

1899.

January 12.

UKKU NAIDE v. SURENDRA.

C. R., Kurunegala, 5,203.

Arbitration—Extension of time for making award—Civil Procedure Code, ss. 683 and 691—Conduct of parties—Estoppel.

Where parties consent to refer their disputes to an arbitrator, they ought to be bound by the award, unless there are any reasons which, according to the Civil Procedure Code, justify the award being remitted for correction or set aside altogether.

When the time for making the award has expired, the Court may enlarge the time on cause shown.

Where an arbitrator, not having filed his award within the due date, applied in the presence of the parties for further time to make his award, and no objection was made to such application, so that the arbitrator filed his award and the case was allowed to stand over for the parties to show cause, if any, against the award, and the defendant's only objection to the award was that it was not filed within the period originally fixed by the Court,—

Held, that the defendant was estopped by his conduct from raising such an objection.

THE facts pertinent to the present appeal in this case are these. On the 8th March, 1898, the parties referred all matters in dispute between them in an action pending in Court to the sole arbitration of one Manapage Korala. The time fixed for filing the award was the 19th of the following month, April. On that day, the parties appeared before the Commissioner and the case was ordered to be "laid over" for the 13th May, 1898, in consequence of the arbitrator not having sent in his award, and it was noted in the journal entry of that date that attention of the arbitrator should be called to the delay. On the 13th May the parties came to Court, but the Commissioner was absent on duty at Puttalam. According to a minute made by the Secretary of the Court in the absence of the Commissioner, it appeared that the arbitrator also was present and asked for further time to make his award, naming the 27th of May. The case was "laid over" for the 20th May. On that day no one appeared in Court, and the Commissioner ordered the case to be "laid over" for the 27th May, 1898.

On the 27th May, 1898, according to the journal entry, the parties appeared in Court, the award was filed, and the case "laid over" for the parties to show cause, if any, against the award. On the 13th June, 1898, the parties appeared in Court, and according to the proceedings of that day the defendants only had cause to show

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against the award, and their one reason was that it was not filed within the period originally fixed by the Court, *i.e.*, the 19th April. The objection was not discussed on that day. The Commissioner, after referring to the formal entries above-mentioned, intimated that he would call on the arbitrator to explain the delay in making the award and why on the 13th May he applied for further time. The matter was postponed to the 23rd June following, on which day the parties and the arbitrator appeared. The arbitrator accounted for the delay by his illness and inability to report his illness to the Court.

The defendants by their proctor again stated that they had no cause to show against the award except that it was not filed on the day fixed.

The Commissioner made the award final, and entered judgment in terms thereof.

The first defendant appealed against this order.

Bawa, for appellant.

Dornhorst, for respondent.

Cur. adv. vult.

12th January, 1899. WITHERS, J.—

This was a reference to an arbitrator under the Civil Procedure Code, and the sections pertinent to the case are the 683rd and 691st. The 683rd section enacts that—

“ If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it think fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the action.”

The 691st section provides, “ no award should be valid unless made within the period allowed by the Court.”

In my opinion the defendants are estopped by their conduct from raising this objection. When they had the opportunity, they made no protest against the application of the arbitrator for further time. The Court has eventually allowed that application, so that the award has been filed within the enlarged time.

In the case of *Punchirala v. Sudehamy* (1 N. L. R. 38), Mr. LAWRIE, A.C.J., and Mr. BROWNE, A.J., decided that the 683rd section of our Code permitted the Court to enlarge the time on cause shown when the time for making the award had expired. In the case of *Warner & Powell's Arbitration* (L. R. 3 Equity, 261), the parties entered into an agreement for the submission of

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their disputes to arbitration. This was in June, 1861. The reference was made a rule of Court on the 18th January, 1866. The deed provided that the award should be made within three calendar months next after the third of the arbitrators for the time should have been named. But the instrument contained no power to enlarge the time for making the award under it. An award was eventually made after the time limited by the deed, and for that reason one of the parties refused to be bound by the award. There was a mistake in the award admittedly of easy correction, and the parties who wished the order to stand asked the Court to enlarge the time for making the award, so that it might be remitted to the arbitrators to correct the mistake.

The Vice-Chancellor, Sir John Steuart, had no doubt that he could enlarge the time and granted the relief asked for, because in his opinion the 39th section of the Act 3 and 4, William IV., chapter 42, embraced the Superior Courts of Equity, and by that section it was enacted that "the Court or any judge thereof may from time to time enlarge the term for any such arbitrator making the award." That case is not unlike the present one.

The only difficulty I feel is with reference to the journal entry of the 27th May, in which appears the words "Award filed."

This journal entry was not apparently signed by the Commissioner, and I consider the entry was merely a record of the fact that the arbitrator had produced his report and the connected documents on the day to which he had asked the time to be extended. When parties consent to refer their disputes to an arbitrator they ought to be bound by the award, unless there are any reasons which, according to the Code, justify the award being remitted for correction or set aside altogether. Not that I impute any blame to the defendants' proctor in this case for taking the legal objection that the award was not valid.

Giving my best judgement to the case, I think the award ought to be sustained.

Judgment affirmed.
