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reappreciate the said evidence and decide whether the view taken by the High Court is right or not. In our opinion, the conviction of the appellants rests on the appreciation of oral evidence and no case has been made out for our interference under Art. 136 of the Constitution.

The result is, the appeal fails and is dismissed.

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April 26.

SMT. SANTA SILA DEVI AND ANOTHER

v.

DHIRENDRA NATH SEN AND OTHERS

(B. P. SINHA C. J., J. C. SHAH and N. RAJAGOPALA AYYANGAR JJ.)

Arbitration—Incompletion of award—Silence of Arbitrator on plea placed for decision—Implies rejection of the plea—Validity of award—Should be upheld if reasonably possible—Arbitrator need not decide every matter of dispute unless specifically required—Arbitration Act, 1940 (X of 1940), s. 30.

The appellant as well as the respondents are the heirs of one Hemendra Nath Sen who died intestate in 1929 leaving considerable properties. Dispute having arisen between his heirs an agreement for partition was entered into determining their shares. Among other provisions there was one by which the 2nd appellant was to have 5 annas shares in a glass factory and the rest of the members dividing the balance of the 11 annas share. Further disputes arose and the parties executed an arbitration agreement in which the dispute between the parties was set out. Before the reference was submitted to the arbitrator the respondents applied to the High Court under s. 20 of the Arbitration Act for an order directing the agreement to be filed in the Court and for making a reference to the arbitrator appointed by the parties. The present appellants were impleaded as respondents. The court made an order referring the disputes to the

arbitrator named in the agreement. The arbitrator entered on the reference and after following the prescribed procedure he pronounced the award. The award was filed in the court where upon the appellants applied for setting it aside on various grounds the principal of which was that the award was incomplete, in that all the disputes which had been referred for arbitration had not been disposed of by it. The Single Judge before whom the application came for hearing rejected the application and directed a decree to be passed in terms of the award. The two appeals filed by the appellants in the High Court, one from the order refusing to set aside the award and the other from the decree in terms of the award were dismissed. The present appeal is by way of special leave granted by this Court.

The main contention raised was that the award was incomplete in as much as the award did not dispose of three matters referred to the arbitrator. These three matters were (a) the award had given no direction regarding the rendition of accounts and profits with reference to a lease of the Glass Works Ltd. whcih the award had declared invalid (b) the award had failed to comply with the request, contained in the arbitration agreement, that the arbitrator should give directions as regards the future management of the Glass Co., (c) there was an allegation in the arbitration agreement as regards which evidence was led before the arbitrator, in relation as to miappropriation of moneys by 6th respondent but the arbitrator had not specified in the award whether this allegation had been made out or not and no direction had been given in regard to the matter.

Held that a court should approach an award with a desire to support it if that is reasonably possible, rather than to destroy it by calling it illegal.

Salby v. *Whitbread and Co.*. [1917] I.K.B. 736 referred to.

Unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award.

Re *Brown and the Croydon Canal Co.* (1839) 9 Ad & Ell. 522 : 112 E.R. 1309 and *Jewell* v. *Christe* (1867) L.R. 2 C.P. 296, referred to.

The silence of the arbitrator upon the subject placed before him means that the arbitrator has negatived such plea. Unless the contrary appears the court will presume that the

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award disposes of finally all the matters in difference. Where an award is made *de praemissis*, the presumption is that the arbitrator intended to dispose finally of all the matters in difference and his award will be held final if by any intendment it can be made so.

Harrison v. *Creswick*, (1853) 138 E. R. 1284 referred to.

Since the impugned award expressly states that it is made "*de praemissis*", *i.e.*, of and concerning all matters in dispute referred to the arbitrator, there is a presumption that the award is complete. The silence of the award as regards the claim for accounting must therefore be taken to be intended as a decision rejecting the claim to the relief. If the lease were set aside because of technical informality. it would not necessarily follow that the relief of accounting was implicit in the declaration of the invalidity of the lease. *Non constat*, the amount due on taking an account has not been taken into account adjusted in making the other provisions of the award. Hence the contention that the nature of the claims required a specific adjudication is repelled.

The silence of the arbitrator on the question of the award in the facts and circumstances of the case, on the question of future management of the Glass Company and his failure to make any specific provision in regard to the management did not therefore leave any lacuna as regards the rights and must be taken to have left the right of the parties to be determined by the relevant general law applicable to the management of the company.

The absence of any provision regarding the claims of the appellants to relief from the respondents on the ground that they misappropriated the money of the company is capable of only one interpretation and that is that the arbitrator rejected the claims.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 197 of 1961.

