

1946

Present : de Silva J.

PARIKKIYA *et al.*, Appellants, and KADIRAVEL, Respondent.

330—C. R. Matala, 7,271.

*Arbitration—Application to set aside award—Requirement of petition—
Postponement of inquiry by arbitrator—Misconduct—Civil Procedure
Code, ss. 687, 691.*

11—H 16792 (8/68)

Where the Court, in calling for objections to an award filed by an arbitrator, appeared to have indicated that the procedure by petition was not obligatory and that objections to the award would be sufficient—

Held, that, in the circumstances, the Court might have treated the objections filed by a party as a petition under section 687 of the Civil Procedure Code.

Where an arbitrator allowed, for good reasons, a postponement of his inquiry—

Held, that there was no misconduct on the part of the arbitrator within the meaning of section 691 of the Civil Procedure Code.

A PPEAL from an order of the Commissioner of Requests, Matale.

N. E. Weerasooria, K.C. (with him *S. R. Wijayatilake*), for the defendants, appellants.

H. W. Jayewardene for the plaintiff, respondent.

February 21, 1946. DE SILVA J.—

The matters in dispute in this case were referred by the parties to the arbitration of Mr. Sallay. Mr. Sallay after inquiring into the matter made his award and it was filed in Court on March 3, 1945. Section 685 of the Civil Procedure Code provides that after the award has been filed notice of the filing shall be given to the parties. Instead of ordering this notice the learned Commissioner had on this day minuted as follows : "Award received. Objections if any on March 27, 1945." On the 27th, apparently no objections were filed and the Court ordered notice on the parties for April 19, 1945. On the 16th April Mr. Edirimanasingham filed revocation of proxy, and proxy from both defendants and objections and moved that the case be called on April 19, 1945, to be fixed for inquiry. When the matter came up for inquiry on the 19th June, Mr. Silva for the plaintiff stated that the objections should be taken by way of petition under section 687 of the Civil Procedure Code. Mr. Edirimanasingham asked that the affidavit filed be treated as a petition. The Court upheld the objection, rejected the affidavit and stated that the award would be made a rule of Court on the 3rd July and ordered notice on the parties for that date. The defendants appeal from this order. It is obvious that the procedure laid down in the Code had not been strictly followed. The Court in calling for objections appears to have indicated that the procedure by petition was not obligatory and that objections to the award would be sufficient. In the circumstances, I think the Court might have treated these objections as a petition under section 687 of the Civil Procedure Code for setting aside the award and proceeded to inquire into the matter.

However, on reference to the objections themselves, I find that the grounds for setting aside the award are not such as would justify the award being set aside even if the allegations are accepted.

Section 691 of the Code provides that no award shall be set aside except on one of the following grounds, namely :

- (a) corruption or misconduct of the arbitrator or umpire ;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;

(c) the award having been made after the issue of an order by the court superseding the arbitration and restoring the action ;

Objections 1 and 2 do not refer to any of the grounds on which an award may be set aside. Objection 3 states that on February 2, 1945, when the defendants were ready for inquiry, the arbitrator put off the inquiry at 11.30 A.M. and that this amounts to legal misconduct on the part of the arbitrator and therefore the award is bad in law.

Reference to the proceedings before the arbitrator on that date shows that both parties were not ready when the arbitrator came as the witnesses had not turned up, and though the defendants' witnesses came at 11.30 the plaintiff applied for a date as the principal witness, the ex-arachchie who was warned by Court on a previous occasion, had not come. In the circumstances the arbitrator refixed the inquiry for the 23rd February as both parties wished to summon witnesses afresh. He also ordered the plaintiffs to pay the defendants the costs of the day. The circumstances clearly show that there was no misconduct on the part of the arbitrator in allowing the postponement. In the circumstances, I do not think any useful purpose would be served by remitting these proceedings for further inquiry.

I would, therefore, dismiss the appeal, but in view of the irregular procedure which has been adopted, I would allow no costs for either side. The application in revision is also dismissed.

Appeal dismissed.
