

1924.

Present : Jayewardene A.J.

KADIRAVEL v. PONNASAMY.

224—C. R. Matala, 16,011.

Arbitration—Mandate to arbitrator—Absence from record of form No. 108—Civil Procedure Code, s. 677.

When an action is referred to arbitration by Court, an order in terms of form No. 108 in Schedule II. of the Civil Procedure Code is signed by the Judge and sent to the arbitrator as his mandate. It cannot be presumed from the absence of such a form from the record that no order of reference has been made to the arbitrator,

A PPEAL from an order of the Commissioner of Requests, Matala, rejecting the appellant's objections to the confirmation of an arbitrator's award. Two objections were taken against the award, viz. :—

- (1) No order of reference as required by section 677 of the Civil Procedure Code was made ;
- (2) That the award was made after the expiration of the time fixed for its delivery.

H. V. Perera (with him Rajakarier), for appellant.

September 22, 1924. JAYEWARDENE A.J.—

This is an appeal from an order rejecting the defendant's objections to the confirmation of an arbitrator's award. Two objections have been taken : (1) that no order of reference as required by section 677 of the Civil Procedure Code has been made ; and (2) that the award has been made after the expiration of the time fixed by the Court for its delivery.

In my opinion both these objections are unsound. By virtue of section 677 of the Civil Procedure Code two orders are entered up. They are orders in forms Nos. 107 and 108 in Schedule II. of the Civil Procedure Code. The first order is called " an order of Court referring a matter to arbitration." There the fact that all the parties consent to refer the matters in dispute to arbitration is stated, and the fact that by agreement the arbitrator is authorized to examine the parties and their witnesses, and to compel the production of documents, and also the right of an arbitrator to appoint a competent accountant. These facts are embodied in an order in form No. 107 and signed as an order, by the Secretary in the case of District Courts and by the Chief Clerk in the case of Courts of Requests. On this order of court referring the matter

to arbitration an order of reference is made according to form No. 108. This is signed by the Judge and it intimates to the person appointed arbitrator the fact of his appointment, the matters referred to him, and his right to compel the attendance of witnesses, and the production of documents. Now, it is contended for the appellant that the order according to form No. 108, which is signed by the Judge, should be in the record, and that the order, which is issued to the arbitrator, is the one according to form No. 107. I am unable to agree with this contention. I think that the order signed by the Judge is the mandate to the arbitrator to hold an arbitration and is forwarded to the arbitrator as his authority to conduct the arbitration. It cannot be in the record, as it is sent to the arbitrator, but it may be, that when the arbitrator delivers his award, he returns his authority with the award. The order referring the matter to arbitration signed by the Secretary or Chief Clerk is left in the record and shows that the Court has, with the consent of the parties, referred the matters in dispute to arbitration. I am unable to agree with the appellant's counsel that it is an order according to form No. 107 that is issued to the arbitrator. I have consulted the Secretary of the District Court of Colombo on this matter. He informs me that an order signed by the Secretary in terms of form No. 107 is left in the record and that an order in terms of form No. 108 is signed by the Judge and forwarded to the arbitrator as his mandate or authority. Now, in the present case the absence of an order in terms of form No. 108 signed by the Judge does not show that no order of reference was issued to the arbitrator. The arbitrator has acted and has held the arbitration. The parties appeared before him and he has made his award. I think it must be taken that an order similar to the one in form No. 108 was made in this case, signed by the Judge and issued to the arbitrator to conduct the arbitration. In my opinion, therefore, the first objection was rightly overruled by the Commissioner.

The next point taken was that the award was not made within the time fixed by the Court. The Court by its order originally directed that the award be delivered on or before March 25, 1924. On an application made by the arbitrator this period was extended from time to time and ultimately it was extended to May 26. The award was sent to Court with a covering letter filed at page 46 of the record and dated May 23, 1924. From a note made in the body of that letter, I find that it was received by the Court on May 26. If that is so, then the award was made, and filed within the enlarged time, but learned Counsel contends that, as the journal entry shows that the award was received on May 30, 1924, the journal entry is conclusive; and the date of the receipt of the award in court must be taken to be May 30, 1924. If the award was, in fact, received on May 30, 1924, it would be out of time and would be invalid,

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but in view of the facts afforded by the letter of May 23, I do not think it possible to attach any importance whatever to the entry in the journal. The entry in the journal is not correct. I, therefore, find that the award was made on May 26, and was made within time and no objection can be taken to it. This ground of objection was also, in my opinion, rightly overruled by the Commissioner. I would, therefore, hold that the learned Commissioner was right in rejecting the defendant's objections.

I dismiss the appeal, but I make no order as to costs as the respondent has not appeared before this court.

Appeal dismissed.