Appeal by special leave from the judgments and decrees dated January 29, 30, 1957 of the Calcutta High Court in Appeals from Original Orders Nos. 122 and 156 of 1956 respectively.

G.S. Pathak, A.N. Sinha and *P.K. Mukherjee,* for the appellants.

A.V. Viswanatha Sastri, B.R.L. Iyengar and *S.N. Mukherjee* for the respondents.

1963. April 26. The Judgment of the Court was delivered by

AYYANGAR J.—This is an appeal by special leave against the judgment of the High Court of Calcutta affirming the decision of a Single Judge of that Court refusing to set aside the award of an arbitrator dated May 27, 1955.

One Hemendra Nath Sen, father of the second appellant, died intestate in 1929 leaving his widow Premtarangini Debi and 8 sons. Respondents 1,2,3, 4, 6 and 7 are the brothers of the 2nd appellant. The 5th respondent is the widow of a deceased brother who died in 1933 while the 8th respondent is the wife of the 2nd respondent. The 1st appellant is the wife of the 2nd appellant. The parties were governed by the Dayabhaga School of Hindu law. Hemendra Nath left considerable properties and on his death disputes arose between his several heirs but an agreement dated January 31, 1933 these were settled. By then one of the sons the husband of the 5th respondent had died leaving a widow (the 5th respondent) and these *viz.,* the widow, the 7 sons and the widowed daughter-in-law entered into this agreement by which the properties left by the deceased were partitioned among them. Broadly stated, the agreement specified the shares of the 9 parties thereto as equal *i.e.,* one ninth each, with however the two widows being allotted their respective shares for their life as for their maintenance. There was also a provision that in regard to a glass factory the 2nd appellant was to have a 5 annas share, the rest of the members dividing the balance of the 11 annas

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(presumably because the 1st appellant's money went in for the initial capital for starting the concern) till certain specified contingencies occurred. Fresh disputes however, arose between the parties and by a formal agreement dated May 11, 1953, they set out those disputes between themselves and agreed to refer the same to the sole aribitration of Dr. Radha Binode Pal—an eminent lawyer and jurist of Calcutta. As the terms of reference have some relevance to the points urged before us in the appeal it would be convenient to set them out. It read :

> "We the undersigned hereby agree, First to refer all disputes arising out of or in connection with or in relation to the New Indian Glass Works Ltd., including the management thereof and the acts of any of the parties in respect of or in relation to or arising out of the said Company, and for future management thereof including the dispute regarding the alleged lease in favour of R. N. Sen (7th respondent) and of the alleged prior leases in favour of A. N. Sen (2nd appellant) and F. N. Sen (6th respondent) of the said Company's business, the legality and validity thereof and Secondly all disputes whatsoever in relation to the joint properties as per Schedule hereunder written or otherwise which were or are owned by the parties or some of them, to the sole-Arbitration of Dr. Radha Binode Pal, Advocate. The said Arbitrator is to enquire, ascertain and partition the said joint properties. We agree that the said Dr. Radha Binode Pal would have summary powers and the award which would be made by him would be final and conclusive and binding upon the parties."

This was followed by a Schedule in which the joint properties were specified and to this document all the family members affixed their signatures.

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Before, however, the reference was submitted to the arbitrator, the respondents made an application to the High Court of Calcutta on its original side on July 12, 1954 under s. 20 of the Indian Arbitration Act, 1940 for an order directing the agreement to be filed into Court and for making a reference to the arbitrator appointed by the parties. Notices were issued to the appellants who were impleaded as respondents to that application and after a hearing, an order was made on November 29, 1954 referring the disputes set out in the agreement to the arbitrator named therein. The arbitrator entered on the reference on January 16, 1955 and the parties thereafter filed statements of cases before him setting out their respective claims and contentions. Evidence was taken and counsel were heared and thereafter the arbitrator pronounced his award on May 27, 1955. It is the validity of this award that is under challenge in these proceedings. We might, merely to clear the ground, mention even at this stage that no 'misconduct' is alleged against the arbitrator but the main ground on which the award is impugned is that it is incomplete.

