesh Khando* v. *Chanapgavda*(8), and *Tejpur* v. *Mahomed Jamal*(9), is erroneous. This is pre-eminently a point on which the decisions of all the High Courts in India should be unanimous.

G. S. Rao appeared to show cause for the opponent (defendant) :—We contend that proper construction of section 525 of the Civil Procedure Code would oust the jurisdiction of the Court to determine questions like the present which form the very basis of action under the section. The plaintiff can seek redress by bringing a regular suit. Under the summary procedure of section 525 unless the fact of reference and award is admitted by the parties, the Court cannot entertain an application to file an award. Sections 525 and 526 should be read together. Section 525 pre-supposes a reference to arbitration and an award made thereon, and the Court must deal with the award on that footing. Section 526 confines the inquiry to objections under sections 520 and 521. If the party objecting to the award shows that there was no reference, the Court cannot proceed further.

[JENKINS, C. J. :—The ruling in *Samal Nathu* v. *Jaishankar*(1) does not lay down that the Court has no jurisdiction at all. It seems to lay down that the Court cannot take further action if the objection is not "obviously unfounded." It contemplates inquiry as to the nature of the objection.]

Whenever the legislature contemplated that such questi should be inquired into in the course of a summary proce

(1) (1881) 4 Mad. 319.
(2) (1896) 20 Mad. 89.
(3) (1883) 10 Cal. 11.
(4) (1893) 21 Cal. 213.
(5) (1898) 25 Cal. 757, 762, 772.
(6) (1884) 9 Bom. 254.
(7) (1890) P. J. 250.
(8) (1892) 17 Bom. 674.
(1) (1836) 20 Bom. 596.

it has made express provisions to that effect, see sections 331 and 531 of the Civil Procedure Code. There is nothing in sections 525 and 526 to show what should be done when the submission is disputed. It would be contrary to the established practice that when a party alleges and the other denies a submission, the burden of proof should be placed on he who denies. How is the defendant to prove a negative?

Section 327 of the old Code (Act VIII of 1859) corresponded with section 526 of the present Code, and it contained the expression "if no sufficient cause be shown against the award". That expression is explained by the Privy Council in *Chowdri Murtaza Hossein* v. *Mussumat Bibi Bichunnissa*[1]. See also *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*[2]. The altered language of section 525 of the present Code shows that the Court should deal with awards the validity of which is not disputed. The circumstance that no appeal is allowed from an order filing an award determines the scope of the section. We submit that under section 525 the Court has to deal with an award made without its intervention in the same way as if the award had been made under an order of reference passed by it.

The inquiry contemplated by sections 520, 521 and 522 cannot embrace an inquiry into the *factum* of the reference. It assumes the existence of the reference as a fact. So too, the existence of the reference is assumed as a fact under sections 525 and 526 and the Court has to inquire only into subsequent events. The proper construction of the said sections appears to provide a summary procedure for enforcing awards the validity of which is not in dispute. Any other construction would, we submit, lead to absurd results. Suppose the Court has jurisdiction to entertain an application like the present: if the Court holds that there was no submission and refuses to file the award, its order would be a decree subject to an appeal; but if the Court holds that there was a submission, then the order for filing the award would not be appealable. There would be no hardship in refusing the application on the ground that the *factum* of the reference is disputed. A suit is open in such a case and in that suit all questions in dispute would be tried in the ordinary way with the ordinary right of appeal. But if the other alternative

(1) (1876) 3 I. A. 209, 213. (2) (1871) 8 Ben. L. R. 315.

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be adopted, it would lead to a great hardship as the decision under section 526 is final.

The language of a statute cannot be strained when the effect of such straining would deprive the parties of their ordinary right to have their controversies tried by a suit with a right of appeal and would compel them to submit to a summary decision not subject to appeal.

The view which has found favour with the other High Courts in this country is, no doubt, against our contention, but this High Court has consistently followed the view we are contending for: *Samal Nathu* v. *Jaishankar*(1), *Hirjibhai* v. *Jamsetji*(2), *Tejpur* v. *Mahomed Jamal*(3).

The maxim *Stare decisis* should be followed and the view of this High Court should be upheld.

