APPELLATE CIVIL

Before the Hon'ble Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

MRS. GOOLBAI HORMUSJI (ORIGINAL PETITIONER), APPELLANT *v.* JUGALKISHORE RAMESHWARDAS (ORIGINAL OPPONENT), RESPONDENT.* 1951 *June* 29

Arbitration—Award by arbitrators—Validity of, when the contract containing submission clause is void—Bombay Securities Contracts Control Act (VIII of 1925), ss. 3, 4, 5 and 6—Ready delivery contract, meaning of—Bombay Native Share and Stock Brokers' Association Rules 359, 361, 362 (a) and 363 (a)—Whether contract pursuant to these rules is ready delivery contract—Whether submission can be founded on contract of indemnity.

Where there is a contract which provides for submission of disputes arising thereunder to arbitration and if that contract is for any reason void or illegal, the submission clause which forms part of the contract also becomes void An arbitrator appointed pursuant to the submission clause has no jurisdiction to embark upon the reference and the award made by him ought to be set aside.

Heyman v. *Darwins, Ltd.*,[1] followed.

Under the Bombay Securities Contracts Control Act, 1925 rules dealing with contracts other than ready delivery contracts framed by a Stock Exchange can only have validity provided they have received the sanction of the Provincial Government.

On a true construction of the Bombay Native Share and Stock Brokers' Association Rules, 359, 361, 362 (*a*) and 363 (*a*), a contract entered into pursuant to these rules is not a ready delivery contract, as under the said rules the contract is not to be performed either immediately or within a reasonable time but on the day fixed in advance by the Stock Exchange or the day fixed under an express stipulation between the broker and his constituent.

Bhagwati J.'s view in *Ghelabhai Mahasukhram* v. *Keshavdev*,[2] dissented from.

Bhagwandas Nangopal v. *Ambalal Parikh*,[3] approved.

If a contract between a broker and his constituent is void, a valid submission cannot be founded upon the said Contract by reason of the fact that it is a contract of indemnity between the broker and his constituent.

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* Appeal No. 93 of 1949 from Order.

[1] [1942] A. C. 356.

[2] (1949) 51 Bom. L. R. 499 (Judgment of Bhagwati J. reported at pages 501-503).

[3] (1949) O. C. J. Suit No. 114 of 1947, decided by Bhagwati J., on August 12, 1949 (unrep.).

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Appeal from Order from the decision of K. J. Khandalawalla, Esquire, Judge of the City Civil Court Bombay.

Arbitration proceedings.

The respondent was a member of the Native Share and Stock Brokers' Association Bombay and carried on business as a share broker. The petitioner was a non-member and in the year 1947 had employed the respondent as a broker for effecting transactions in shares in accordance with the rules and regulations of the said Association. In respect of the Petitioner's transactions for the clearing of August 9, 1947, a sum of Rs. 6,321-12-0 became due by the the petitioner to the respondent. Thereafter the petitioner gave instructions to the respondent to square up the outstanding sales of 25 shares of Tata Deferred and 350 shares of Swadeshi Mills and the respondent squared up these outstanding sales on August 11, 1947. The contract notes provided that "in the event of any dispute arising between the parties out of the transaction the matter shall be referred to arbitration as provided by the rules and regulations of the Native Stock and Share Brokers' Association". On August 13, 1947 the petitioner instructed the respondent to square up her outstanding transactions of sale by purchasing 350 Swadeshi Mills shares and 25 Tata Deferred shares at the opening of the market on the 14th instant. There followed correspondence between the petitioner and the respondent and by her letter dated August 19, 1947, the petitioner denied that contracts were squared up on August 11, 1947, under her instructions. On August 21, 1947, the respondent made an application to the Association for arbitration. The respondent appointed an arbitrator on behalf of himself. The Secretary of the Association called upon the petitioner to appoint an arbitrator on behalf of herself. The Petitioner by her attorney's letter dated August 28, 1947, wrote to the Secretary to the effect that all the contract notes submitted by the respondent were not in accordance with the rules of the said Association, were void and therefore there was no arbitration agreement with regard to any dispute. The Petitioner declined to appoint any arbitrator as called upon and said that any award made would be without jurisdiction. As the Petitioner failed to appoint an arbitrator within the appointed time, the President of the said Association appointed an arbitrator on her behalf. The arbitrators sent a notice informing the Petitioner about the day, time and place for proceeding with the reference. The Petitioner still maintained

her attitude that there could be no valid arbitration and did not remain present at the proceedings. On October 10, 1947 the arbitrators made an award ex-parte in favour of the respondent for a sum of Rs. 4,474-12-0 plus Rs. 100 as costs of the arbitration. Notice of the award was given to the respondent on March 6, 1948 and the respondent filed the award in Court. On May 24, 1948 the Petitioner filed a petition to set aside the award.