The award is a long document and purports to decide all the disputes which had been referred to him. It does not set out the arguments or even the contentions urged by the parties in regard to any specific matter or even the reasons for the particular decisions recorded but corresponds in form to what might for convenience be termed a decree in a civil suit. The award was filed into Court on June 29, 1955, and thereupon the appellants made an application for setting it aside on various grounds the principal of which was, as already indicated, that the award was incomplete, in that all the disputes which had been referred for arbitration had not been disposed of by it. The application came on for hearing before a learned Single Judge on the original side and it was dismissed on May 26, 1956, the

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learned Judge directing a decree to be passed in terms of the award. The appellants preferred two appeals one from the order refusing to set aside the award and the other from the decree in terms thereof. These were heard and disposed of by a common judgment dated January 29, 1957 which directed the dismissal of the appeals and thereafter they applied for and obtained special leave of this court and in pursuance thereof the present appeal which is a consolidated one against the judgment in the two appeals in the High Court has been filed.

Before the High Court a very large number of objections were taken to the validity or legality of the award and they have been elaborately considered and dealt with by the Judge of first instance and by the appellate Bench. Most of these, however, were not repeated before us and Mr. Pathak—learned Counsel for the appellants intimated that he would press only three of the grounds: (1) that all the disputes which had been referred to the arbitrator had not been disposed of by the award, and that for this reason the award was incomplete and had to be set aside. He submitted that there was this incompleteness in respect of three matters: (a) the award had given no direction regarding the rendition of accounts and profits with reference to a lease of the Glass Works Ltd., which the award had declared was invalid and not binding on the Company in which all the shares were owned by the parties, (b) the parties had specifically required the arbitrator in their agreement of reference that he should give directions as regards the future management of the Glass Co., but the award had failed to comply with this request., (c) there was an allegation made in the reference, and as regards which evidence was led before the arbitrator, as to misappropriation of moneys by the 6th respondent. The arbitrator had not specified in his award as to whether this allegation of misappropriation had been

made out or not, nor had he given any direction in regard to the matter. These related to the head of objections touching the incompleteness of the award. (2) The second ground urged was this: This award had directed that a piece of land situated at Ketugram in the district of Burdwan be allotted to the 7th respondent in trust for sale for meeting the costs and charges of filing the award and other Court proceedings in reference thereto and to distribute the balance remaining after meeting the said costs and charges, equally between himself and 6 other named. Learned Counsel urged that it was beyond the power of the arbitrator to have created this trust of the property in dispute. (3) The values of the several items of property were specified in the award and the division effected was on the basis of this valuation. Learned Counsel urged that the arbitrator failed in his duty in not valuing the properties himself but had adopted the values suggested by one or other of the parties.

We shall now deal with these points. As however, we consider that it is only the 1st of the above points about the incompleteness of the award that merits any consideration and that the other two have really no substance and it would be convenient first to dispose of the second and the third of the above points.

The trust created by the award to which point No. 2 relates is in the following terms. Clause 13 of the award which the relevant clause runs:

> "That the land at Ketugram, Katwa in the District of Burdwan is allotted to Sri Dhirendra Nath Sen, in trust for selling the same to meet the costs and charges of filing the award together with minutes of the arbitration proceedings, depositions and documents to be filed in court with the award and to distribute the balance if

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> any, left after meeting the said costs and charges, equally amongst himself and the 6 other sons..."

and then the award proceeds to make provisions for the contingency of the sale proceeds being insufficient. It was submitted by learned Counsel that the arbitrator had no jurisdiction to create a trust in respect of property which he was called upon to divide between the parties. This contention however proceeds on a misreading of what the arbitrator had done, for he has done nothing of the sort alleged. He has merely made provision for the payment of the costs to be incurred in filing the award which obviously, if it were a valid award, would have to be borne by all the parties whose property was being divided under the award and he had made provision just for that purpose and had directed a division of the surplus sale proceeds among the parties entitled to the property. When this aspect of the matter was pointed out to learned Counsel the contention was not seriously maintained.

The third point about the arbitrator not having determined the values of the property himself has even less merit than the one we now disposed of. The minutes of the proceedings before the arbitrator were produced before the court and those clearly showed that the estimated values of the items, as set out in the award, were those to which the parties themselves had agreed. The point, therefore, does not call for any further consideration.

Coming next to the point regarding the incompleteness of the award, we shall deal first with the contention based on the absence in the award of a direction to account for profits with regard to a lease of the Glass factory which was declared void. The relevant facts relating to this objection are as follows. Under the arbitration agreement the 1st

head of the disputes referred was this "disputes arising out of or in connection with or in relation to the New Indian Glass Works Ltd. including the management thereof and the acts of any of the parties in respect of or in relation to or arising out of the said company". This was amplified in a statement filed before the arbitrator on February 12, 1955 by the 1st appellant.