L. A. Shah was not called upon in reply.

JENKINS, C. J.—The question referred to the Full Bench is, "whether, when an application is made under section 525, Civil Procedure Code, to file an award as an award made in the matter which has been referred to arbitration, the question, if raised, whether the matter has been referred to arbitration and an award has been made thereon, is one which the Court to which the aforesaid application has been made can and ought to decide."

The applicant, alleging himself to be interested in an award, applied to the Court that the award should be filed under section 525 of the Civil Procedure Code.

His application was met with a denial of the reference and the award, and it was thereupon decided by the Additional Joint Subordinate Judge that he had no jurisdiction to inquire into the question whether the matter had been referred to arbitration and an award made thereon.

It is out of this that the present reference arises.

The section says that where a matter has been referred to arbitration and an award has been made thereon a party can apply that the award be filed in Court; in other words the existence of the reference and the award are a necessary condition to the party's right to apply.

(1) (1884) 9 Bom. 254. (2) (1890) P. J. 250.

(3) (1896) 20 Bom. 526.

But, as has been said, that of things that do not appear and things that do not exist, the reckoning in a Court of law is the same, and so to satisfy this condition it must be made to appear that there has been a reference to arbitration and an award, and that can only be by the recognized methods of proof. Therefore it seems to us that a party applying under section 525 is bound, and is also entitled to prove that there has been a reference to arbitration and an award; and we can find nothing in this section which says that he loses that right merely because his opponent denies that there has been a reference and an award.

We think it unnecessary to elaborate our remarks on this section, which has already been discussed fully by the Courts of Madras, Allahabad and Calcutta in terms that amply support the view that we have here expressed. If the other view is to prevail, then the party disappointed with the result of the reference can by a bare denial paralyze the action of the Court under Chapter XXXVII of the Code; a result that can hardly have been intended.

It has been suggested that to discard the respondent's contention involves the hardship that there would be no appeal. This does not arise directly for decision and we refrain from the expression of an opinion which would be but an *obiter dictum*, but we would point to the fact that the view of the other High Courts is that an appeal will lie, and we have no reason to suppose that this Court will needlessly dissent from this concord of opinion.

It is argued that section 526 does not contemplate the inquiry involved by a denial of the reference and the award. But the answer is that the inquiry arises before section 526 is reached; it arises at the very threshold of the application under section 526, which imposes, as we have said, on the applicant the obligation of not only alleging, but of establishing that there has been a reference and an award.

Then it has been said that we are infringing the principle of *stare decisis* as there is a long course of decisions in this Court opposed to the view which we have expressed.

The principle of *stare decisis* is of undoubted value in its bearing on the law of property, but we know of no reason why

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in the department of procedure we should be frightened by that doctrine from bringing our practice, in this Court, into conformity not only with the settled practice existing over the whole of India, but also, as we think, the plain terms of the Code.

We think that there is a misapprehension as to the real meaning of the decisions in the Bombay High Court. They are all based upon *Samal Nathu* v. *Jaishankar* (1), and we are not aware that any case purports to go beyond the decision there given. On the contrary, there has on occasion been a reluctance to give full effect to that decision. We think the Court did not in that case go the length of saying that there was no jurisdiction; for, whatever may have been said in the earlier part of the judgment, it is distinctly said in the later part "that if the objection is obviously unfounded, the Court may well regard it as no cause against the filing; but if it is substantial, then the party urging it ought, we think, not to be deprived of the advantage of being a defendant rather than a plaintiff."

Now these words imply that notwithstanding the denial there must be some investigation: there must be an investigation for the purpose of ascertaining whether the objection is obviously unfounded, or is substantial, and if that be so, mere denial does not oust jurisdiction. Nor can we suppose that it was intended by the Judges to decide that jurisdiction depends upon the uncertain test of whether or not a particular Judge may think an objection was substantial or not.

We think, therefore, that when the case of *Samal Nathu* v. *Jaishankar* (1) is read as a whole, it cannot be said that the Court there decided that there was no jurisdiction: it was merely intended to lay down a rule of guidance.

If we accept Mr. Rao's argument we have to say that the Court has no jurisdiction to determine whether it has jurisdiction, and that is a proposition which has a false ring about it.

For these reasons we would answer the reference by saying that the question is one which the Court can and ought to decide.

We remit the case to the Division Bench with that opinion.

Order accordingly.

G. B. R.

(1) (1884) 9 Bom. 251.