K. J. Khandalawalla, Esq. Judge of City Civil Court Bombay dismissed the Petition.

In the course of his judgment the learned Judge observed:

"Thirdly Mr. Madan has contended that the Association fixed the time for the performance of the contracts in dispute whereas in a ready delivery contract no time is specified and it is a contract which has to be performed immediately or within a reasonable time. Now this contention has been expressly dealt with by Mr. Justice Bhagwati in 51 B.L.R. 499 where his Lordship stated that these share market transactions being subject to the rules and regulations of the Association it was open to the parties entering into these transactions to either stipulate that they should be performed immediately or that they should be performed within a reasonable time. Reasonable time was in each particular case a question of fact. It was open to the parties to say that what was fixed by the governing body or Board of Directors as the time for the performance of these contracts should be deemed reasonable time and to leave it to the governing body to fix from time to time the respective dates for the performance of the obligations under the contracts. Merely because this fixation of a reasonable time was left by the parties trading in those scrips under the rules and regulations to the governing body or the Board of Directors, that did not alter the nature of the contracts. This decision of Mr. Justice Bhagwati is in any event binding upon me."

The petitioner appealed to the High Court.

D. P. Madon with *Mehervaid & Co.*, for the appellant.

S. S. Rangnekar with *Thakordas & Co.*, for the respondent.

M. P. Amin with *R. M. Kantawala* and *Kanga & Co.*, for the Stock Exchange.

CHAGLA C. J. This is an appeal from an order of Mr. Khandalawala, Judge of the City Civil Court, dismissing the appellant's petition for setting aside an award. The respondent is a member of the Native Share & Stock Brokers' Association, Bombay. The petitioner is a non-member and she employed the respondent in the year 1947 as her broker, and pursuant to her instructions the broker carried out certain transactions. There was a dispute between the broker and the constituent as to

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what the broker was entitled to and the dispute was referred to arbitration under the Rules of the Native Share & Stock Brokers' Association, and the arbitrator made an award in favour of the broker. This award was challenged by the petitioner. The challenge was made on various grounds, but inasmuch as we are in favour of the petitioner on one of the grounds alleged by her, it is unnecesary to consider the other grounds which were placed before the learned Judge below and which have been dealt with by him in the judgment. The ground we wish to consider, which is the most substantial ground, is that the contract entered into between the constituent and the broker is void and therefore the submission clause which forms part of the contract also becomes void, and therefore the arbitrator had no jurisdiction to embark upon the reference and the award made by him should be set aside.

The contract in question is a contract by which the broker entered into certain transactions of purchase on behalf of the appellant. The contract states: "This contract is made subject to the rules and regulations of the Native share and Stock Brokers' Association," and it also provides that "in the event of any dispute arising between the parties out of the transaction the matter shall be referred to arbitration as provided by the rules and regulations of the Native Stock & Share Brokers' Association." The contention of the appellant is that this contract is not a ready delivery contract but a forward contract, and being a forward contract, it is void as provided by the Bombay Securities Contracts Control Act, 1925. This Act was enacted to regulate and control contracts for the purchase and sale of securities in the city of Bombay and elsewhere in the Presidency, and the scheme of the Act is that forward contracts should not be put through by any agency except a recognized stock exchange and pursuant to rules which should receive the sanction of Government. Section 3 defines what a ready delivery contract is, and the definition is that it is a contract for purchase or sale of securities for the performance of which no time is specified and which is to be performed immediately or within a reasonable time, and the explanation says: "The question what is a reasonable time is in each particular case a question of fact." All contracts which do not fall within this definition of ready delivery contract are governed by ss. 4, 5 and 6. Therefore, it will be noticed that in order that a contract should be a ready delivery contract it should satisfy two conditions. It must be a contract for the performance of which

