1922.

Present : Bertram C.J. and Schneider J.

MUDIYANSE *et al. v.* APPUHAMY.

150—D. C. (Inty.) Kegalla, 5,800.

Arbitration—Case sent back to Court for decision of a point of law—Return to arbitrator—No fresh motion signed by parties—Civil Procedure Code, s. 693.

An arbitrator who was duly appointed sent the case back to Court for the decision of a point of law. The case was again by consent of parties referred to the arbitrator. No fresh motion was signed by the parties.

Held, that the sending of the case back to Court for the decision of the point of law did not supersede the arbitration, and that a party could not object to the award on the ground that the case was not properly referred to the arbitrator.

THIS was an action by the plaintiffs for the recovery of a sum of Rs. 842.50 being damages sustained by them by reason of defendant's wrongful possession of certain lands described in the plaint ; the defendant filed answer denying his liability and claiming a sum of Rs. 369 in reconvention.

The parties on March 16, 1922, by a written motion referred the matters in dispute between them to the arbitration of Mr. E. A. P. Wijeratne, Proctor.

On June 14, 1922, the arbitrator returned the record to Court with a letter stating that the parties desired that a point of law be decided by the Court. The arbitrator made no award.

On July 4, of consent, the matter was again referred to the arbitrator. There was, however, no fresh motion signed by the parties or reference. The arbitrator on September 14, 1922, filed an award.

On September 29, 1922, the plaintiffs filed their objections to the award. The objections were inquired into on October 19, 1922, and on October 26, 1922, the District Judge (W. J. L. Rogerson, Esq.) delivered the following order disallowing plaintiff's application and confirming the award:—

Mr. Swan for plaintiff objects that the return of the record by the arbitrator on June 14, 1922, resulted in the cessation of his authority to arbitrate, and the return of the record on July 4, 1922, was not in order without a fresh reference to arbitration. The plaintiff took part in the further arbitration proceedings, and I do not think he can now be allowed to object that they were irregular. Nor do I think that they were irregular. The return of the record to the arbitrator on July 4, 1922, was with the consent of parties.

The plaintiff having taken part cannot claim that the award must be set aside for any other ground than those enumerated in section 691, Civil Procedure Code. I am unable to agree with plaintiffs' Proctor that the fixing of the case for inquiry amounted to a suppression of the order for arbitration. The objection in any event is merely technical. Counsel for defendant quotes 3 S.C.C. 110, in which the Supreme Court stated strongly its opinion on technical objections to an award made by the party against whom the award has gone. Plaintiffs' proctor quotes the judgment in D.C. 5,821 of this Court. In that case the original application for arbitration was bad, and so whole proceedings were irregular. In the present case the application was in order, and any irregularity that occurred was due to the parties agreeing to the case being referred back to Court for the decision of a legal point. The point was not decided, and the irregularity, if any, was cured by the parties agreeing to the return of the record to the arbitrator for his award in accordance with the reference. In my opinion, however, there was no irregularity at all.

The application to set aside the award is refused.

Keuneman, for the appellants.

H. V. Perera, for the respondents.

January 18, 1922. BERTRAM C.J.—

The only question that arises on this appeal is whether the fact that the Court fixed for inquiry a matter which was brought before it by the arbitrator in an arbitration, sending the case back to the Court for the consideration of a point of law, *ipso facto*, superseded the arbitration under section 683 of the Civil Procedure Code. The suggestion is purely technical, and seems to me quite unarguable. The parties to the arbitration by consent agreed that the arbitrator should send it back to the Court for the determination of the point of law. The Court thereupon fixed the matter for inquiry without considering in any way the regularity of the action of the arbitrator or its possible effect on the case ; and when the parties came for the inquiry, no inquiry was held, and by consent the case was remitted to the arbitrator. I see nothing in this to supersede the functions of the arbitrator. I should be very sorry if the decision, which this Court felt bound to give in the case of *Arachchi Appu v. Mohotti Appu* [1] with reference to the necessity of a strict compliance with the conditions of the Code relating to the actual reference to arbitration. should be interpreted as requiring the meticulous consideration of technicalities at every stage of the arbitration, and as authorizing the parties to play fast and loose with their formal consents. In my opinion the appeal should be dismissed, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.