Present : Wood Renton J. and Grenier J. *July 12, 1910*

PITCHE TAMBY *et al. v.* FERNANDO *et al.*

394—*D. C. Puttalam*, 1,990.

Arbitration—Fifteen days' notice of the filing of the award must be given to the parties—Notice to the proctors insufficient—Doctrine of estoppel, how far it applies to arbitration proceedings—Civil Procedure Code, ss. 676, 687.

Fifteen days' notice of the filing of the award by an arbitrator should be given to the parties to the case prior to the confirmation of the award by the Court. The notice should be to the parties themselves and not to the proctors.

The provisions of the Civil Procedure Code in regard to arbitration should be rigorously and literally complied with.

THE facts appear sufficiently from the judgment.

Sampayo, K.C., for the first defendant, appellant.—The application for reference to arbitration was not signed by all the parties to the case. The award is therefore invalid.

The appellant did not receive fifteen days' notice of the filing of the award prior to its confirmation by the Court, as required by section 687 of the Civil Procedure Code. The decree of Court was therefore irregularly entered.

Authorities cited : *Bykuntnath Chatterjee v. Nuzuroodeen*,[1] *Indur Subbarami v. Kandada Rajamannar*,[2] *Hira Singh v. Ganga Sahai*,[3] *D. C. Kurunegala* 2,493, 24 *Cal.* 469.

Chitty, for plaintiffs, respondents.—The appellant is estopped from questioning the validity of the award, as he took part in the arbitration proceedings without protest.

The appellant had signed the application for reference, and is therefore bound by the award.

The proctor for the appellants had no objection to offer against the award being made a decree of Court ; notice to the proctor was sufficient notice to the appellant.

Counsel cited the following authorities : *Biswas v. Mookerjee*,[4] *Dasia v. Pani*,[5] *Tyerman v. Smith*,[6] *Sundram Aiyar v. Abdul Latif*,[7] *Abdul Hamid v. Raizuddin*,[8] *Joy Prokash Lall v. Sheo Golam Singh*.[9]

Sampayo, K.C., in reply.

Cur. adv. vult.

[1] *10 W. R. 171*
[2] *26 Mad. 47.*
[3] *(1883) 6 All. 322.*
[4] *(1866) 5 W. R. 130*
[5] *(1879) 4 Cal. 65.*
[6] *(1856) 25 L. J. Q. B. 359.*
[7] *(1899) 27 Cal. 61, 64, 65.*
[8] *(1907) 30 All. 32.*
[9] *(1884) 11 Cal. 37.*

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Pitche Tamby v. Fernando

July 12, 1910. WOOD RENTON J.—

In my opinion this appeal must be allowed. It appears, first, that there was no special authority given by the parties or any of them to their respective proctors to consent to a reference of the case to arbitration as required by section 676 of the Civil Procedure Code, and the decisions of the Supreme Court interpreting that section (see *Gonsales v. Holsinger* [1]) : in the next place, that the application for a reference to arbitration was, in fact, not signed by all the plaintiffs-respondents to this appeal, although it was signed by the first defendant-appellant ; and in the last place, that the first defendant-appellant did not receive the fifteen days' notice of the filing of the award prior to its confirmation by the Court, to which section 687 of the Civil Procedure Code entitled him. It is not necessary for the purposes of the present case to decide—and I do not decide—that there may not be circumstances in which a party to an arbitration, who has either duly authorized his proctor to apply for an order of reference, or has himself made in person and signed such an application, and has thereafter appeared before the arbitrator without objection, taken part in arbitration proceedings, and raised no objection to the award in the court of first instance, may not fairly be held to be estopped from challenging the award for the first time in the Appeal Court, on the ground that the application for an order of reference had not been signed by all the parties to the case, provided that what is decreed to do by the award is something that can be fulfilled in favour of the parties who have, irrespective of those who have not signed the application for a reference. I do not think that that point is covered by the decisions of Stewart J. and Dias J. in *Ramasamy Kangany v. Aiya Cutty Kangany*,[2] and of the Collective Court in *Bimbarahami v. Kiribanda Muhandiram*,[3] where the *ratio decidendi* was that there had been no application in writing at all for the order of reference, and no foundation for the proceedings, except a minute by the District Judge. Here, however, the first defendant-appellant has had judgment given against him in favour of all the plaintiffs-respondents, both those who did, and those who did not, sign the application for the reference jointly and severally. The plaintiffs-respondent who did not sign that application would not have been bound by the award if it had been adverse to them, and they cannot take advantage of it when it is in their favour (see *Hira Singh v. Ganga Sahai*[4]). I think that the award in the present case cannot be upheld on the ground that the appellant is estopped from disputing it (see also No. 266—D. C. Final Kurunegala No. 2,493). Whether the doctrine of estoppel can ever be applied so as to cure irregularities in arbitration proceedings is a question in regard to which there has been considerable difference of judicial opinion both in

[1] *(1885) 7 S. C. C. 101.*
[2] *(1879) 2 S. C. C. 59.*
[3] *(1885) 7 S. C. C. 99.*
[4] *(1883) I. L. R. 6 All. 322.*

India and in Ceylon, and which may some day have to be definitely decided. Moreover, in my opinion, the omission to give the first defendant-appellant due notice of the filing of the award is a fatal objection to the proceedings. The case was fixed for the consideration of the award on September 22, 1909 ; it was only on September 15 that notice of the filing of the award was given to him ; he had not, therefore, the period of fifteen days allowed by section 687 of the Code of Civil Procedure for the filing of any objections to the award that he might have to offer. On the day fixed for the hearing both he and his proctor appeared before the District Court ; the proctor stated that he had no objections to offer to the award. The first defendant-appellant himself, however, at once informed the Court that he had cause to show against the award. The learned District Judge thereupon said that no petition to set aside the award had been filed ; that the award was filed on August 31 ; and that parties had taken notice of it on that date. It appears, and counsel for the respondents admitted at the argument before us, that on August 31, when the date was fixed for the consideration of the award, the parties were absent, although their proctors were present. There is no entry in the record showing that the proctors took notice on behalf of the parties. Section 685 of the Civil Procedure Code requires that notice of the filing of an award should be given to the parties themselves, and the affidavit of the process server shows that this was not done till September 15.

I would set aside the decree under appeal and all the arbitration proceedings and send the case back for trial on issues in the usual way. The appellant is entitled to the costs of this appeal as against the respondents. I would leave the costs of the original and of the subsequent proceedings to the District Judge.

I desire once more to point out how vitally important it is that the courts of first instance in all cases of this kind should see that the provisions of the Civil Procedure Code in regard to arbitrations are rigorously and literally complied with.

GRENIER J.—I agree.

Sent back.