JUGGILAL KAMLAPAT

v.

GENERAL FIBRE DEALERS LTD.
(AND CONNECTED APPEAL)

1961

December 12.

(K. N. WANCHOO and J. C. SHAH. JJ.)

Arbitration—Award set aside—Reference to arbitration not superseded—Second reference to arbitration, if permissible—Arbitration Act. 1940 (10 of 1940), s. 19.

Disputes which arose between the parties with respect to carrying out a contract were referred to the arbitration of the Bengal Chamber of Commerce in accordance with an agreement to refer disputes as and when they arose to the arbitration of the Chamber. The award of the Tribunal of Arbitration was set aside by the High Court. On an application for referring the matter for arbitration *de novo* another tribunal was constituted which made a fresh award. The questions which arose for decision were whether after the first award was set aside the reference to arbitration was exhausted and the arbitrator had become *functus officio* and whether without a fresh arbitration agreement it was not possible to have the same dispute decided again by the arbitrator.

Held, that the arbitrator became *functus officio* after he gave the award but that did not mean that in no circumstances could there be further arbitration proceedings where an award was set aside or that the same arbitrator could never have anything to do with the award with respect to the same dispute.

Section 19 of the Arbitration Act empowered the Court not to supersede the reference and to leave the arbitration agreement effective even when it set aside the award and thereupon it would depend upon the terms of the arbitration agreement whether the arbitration proceedings could go on with respect to the same dispute or with respect to some other dispute arising under the arbitration agreement.

Barangore Jute Factory v. *Hulas Chand Rupchand.* (*1958*) 62 C.W.N. 734, *Rallis India Ltd.* v. *B. V. Manickam Chetty*, A.I.R. 1956 Mad. 369, and *Firm Gulab Rai Girdhari Lal* v. *Firm Bansi Lal Hansraj*, A.I.R. 1959 Punj. 102, approved.

Morder v. *Palmer*, (1870) 6 Ch. App. 22 and *Sutherland and Co.* v. *Hannevig Bros. Ltd.* [1921] 1 K. B. 336, referred to.

In the present case the first award was set aside but as the reference had not been superseded and the arbitration

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agreement subsisted it was open to the Chamber to appoint another tribunal under r. X of the Chamber Rules.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 309 and 525 of 59.

Appeals by special leave from the judgment and orders and decree dated August 27, 1958, November 24, 1958, and March 10, 1958, of the Calcutta High Court, in Award Case No. 103 of 1955 and Appeal from Original Order No. 26 of 1956 respectively.

N. C. Chatterjee and *B. P. Maheshwari*, for the appellant (in C. A. No. 309 of 59).

H.N. Sanyal, Additional Solicitor-General of India, *S. K. Gupta* and *D. N. Mukherjee*, for respondent (in C. A. No. 309 of 59).

N. C. Chatterjee, *M. G. Poddar* and *S. N. Mukerji*, for the appellant (in C. A. No. 525 of 59).

H. N. Sanyal, Additional Solicitor-General of India, *A. N. Sinha* and *P. K. Mukherjee*, for the respondent (in C. A. No. 525 of 59).

1961. December 12. The Judgment of the Court was delivered by

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WANCHOO, J.—These two appeals by special leave from the judgments of the Calcutta High Court raise a common question of law and will be dealt with together. It will be convenient to set out the facts of apeal 309 and deal with them in connection with the point raised on behalf of the appellant. These facts are that a contract was entered into between the parties for supply of cornsacks on August 29, 1951. The contract contained an arbitration clause in the following terms.

> "All matters, questions, disputes, difference and/or claims arising out of and/or concerning and/or in connection with and/or in consequence of or relating to this contract whether or not the obligation of either or both

parties under this contract be subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed shall be referred to the arbitration of the Bengal Chamber of Commerce under the rules of its Tribunal of Arbitration for the time being in force and according to such rules the arbitration shall be conducted."

Disputes arose with respect to carrying out of the contract and on October 25, 1951, the respondent referred these disputes to the arbitration of the Bengal Chamber of Commerce (hereinafter referred to as the Chamber). That case was numbered 217-G of 1951 in the Chamber's records. On April 17, 1952, the Tribunal of Arbitration made an award disallowing the claim of the respondent. This award was filed in the High Court. On May 25, 1953, the award was set aside on the ground of misconduct on the part of the arbitrators by a learned Single Judge. That order was taken in apeal and on July 8, 1954, the appeal was dismissed. Later, leave to appeal to this Court was refused and thus the order of the learned Single Judge setting aside the award finally stood.