no time must be specified and it must also be a contract which is to be performed either immediately or within a reasonable time. It is only when these two conditions are satisfied with regard to the performance of a particular contract that the contract becomes a ready delivery contract. Section 4 deals with recognition of stock exchanges, and s. 5 deals with rules to be framed by a recognized stock exchange with the sanction of the Provincial Government, and the rules which a recognized stock exchange may frame are relating to various matters set out in that section. It may be pointed out that under s. 5 it is only those rules which deal with contracts other than ready delivery contracts that require the sanction of the Provincial Government. Therefore, it is open to a recognized stock exchange to frame rules with regard to transactions and securities which are ready delivery contracts without the sanction of the Provincial Government, but when a stock exchange purports to frame rules dealing with contracts other than ready delivery contracts, the rules can only have validity provided they have received the sanction of the Provincial Government. Then s. 6 provides that every contract for the purchase or sale of securities other than a ready delivery contract entered into after a date to be notified in this behalf by the Provincial Government shall be void, unless the same is made subject to and in accordance with the rules duly sanctioned under s. 5, and every such contract shall be void unless the same is made between members or through a member of a recognized stock exchange. Therefore the only contracts other than ready delivery contracts which are recognised by law are those contracts which are made subject to and in accordance with the rules sanctioned under s. 5, and the further condition laid down for the recognition of what might be called forward contracts is that these contracts must be made between members or through a member of a recognized stock exchange. It is only when these conditions are satisfied that forward contract or a contract other than a ready delivery contract is valid; and the section further provides that no claim shall be allowed in any civil Court for the recovery of any commission, brokerage, fee or reward in respect of any such contract.

Now, what is contended on behalf of the appellant is that the contract we have before us is not a ready delivery contract; further that it is not in accordance with the rules framed by a recognized stock exchange; and therefore it attracts the application of s. 6 and is void. As the matter was of considerable

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importance, we thought it advisable to give notice to the Native Share & Stock Brokers' Association, and Mr. Amin has appeared before us and has given valuable assistance to the Court in helping us to come to a conclusion as to whether the contract in this application and appeal is or is not a ready delivery contract. In order to decide whether this contract satisfies the definition of a ready delivery contract given in the Act, we have got to look at the rules framed by the Native Share & Stock Brokers' Association, because admittedly the contract was governed by these rules.

It is necessary to set out the previous history of forward transactions which were permitted by the Native Share & Stock Brokers' Association. During the last war a rule was framed, r. 94C of the Defence of India Rules, which prohibited any stock exchange from permitting or affording facilities for the making of any contract other than a ready delivery contract, and ready delivery contract was defined by that rule as a contract which must be performed by the actual delivery of, or payment for, the securities specified therein on a date not later than the fifteenth day (or, if the fifteenth day happens to be a holiday, the business day next following) from the date of the contract. It will be immediately noticed that the definition of ready delivery contract given in r. 94C (*1*) (*c*) is entirely different from the one given in the Act. The object of r. 94C (*1*) (*c*) was not to permit the period of settlement to extend beyond a fortnight. Although these contracts were called ready delivery contracts, they were really forward contracts with the period of delivery limited to a fortnight. Therefore, what was aimed at by r. 94C (*1*) (*c*) was contracts where settlement or performance was postponed beyond a period. Those who were responsible for enacting this rule wanted settlement to be fairly quick and not to be extended beyond a reasonable period. This rule lapsed on September 30, 1946, and the Stock Exchange in Bombay framed new rules on September 24, 1946, which came into force on October 4, 1946. These rules did not obtain the sanction of the Provincial Government because these rules purported to deal with ready delivery contracts, and, as I have pointed out, under the Act, rules dealing with ready delivery contracts did not require the sanction of the Provincial Government.

When we turn to the rules what we find is that an attempt has been made to stabilise the position that obtained under r. 94C, or, in other words, the Stock Exchange by framing those

rules wanted to continue settlement or performance of contracts to take place within a fortnight and not to be extended beyond that time. That is clear when we look at the scheme of these rules. Rule 359 prohibits the entering into, within or without the ring, of contracts other than ready delivery contracts. Therefore, ostensibly by r. 359 the Native Share & Stock Brokers' Association wanted to prohibit all contracts other than ready delivery contracts. The question is whether in effect by framing these rules it has succeeded in preventing the entertering into of such contracts. Rule 351 provides that—

"the Board may from time to time specify the securities which shall be settled either by the system of Clearance Sheets or by the process of Tickets. All bargains in such Cleared Securities shall be deemed to be for fifteen days' clearing and the settlement and clearing of such bargains shall be effected as hereinafter provided."

