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and thereafter dispose it of by such order as the decision of the Central Government may justify. There will be no order as to costs.

Appeal allowed.
Case Remitted.

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April 5.

B. SUBBARAMA NAIDU
v.
B. SIDDAMMA NAIDU & OTHERS

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Arbitration—Order of reference—If must specify date within which the award is to be made—Award—Validity—When can be set aside—Arbitration Act, 1940 (10 of 1940), ss. 23(1), 30.

The questions for determination in the appeal were whether the award in question was invalid, (1) by reason of the court failing to comply with the mandatory requirement of s. 23(1) of the Arbitration Act, 1940, that the time within which the award is to be made, must be specified in the order, and (2) whether the arbitrator was in error in allotting to the appellant less than half share in the properties.

Held, that under s. 23(1) of the Arbitration Act, 1940, it is imperative that the time for making the award must be fixed; but that does not mean that where the court omits to specify the time in the order of reference and does so elsewhere in the proceedings, the reference is invalid. Consequently, in a case where the order sheet of the court read with the order of reference made it clear that the arbitrator was to file his award by the date to which the suit was adjourned, it could not be said that the section had not been complied with.

Raja Har Narain Singh v. *Chaudhrain Bhagwant Kuar* (1891) L.R. 18 I.A. 55, referred to.

Held, further, that the award could not be said to be bad on the face of it and "otherwise invalid" merely because the appellant had received less than his due share. The court cannot interfere with the findings of an arbitrator based on the best of his judgment unless it is shown that he has acted dishonestly.

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Subbarama Naidu v. Siddamma Naidu

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 12 of 1958.

Appeal by special leave from the judgment and order dated April 6, 1953, of the Madras High Court in Appeal against order No. 54 of 1949.

S. T. Desai and *K. R. Choudhri*, for the appellant.

K. N. Rajagopala Sastri and *T. V. R. Tatachari*, for respondents Nos. 1 to 5.

1961. April 5. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR, J.—In this appeal by special leave from the decision of the High Court of Madras the appellant challenges the validity of an award made by an arbitrator appointed by the Court in a suit for partition and recovery of possession filed by the appellant of his half share in certain properties upon three grounds. The first ground is that the reference to arbitration was itself invalid because the Court failed to comply with the mandatory requirements of s. 23, sub-s. (1) of the Arbitration Act, 1940 (10 of 1940) in the matter of specifying the time within which the award was to be made. The second ground is that the award was filed in Court by the arbitrator after the expiry of the time subsequently granted by the court for filing the award. The third ground is that the arbitrator erred in allotting to the appellant less than half the share in the properties in suit. In our opinion there is no substance in any of these grounds.

It is undoubtedly true that sub-s. (1) of s. 23 requires that an order thereunder referring a dispute to an arbitrator must specify the time within which the award is to be made. What is imperative is the fixation of the time for making the award. But it does not follow that where the Court omits to specify the time in the order of reference but does so elsewhere in the proceedings, the reference is bad. In *Raja Har Narain Singh* v. *Chaudhrain Bhagawant Kuar and another* (1) which was a case under the Code of Civil

(1) (1891) L.R. 18 I.A. 55.

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Procedure, 1882, the Privy Council had to consider the provisions of s. 508 which correspond to those of s. 23(1) of the Arbitration Act. While pointing out that the provisions of s. 508 are mandatory and imperative they held that though the failure of the Court to specify the time for making the award in the order of reference was not a strict compliance of the terms of the section still the fact that the Court fixed a date for hearing of the case "might be sufficient." There also, as here, subsequent to the making of the reference the Court repeatedly made orders enlarging the time and in those orders fixed the time within which the award was to be made. Thus the emphasis laid by the Privy Council was on the fixation of time in some manner and not on the necessity of expressly specifying the time in the order of reference itself. Here the B Form Diary of the court shows that the dispute was referred to arbitration on January 22, 1948. The entry in the diary of that date reads thus: "Subject matter of suit is referred to Arbitration on joint petition. Call on .....24-2-1948". The words "call on" must be interpreted to mean that the arbitrator was required to file his award by the date for which the suit stood adjourned, that is, February 24, 1948. In our opinion this entry should be read along with the order of reference. Reading them together it would follow that time was in fact fixed for filing the award by February 24, 1948. The mere omission to mention this date in the order of reference itself did not vitiate the reference.

