Present : Jayewardene A.J.

PERERA *v.* ANDRIS. 1924.

235—C. R. Panadure, 17,560.

Arbitration—Filing of award—Power of Court to extend time—Verbal application for extension—Civil Procedure Code, s. 91.

Once an award has been filed, a Court has no power to extend the time allowed for making the award.

An application for extension of time must be made as required by section 91 of the Civil Procedure Code, and the Court's order thereon must be made in writing.

Sedris Perera v. Magris Perera [1] followed ; *Punchirala v. Suddahamy* [2] and *Ukku Naide v. Surendra* [3] referred to.

APPEAL by the defendant from an order of the Commissioner of Requests, Panadure, confirming the award of an arbitrator and entering up judgment in terms of the award. The parties to the case by a writing duly signed, referred the matters in dispute to the arbitration of the Interpreter Mudaliyar of the Court under Chapter 51 of the Civil Procedure Code. The award was returnable on April 30, 1924, but the award was not made till May 21, 1924. On the receipt of the award certain objections were filed against it, the main objection being that it was made after the returnable date. At the inquiry it transpired that the arbitrator had asked for permission verbally to file his award within a further period of three weeks, and that the Court had granted him the desired permission in a similar way. The Commissioner held that such permission need not be given in writing, and overruled the objection.

Amaresekere, for defendant, appellant.

J. S. Jayewardene, for plaintiff, respondent.

September 19, 1924. JAYEWARDENE A.J.—

This is an appeal by the defendant against an order rejecting his objections to the confirmation of an arbitrator's award and entering judgment in terms of the award. The parties in this case, by a writing duly signed referred the matters in dispute to the arbitration of the Interpreter Mudaliyar of the Court under Chapter 51 of the Civil Procedure Code. The award was made returnable on April 30, 1924, but the award was not made till May 21, 1924. On the receipt of the award the Court fixed June 11 for its consideration, and the defendant's proctor took certain objections and moved that it be set aside.

[1] *(1906) 3 Bal. 7.*
[2] *(1895) 1 N. L. R. 38.*
[3] *(1899) 4 N. L. R. 118.*

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The main objection pressed is that the award is void, as it was made after the returnable date. The learned Commissioner overruled the objection, upheld the award, and directed that judgment be entered in terms of the award.

At the inquiry, according to the judgment of the learned Commissioner, the arbitrator was present in Court, and said that he had asked for permission verbally to file his award within a further time of three weeks, and that the Court had granted him the desired permission. The learned Commissioner says that although there is no entry to that effect, it is possible that such permission was applied for and granted, and that the absence of an entry may be due to the fact that the record had been forwarded to the arbitrator. He also thought that there was nothing in the Code requiring the allowance of an extension of time to be in writing.

I am unable to agree with the learned Commissioner when he says there is nothing in the Code which requires an application for an extension of time to be in writing. I think the matter is governed by section 91 of the Civil Procedure Code, which says that every application to the Court in the course of an action incidental thereto shall be made by motion by the applicant in person or by his advocate or proctor, and a memorandum in writing of such motion shall at the same time be delivered to the Court. In the Court of Requests such application may be made orally by the applicant, and then reduced into writing by the Court in accordance with the rules of summary procedure hereinafter provided. This is a Court of Requests case, and the arbitrator was entitled to make an application for an extension of time. He could have made that application verbally if he was not represented by a legal adviser, but his application should have been reduced to writing by the Court. The necessity for such a record is obvious, and I think it is unsafe to uphold any principle which allows applications to Court to be made verbally, and granted without their being reduced to writing. In my opinion, therefore, the application by the arbitrator, if he made any such application, ought to have been reduced to writing, and the order of the Court on such application also ought to have been made in writing as required by law. I am, therefore, not prepared to hold that the Court granted an extension of time to the arbitrator to make his award. Then arises the question whether, if no extension of time was given before the filing of the award, the time can be extended now, and the award be regarded as filed within such extended time. The learned Counsel for the respondent has asked the Court, in view of the very technical nature of the objection raised, to extend the time and to regard the award as one falling within the time so extended. In my opinion once an award has been filed, the Court has no authority to extend the time for making the award. The matter is regulated by Chapter 551 of the Civil Procedure Code

which provides a special procedure in cases of reference to arbitration. Section 683 of the Code empowers the Court to extend the time specified in the order of reference, and to extend it from time to time as the circumstances of the case may require, but section 691 of the Code enacts that no award shall be filed unless made within the period allowed by the Court. In the present case the time allowed by the Court was till April 30, 1924, but the award, as I have pointed out, was not filed till May 21, 1924. Therefore, the award has not been filed within the period allowed by the Court, and would, under section 691, be liable to be set aside. But it is contended on the authority of certain local and English cases that in order to save the parties unnecessary expense, the Court has the power in appropriate cases to extend the time even after the award has been filed. In the case of *Punchirala v. Suddahamy* (*supra*) the time was extended after the expiration of the time originally fixed. It was not a case where the time was extended after the award had been filed. It has, therefore, no application to the present case. The case of *Ukku Naide v. Surendra* (*supra*), when carefully considered, shows that the award had not been filed when an extension was applied for, and the Court thought that the entry in the record that the award had been filed on May 27 was a mistake, and that the award had not, in fact, been filed on the day on which the extension was granted. These two local cases on which counsel for the respondent relies do not support his contention that the time can be extended after the award has been filed. He has also relied on certain English cases, but I do not think it necessary to refer to the English cases, because those cases seem to depend upon certain statutory provisions which regulate arbitration proceedings in England. As the Privy Council said in the case of *Aitken Spence v. Siman Fernando*,[1] questions relating to arbitration proceedings depend entirely on the provisions of the Civil Procedure Code, and the question which arises here depends upon the construction of section 683 and section 691 of our Civil Procedure Code. These two sections appear to be identical with sections 514 and 521 of the Indian Civil Procedure Code of 1882, and in the case of *Har Narain v. Bhagwant* [2] the Privy Council construed sections 514 and 521 and laid down in unmistakable terms that once an award has been delivered it is not legally competent to the Court to grant further time, or to enlarge the period for the delivery of the award under section 514 of the Indian Code of Civil Procedure. It held that where an award was not made within the period fixed by the Court's order, but was made after the date given in the last order extending the time for its delivery, the award was invalid. It also said that the decree of the Court dealing with the award as if duly made within the time could not be treated as enlarging it. That is what the learned counsel for

[1] *(1903) 3 Bal. 180.*

[2] *(1891) 13 All. 300.*

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the respondent wishes the Court to hold in this case. The judgment of the Privy Council has been followed, and I might refer to the case of *Gopalji Kallianji v. Chhaganlalvitthalji*.[1] I may also mention that the construction of these sections as laid down by the Privy Council was followed in the local case of *Sedris Perera v. Magris Perera* (*supra*). I think the tendency of the Courts is to enforce the procedure with regard to arbitrations strictly. I do not think that, however technical the appellant's objection may be, and however much a contrary decision may save the parties further expense and trouble, it is open to me to uphold the judgment of the learned Commissioner.

I would, therefore, allow the appeal with costs, and send the case back to the lower Court to be proceeded with in due course.

There will be no costs of the proceedings before the arbitrator.

Appeal allowed.