Therefore this rule lays down the period of each clearance and that period is a period of fifteen days, and it provides that certain securities which are called cleared securities shall be dealt with within these clearances and shall be governed by rules with regard to settlement and clearing as provided in the subsequent rules. It is admitted that the shares we are dealing with in this particular appeal are cleared securities. Then r. 362 (*a*) provides:

"The Board shall fix in advance the first and the last working day for each Fortnightly Clearing and the various Clearing days. All contracts for any Cleared Security or Securities entered into during a Clearing that are outstanding on the last business day shall be performed by the actual delivery of or payment for the securities specified therein unless carried over to the next Clearing."

Therefore this rule makes it perfectly clear that all transactions entered into within a particular clearing have to be settled by delivery being given or taken on the day fixed in advance by the Stock Exchange. Therefore the date of performance is fixed beforehand and anyone entering into a transaction for the purchase or sale of certain securities is bound to perform that contract on the date fixed in advance under the rules of the Native Share & Stock Brokers' Association. Mr. Amin has emphasised the fact that the rules speak of only those contracts being performed which are outstanding on the last day of the clearing. I fail to see what particular importance can be attached to the expression used in r. 362 (*a*) that the outstanding transactions have to be performed by the actual delivery of or payment for the securities specified, because if a constituent enters into several transactions, what has got to be determined is what is the ultimate result of these various transactions. He may enter into transactions of sale, he may enter

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into transactions of purchase, some transactions may be worked off by there being cross-transactions, and what the rules contemplate is what has got to be performed is the result of various transactions entered into by a constituent. But even though cross-transactions may be entered into, each transaction is a separate contract which has got to be performed and the performance is to be on the day fixed by the rules. It may be that as a result of working out for the purpose of convenience various transactions, the constituent has neither to give delivery nor to take delivery or he has got to give delivery or take delivery of a specified number of shares. But from this it cannot be said that there is no obligation upon the constituent to give or take delivery with regard to each specific contract into which he enters. Then this rule also deals with a carry over or a *badla* to the next clearing. We are not concerned with that provision. Then there is a proviso :

> "Provided that the parties may expressly stipulate at the time of the contract to make delivery and payment on any day other than the day specified in this rule but not later than the seventh day from the date of the contract and in such case delivery and payment shall be made Ex-Clearing House."

This proviso gives liberty to the parties to enter into a separate contract with regard to the delivery and payment, but it has imposed two conditions. One is that the delivery should not be later than the seventh day from the date of the contract, and if such contract is entered into, then the parties cannot avail themselves of the facilities of the clearing house set up under the rules of the stock exchange. Then the following rules lay down the machinery of the clearing house. It provides how brokers have to submit lists and clearance tickets and by what time delivery is to be taken and given and by what time payment is to be made or received.

Now, the question is, on a true construction of these rules can it be said that a contract entered into pursuant to these rules is a ready delivery contract as defined by the Act? In the first place, it seems to be abundantly clear that a contract entered into under these rules is a contract for the performance of which a definite time is specified under the rules as framed. When a constituent asks his broker to purchase certain shares for him which are cleared securities, then he enters into a contract which he must perform at the time specified under the rules, viz., he must perform it on the last day of the clearance. He has no option to take delivery earlier than the day fixed

under the rules. He cannot make payment earlier than the day fixed under the rules. Therefore every stage of the performance of the contract is clearly set out and clearly fixed under the rules framed by the stock exchange. Even if he were to enter into an express contract altering the date of the performance, even so under the rules he has got to specify the day when he must perform the contract. It is not left to him to perform the contract immediately or within a reasonable time. Therefore, whether he goes through the machinery set up by the stock exchange or whether he avoids that machinery and enters into an express contract with the broker, as far as the performance of his contract is concerned a specific time has got to be fixed and that specific time is either the date of the clearing fixed in advance or the date which he has got to fix under the express stipulation entered into by him with the broker. Therefore, either in one case or the other there is a time specified for the performance of the contract. The second condition in the definition of ready delivery contract is also obviously not satisfied, because if there is a specific time at which the contract is to be performed, then no question can arise of the contract being performed immediately or within a reasonable time. Mr. Amin has drawn our attention to r. 363 (*a*) which deals with contracts for non-cleared securities and which provides that such contracts shall be settled on every Thursday of the following week, and Mr. Amin says that whereas under r. 363 (*a*) the time is specified for the performance of the contract, the same cannot be said with regard to cleared securities dealt with under rr. 361 and 362 (*a*). In my opinion, there is no difference as far as the effect is concerned between r. 263 (*a*) and rr. 361 and 362 (*a*). Rule 363 (*a*) mentions a particular day of the week with regard to cleared securities. Rules 361 and 362 (*a*) do not mention the particular day of the week for the performance of the contract, but the days of clearance are fixed in advance and persons entering into contracts know on which day they have got to perform the contract as much as persons entering into transactions with regard to non-cleared securities know that under r. 363 (*a*) they have got to perform the contract on the Thursday of the following week.