> "Para 12. Dhirendra Nath Sen, Phanindra Nath Sen, Satyendra Nath Sen, Rabindra Nath Sen and Jitendra Nath Sen should render true accounts of their dealings with the assets and/or properties of the said Company (New Indian Glass Works) and an award be passed for my share of the amount found due on accounting.
>
> 13. The alleged leases in favour of Rabindra Nath Sen and Phanindra Nath Sen were fraudulently made in order to defraud me. I claim for an adjudgment that the said leases are void and I pray for accounts, against the said alleged lessees and an award for my share of the profits on accounting."

The arbitrator decided in paragraph 9 (c) of the award that "the alleged lease of the factory to Rabindra Nath Sen to be declared void and to be of no binding effect on the Company or on the shareholders." The award contained, however, no further direction ordering or refusing to order Rabindra Nath Sen to account for the profits with regard to this lease declared void. The point that is now urged is that the award is incomplete, in that it has not followed up this declaration or invalidity of the lease by making a consequential order for accounting or by rejecting the claim of the appellants to the accounting and for their share of the amounts found due on the taking of such accounts. The learned

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Single Judge on the original side as well as the appellate Bench rejected this objection on the authority of an English decision in *Harrison* v. *Creswick* (1), where Parke, B., delivering the judgment of the court, stated :

> "The silence of the Arbitrator upon the subject placed before him means that the Arbitrator has negatived such plea."

It was submitted by Mr. Pathak that this decision had been misunderstood by the learned Judges of the High Court, and that, in fact, it was an authority in his favour. The contention urged before the Court of common pleas as a ground for setting aside the award was that the defendant had pleaded a cross-claim before the arbitrator and that the award had granted the plaintiff a decree for a certain sum without specifically allowing or negativing the defendant's cross claim. Dealing with this objection Parke, B. who spoke for the Court, observed :

> "The only question is whether the arbitrator has not by his award impliedly, if not in express terms, finally disposed of the matter. The rule as laid down in the notes to *Birks* v. *Trippett* is, that, where an award professes to be made *de praemissis*, 'Even where there is no award of general releases, the silence of the award as to some of the matters submitted and brought before the arbitrator, does not *per se* prevent it from being a sufficient exercise of the authority vested in him by the submission. An award is good, notwithstanding the arbitrator has not made a distinct adjudiction on each or any of the several distinct matters submitted to him, provided that it does not appear that he has excluded any........Where an award is made *de praemissis*, the presumption is, that the arbitrator intended to dispose

(1) (1853) 138 E. R. 1254.

> finally of all the matters in difference; and his award will be held final, if by any intendment it can be made so. The rule is this,—where there is a further claim made by the plaintiff, or a cross demand set up by the defendant, and the award, professing to be made of and concerning the matters referred, is silent respecting such, further claim or cross-demand, the award amounts to an adjudiction that the plaintiff has no such further claim, or that the defendant's cross demand is untenable : but where the matter so set up from its nature requires to be specifically adjudicated upon, mere silence will not do."

It is this last sentence on which Mr. Pathak relies in support of the submission that in the case now before us there was a need for the arbitrator to have rendered a decision in express terms accepting or rejecting the claim for the accounting and that a rejection of that claim could not be inferred from the mere failure of the arbitrator to deal with it. Learned Counsel pointed out that a case of a cross demand or a cross claim with which Parke, B. was dealing was quite different from an independent claim such as that for accounting made by the appellants in the present case, for where a sum is decreed to a plaintiff it necessarily involves the acceptance or rejection of the cross claim made by the defendant but the position is different where the claim made stands on independent footing.

Before dealing with this point it is necessary to emphasize certain basic positions. The first of them is that a Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal (See *Salby* v. *Whitbread and Co.*, (1). Besides it is obvious that unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each

(1) [1917] 1 K. B. 736, 748.

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claim or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally express the decision of the arbitrator on each matter of difference. (Vide *Re. Brown and The Croydon Canal Co.* (1) and *Jewell* v. *Christie* (2). Further, as parke, B. himself put it during the course of arguments in *Harrison* v. *Creswick* (3) :

> "Unless the contrary appears the court will presume that the award disposes finally of all the matters in difference.",

and to repeat a sentence from the extract quoted earlier :

> "Where an award is made *de praemissis*, the presumption is, that the arbitrator intended to dispose finally of all the matters in difference ; and his award will be held final, if by any intendment it can be made so."

We shall approach the argument addressed to us in the light of these considerations. Now the award opens with a paragraph which recites, after setting out the reference :

> "Whereas I have heard and duly considered all the allegations advanced, evidence adduced before me regarding the respective cases of the parties ....I do hereby make and publish this, my *award in writing as to all the disputes mentioned above*."