As regards the failure of the arbitrator to file the award within the time fixed the argument of learned counsel is that though on March 25, 1948, time was fixed for filing the award by June 23, 1948, the award was not actually filed till July 6, 1948. A reference to the B Form Diary discloses that on February 24, 1948, the case was adjourned to March 25, 1948. The Diary contains the remark "call on" and this remark precedes the mention of the adjourned date. The High Court has interpreted this to mean that the time was extended by the Court on February 24, 1948, to March 25, 1948. The entry dated March 25, 1948, contains the following:

"Further time wanted. File Award ..... 23-6-1948".

Three further entries are relevant and they are as follows:

"23-6-1948 Call on ... 28-6-1948
28-6-1948 Call on ... 6-7-1948
6-7-1948 Award filed. Objections 13-7-1948".

It is obvious from these entries that time was extended by the Court to file the award on three occasions. The award was actually ready on June 28, 1948, and was filed in Court on July 6, 1948. Learned counsel for the appellant faintly urged that on July 2, 1948, that is, before the award was actually filed, he had made an application to the Court for superseding the arbitration and that, therefore, the award could not be filed thereafter. A mere application of the kind could not affect the reference. Apart from that, the award had actually been made before that date and, therefore, the attempt to seek the supersession of the arbitration was, in any case, belated.

As regards the last point the High Court has come to the conclusion that though the area of the land allotted to the appellant is less than half the total area of the land in suit there is nothing to indicate that the value of that land is less than half that of the entire land in suit. We agree that upon the material on record it would not be possible to say that the appellant has in fact received less than his due share of property. Apart from that, however, we may point out that under s. 30 of the Act an award can be set aside only on the following three grounds:

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

(c) that an award has been improperly procured or is otherwise invalid.

Plainly this objection would not fall either under cl. (a) or under cl. (b) nor under the first part of cl. (c).

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The question is whether it could possibly fall within the second part of cl. (c), that is, whether the award is "otherwise invalid". In order to bring the objection within this clause learned counsel contended that the award was bad on its face. It is difficult for us to appreciate how the award could be said to be bad on its face. When a dispute is referred to arbitration, the arbitrator has to decide it to the best of his judgment, of course acting honestly. Here, in his judgment the arbitrator has allotted to the appellant certain lands the total area of which is less than half that of the entire land in suit. The appellant's contention is that he is entitled to half the entire land. This contention was before the arbitrator. In spite of that he has made the award in the terms in which he has made it. There appears to be no suggestion that the arbitrator acted dishonestly. How can it then be said that this award is on its face bad?

Agreeing with the High Court we dismiss this appeal with costs to the contesting respondent.

Appeal dismissed.

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April 6.

THE COMMISSIONER OF INCOME-TAX, BOMBAY

v.

THE SCINDIA STEAM NAVIGATION CO. LTD.

(S. K. Das, J. L. Kapur, M. Hidayatullah, J. C. Shah and T. L. Venkatarama Aiyar, JJ.)

Income-tax—Reference—Scope—"Any question of law arising out of such order", Meaning of—Indian Income Tax Act, 1922 (11 of 1922), as amended by Income-tax (Amendment) Act, 1946 (VIII of 1946), ss. 66, 10(2)(vii) proviso.

By s. 66 (1) of the Indian Income-tax Act, 1922 "the assessee or the Commissioner may, by application in the prescribed form .....require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and the Appellate Tribunal shall...draw up a statement of the case and refer it to