The position in law seems to be fairly clear, but I must confess that I felt a little difficulty in view of the fact that Mr. Justice Bhagwati in a reported judgment has taken a different view of the true position arising under these rules.

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The judgment of Mr. Justice Bhagwati is reported in *Ghelabhai Mahasukhram* v. *Keshavdev*,[1] and at p. 503 the learned Judge deals with this question and he comes to the conclusion that the rules enacted by the Stock Exchange do not prescribe a specified period for the performance of the contract. The view that the learned Judge takes is that it is open to the parties to leave it to a third party to determine what is the reasonable time within which a contract may be performed, and according to the learned Judge the parties by agreeing to the rules of the stock exchange and making the contract subject to those rules agreed to leave it to the board of directors of the Stock Exchange to determine what is the reasonable time within which the contract between them should be performed. With very great respect to the learned Judge, before he dealt with the question of reasonable time he should have satisfied himself whether under the rules the contracts dealt with were or were not to be performed at a specified time. If the time for performance was specified, then no further question need have arisen with regard to the performance of the contract within a reasonable time, and in the judgment of the learned Judge he has again with respect completely overlooked the fact that under the rules these contracts had to be performed at a time clearly specified under the rules. If the contract had to be so performed, it is difficult to understand how it can be said that the parties left it to the board of directors to fix the reasonable time within which the contract was to be performed. The learned Judge has also overlooked the fact that what the definition speaks of is the performance of the contract within a reasonable time. But even taking the most favourable view of the rules, the rules do not lay down a time within which a contract is to be performed. The rules lay down a particular day on which the contract has to be performed. Therefore at most the rules lay down the limit of the reasonable time. The rules do not say that the reasonable time is ten or fifteen days within which the parties may perform the contract; if they do not perform it within that period, then there would be a breach of the contract. But as I said before, it is not open to the parties at all to perform the contract antecedent to the date fixed under the rules. Therefore it is difficult to understand how it could be said of these rules that a time is fixed within which performance of the contract is permissible. Further, the learned Judge has also overlooked the fact that the explanation to

[1] (1949) 51 Bom. L. R. 499.

s. 3 (4) clearly lays down that reasonable time must be determined in each particular case as a question of fact. Therefore with regard to each contract and with regard to each transaction reasonable time may be different, dependent upon the facts and circumstances of that particular case. It is not possible for the board of directors to lay down a reasonable time for all contracts or transactions of parties who enter into transactions with regard to certain shares, and it is exactly what the board of directors have attempted to do. Therefore, with very great respect to the learned Judge, I do not think that the view he has taken of the law is correct, and we must disagree with the construction he has placed upon the rules framed by the Stock Exchange.

The learned Judge himself in a later decision, again with respect to him, seems to have taken the correct view of what the position was under the rules of the Stock Exchange. That is an unreported judgment in *Bhagwandas Nangpal* v. *Ambalal Parikh*.[1] The learned Judge in that case, after setting out the history with regard to r. 94C, proceeds to say :

"It was, therefore, that in pursuance of this enactment the authorities of the Stock Exchange in Bombay after this 24th September 1943 framed rules which were called 'Temporary Rules' for the purpose of ready delivery contracts. These were certainly not ready delivery contracts known as such in accordance with the definition thereof given in the Bombay Act VIII of 1925 but were ready delivery contracts known as such within the terms of the definition thereof under Rule 94C of the Defence of Indian Rules."

Pausing here for a moment, the learned Judge in this judgment clearly notices the material and substantial difference in the definition of ready delivery contract to be found in r. 94C and s. 3 of the Act. Then the learned Judge proceeds :

"The scope of the ready delivery contracts was thus extended and ready delivery contracts in respect of which the performance was to take place at a date not later than 15 days after the entering into of the contracts were ready delivery contracts which were permitted under Rule 94C."