It need hardly be added that the arbitration agreement and the statements filed extracts from which we have set out earlier were among the documents incorporated with this award and included among the matters considered by the arbitrator which

(1) (1839) 9 Ad. & Ell. 522—112 E. R. 1309.
(2) (1867) L.R. 2 C.P. 296. (3) (1853) 138 E.R. 1254.

disputes he intended to resolve by this award. The award, therefore, on its face intended and purported to decide all the disputesr aised for this adjudication and therefore the Court will assume that he has considered and disposed of every claim made or defence raised. Since the award now impugned or expressly states that it is made *"de praemissis," i.e.,* of and concerning all the matters in dispute referred to the arbitrator, there is a presumption that the award is complete. In the circumstances the principle of construction enunciated by Parke, B. aptly covers the case and the silence of the award as regards the claim for accounting must, therefore, be taken to be intended as a decision rejecting the claim to that relief.

We shall next turn to the submission that the nature of the claim here made required a specific adjudication and the appellants were logically entitled to the relief of accounting when once the lease of the factory was declared void and that viewed from that angle the award must be treated as incomplete as not expressly dealing with a legal consequence of the declaration granted. We do not consider this contention sound, for two reasons : (1) If the lease were held to be void because of technical informality it need not necessarily involve any accounting since accounting postulates, the lease being for an improperly low rental. If the lease be set aside for such a reason, it would not necessarily follow that the relief of accounting was implicit in the declaration of the invalidity of the lease, (2) *Non constat,* the amount due on taking on an accounting has not been taken into account or adjusted in making the other provisions of the award. This objection, therefore, has to be repelled.

The next item alleged as regards the incompleteness of the award was the failure on the part of the arbitrator to provide by his award, for the future

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management of the New Indian Glass Works Ltd. We consider that there is no substance in this objection either. The award had declared the shares of the parties in the Glass Company and by cl. 9 (b) had set aside the agreements or arrangements put forward as regards the management of the affairs of the company regarding whose validity and propriety disputes had been raised. When those alleged agreements were set aside and declared not to be binding on the parties, the law would step in and the provisions of the Indian Companies Act as regards the management of the business and affairs of the company would come into operation, and the arbitrator may well have considered that the provisions contained in the law of the land sufficient to safeguard the interests of the shareholders. The silence of the arbitrator in this regard and his failure to make any specific provision therefor in regard to the management did not therefore leave any lacuna as regards the r ights of the parties to manage but must be taken to have left the right of the parties to be determined by the relevant general law applicable to the management of the company. If the arbitrator considered that these provisions sufficiently secured the rights of the parties and did not consider that any special provision as regards this matter was needed the award would be silent on that point and that might be the explanation for the state of affairs.

The last of the points urged was that the award had not referred to or decided the claim of the appellants to relief from the respondents or some of them on the ground that they had misappropriated the moneys of the company and were, therefore, bound to bring the money back into hotch potch for division among the parties. The absence of any provision in regard to this claim is capable only of one interpretation and that is that arbitrator rejected the claim. It is, therefore, an instance where the silence of the award is a clear indication, having regard to

the adjudication being professedly complete and *de praemissis,* that the claim in that respect was not upheld. This would not render the award incomplete. We consider therefore that none of the three points urged in challenge of the validity of the award on the ground of its incompleteness has any substance.

The appeal fails and is dismissed with costs.

NANDESHWAR PRASAD AND ANOTHER

v.

THE STATE OF U. P. AND OTHERS

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, and K. C. DAS GUPTA JJ.)

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April 16.

Land Acquisition—Notification by Governor—Land required for construction of industrial tenements—Second notification—Collector directed to take possession—Collector's notification stating possession would be taken over—Acquisition for Kanpur Development Board—Action if must be taken under s. 114 of the Kanpur Act—Notification under s. 6 could be issued without first taking action under s. 5A—Land acquisition Act, 1894(1 of 1894), ss. 4,5,5A, 6,9, 17(1), 17(4), Kanpur Urban Area Development Act, 1945(Act VI of 1945), ss. 71,114.

In these two appeals the same questions of law arise and the facts in C.A. No. 166 of 1962 are similar to those in C.A. 167 of 1962 which are stated below.

The appellant in C.A. No. 167 of 1962 is the owner of certain lands situated in the city of Kanpur. The land is occupied by a Mill and godowns and no part of the land is waste land or arable land. In 1932 the U. P. Government sanctioned by a notification a Scheme (Scheme No. XX) of the Improvement Trust, Kanpur. This Trust has been replaced by the Development Board, Kanpur, by reason of the Kanpur Urban Area Development Act, 1945.