Therefore this is the correct position as understood and appreciated by the learned Judge. What the Stock Exchange has attempted to do is to extend the scope of the ready delivery contracts. But it is not open to the Stock Exchange to extend the scope of ready delivery contracts in law. If they attempt

[1] (1949) O. C. J. Suit No. 114 of 1947, decided by Bhagwati J., on August 12, 1949 (unrep.).

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to extend it, the transactions fall outside the category of ready delivery contracts, and if they are not ready delivery contracts, then they can only deal with those transactions by framing rules with the sanction of the Provincial Government. The Stock Exchange has attempted to deal with these transactions without being under an obligation to get the sanction of the State. But the law does not permit them to do so, and without meaning any disrespect, these rules are really a device by which the Stock Exchange wanted to permit its members to deal in forward transactions without having to obtain the sanction of the Government which the law compels them to do.

If, therefore, the contract in this appeal is not a ready delivery contract, inasmuch as it is entered into in accordance with rules framed by the Stock Exchange which have not received the sanction of Government under s. 5, the contract is void under s. 6. The question is, what is the effect of our holding that the contract is void upon the submission clause contained in that contract? The general principle of law is that if there is a contract which contains a submission clause and if that contract for any reason is void or illegal, the submission clause must fall along with the contract. This principle was clearly enunciated by Lord Chancellor Viscount Simon in *Heyman* v. *Darwins, Ld.*[1] This is what the Lord Chancellor says (p. 366) :

> ".....Similarly, if one party to the alleged contract is contending that it is void *ab initio* (because, for example, the making of such a contract is illegal), the arbitration clause cannot operate, for on this view the clause itself also is void."

Mr. Rangnekar for the broker has put forward a rather ingenious argument and what he has contended is that although the contract for the purchase or sale of securities may be void under s. 6 of the Bombay Securities Contracts Control Act, the contract to the extent that it is a contract of indemnity between the broker and its constituent is not void and the submission clause to the extent that it may deal with the disputes between the broker and the constituent with regard to the broker's indemnity should be upheld and we should hold that the arbitrator had jurisdiction to determine whether the broker was entitled to any amount for indemnity. If the contract is not a ready delivery contract but is what may be described as forward contract, then under the rules of the stock exchange such a contract has to be entered into in accordance with the

[1] [1942] A. C. 356.

rules framed for forward contracts. It may be pointed out that there are rules which have received the sanction of Government with regard to forward contracts and it would be perfectly legal for the stock exchange to permit brokers of constituents to enter into these forward contracts. But as I pointed out, by a rule which they themselves have framed, rule 359, they have prohibited contracts other than ready delivery contracts and that is why only contracts which are entered into on the stock exchange are what the stock exchange chooses to call ready delivery contracts governed by rules to which reference has been made earlier. But if in fact this is not a ready delivery contract but is a forward contract, then that contract must be evidenced by a contract note which has got to be in the form set out in Appendix H to the rules framed by the stock exchange. That form deals with both a contract between member and member and between a member and a non-member. Therefore if a broker wants to have the question of his indemnity referred to arbitration, he must enter into a contract in accordance with the form laid down under the rules. Then alone is his contract valid; then alone is the clause with regard to submission valid and operative. But if he chooses to enter into a forward contract and submits to his constituent a contract note which is not in accordance with the form laid down in the rules, then the contract note and the contract are invalid and the broker cannot rely upon the submission clause for the purpose of having his dispute with the constituent arbitrated upon by an arbitrator. Therefore we cannot accept Mr. Rangnekar's submission that although the contract for purchase or sale of these shares is void as offending against the provisions of s. 6 of the Act, a valid submission may still be founded upon this contract by reason of the fact that it is a contract of indemnity between the broker and his constituent.

The result therefore is that we must hold that the contract relied upon by the respondent is void, that the submission clause contained in that contract is also void, and therefore no valid arbitration could have been founded upon the submission clause. If no valid arbitration could have been so founded, then the award made by the arbitrator was invalid and without jurisdiction and that award must be set aside. We would therefore allow the appeal and set aside the order passed by the learned Judge below. Petitioner will be entitled to his costs throughout.

Appeal allowed.

K. B. S.