Soon after the award had been set aside by the learned Single Judge, the respondent addressed a letter to the Chamber on September 7, 1953. It was said in this letter that as the award in case No. 217-G of 1951 had been set aside by the High Caurt, the respondent begged to refer the matter for arbitration *de novo* and enclosed its statement of the case. Thereupon another tribunal was constituted under the rules of the Chamber to decide the disput afresh. The appellant appeared before the tribunal and contended that it had no jurisdiction to make an award on a second reference in the same dispute. The tribunal, however, proceeded to decide the reference and made the award on

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March 15, 1955. This time the award was in favour of the respondent. Thereupon on August 4, 1955, the appellant made an application to the High Court praying that the award be set aside. In the alternative, the appellant prayed that the award be declared null and void and the arbitration agreement between the parties be superseded on the ground that the second reference was incompetent.

The application was opposed by the respondent and its contention was that this was not a second reference, and what the respondent wanted was that the Chamber should in the event that had happened take up the dispute again and make a proper award. Reliance in support of the plea that such a course was permissible was placed on behalf of the respondent on the decision of the Calcutta High Court in *The Barangore Jute Factory Co. Ltd.* v. *Messrs. Hulas Chand Rupchand*(1).

The learned Single Judge relied on the decision in *The Barangore Jute Factory* (1) and held that from what the respondent said to the Chamber its letter of September 7, 1953, it was reasonably clear that all that it wanted was that the Chamber should in the event that had happened take up the dispute again and make a proper award. It could not therefore be held because of some language used in the letter that the respondent was making a fresh reference. Consequently, it was held that the Chamber had jurisdiction to decide the dispute after the earlier award had been set aside and what the respondent had asked for was for the continuance of the original reference, which had not been superseded. The learned Single Judge then went into the question whether there was such misconduct as would justify setting aside the award and held that there were no grounds made out which would justify the setting aside of the award. Consequently, the application for setting aside the award was dismissed. Thereafter the appellant came to this Court for special

(1) (1958) 62 C W N 734.

leave, which was granted; and that is how the matter has come up before us.

The main question that has been argued before us is that the first award was set aside on May 25, 1953, the reference was exhausted and the arbitrator had become *functus officio* and it was therefore not possible without a fresh arbitration agreement to have the same dispute decided agian by the arbitrator, irrespective of whether the letter of September 7, 1953, amounted to a second reference or was a mere request for continuation of the proceedings in the original reference, which had proved abortive as the award originally made had been set aside. Reliance in this connection is placed on what are called certain fundamental principles governing all arbitrations. It is urged that once an award is wholly set aside, the arbitrator is *functus offico* and thereafter he cannot function again to decide the same dispute. This is said to be a fundamental principle of all arbitrations, and reliance is placed on a passage in "Russel on Arbitration" (15th Edn., p. 298), where the effect of setting aside an award is stated thus—"If an award is wholly set aside, the arbitrator is *functus officio*." Reliance is also placed on *Mordue* v. *Palmer* (1), where it was held—

> "An arbitrator having signed his award is *functus officio* and cannot alter the slightest error in it, even thoug such error has arisen from the mistake of the clerk in copying the draft. The proper course in such a case is to obtain an order to refer the award back to the arbitrator."

Reliance is also placed on *Sutherland and Company* v. *Hannevig Brothers Limited*(2). That was a case under the English Arbitration Act of 1889 which provided that an arbitrator could correct in an award any clerical mistake or error from any

(1) (1870) 6 Ch. App. 22. (2) [1921] I. K.B. 336,

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accidental slip or omission and had thus varied the rule laid down in *Mordue's case*(1). It was however held in that case that the correction made by the arbitrator was not justified under the Arbitration Act. These cases in our opinion have not much bearing on the question before us. It is true that generally speaking, an arbitrator is *functus officio* after he has made the award; but this only means that no power is left in the arbitrator to make any change of substance in the award that he had made (except in certain circumstances which have been provided in the law). What we have to see however are the scheme and the provisions of the Arbitration Act, No. X of 1940 (hereinafter called the Act), which govern the proceedings in arbitration in this case. These provisions are to be found in Chap. II of the Act which deal with "arbitration without intervention of Court."

Sections 3 to 7 deal with various aspects of arbitration agreements with which we are not concerned in the present case. Sections, 8, 11 and 12 deal with the power of a court to appoint or remove arbitrators or umpire. Sections 9 and 10 deal with the right of a party to appoint a new arbitrator or sole arbitrator and also with the appointment of an umpire. Section 13 deals with the power of the arbitrator and s.14 provides for the signing of the award and giving notice in writing to the parties of the making and signing of the award and filing the same in court. Section 15 gives power to the court to modify the award in the circumstances mentioned therein. Section 16 gives power to the court to remit the award for reconsideration under certain circumstances. Section 17 provides for delivery of judgment in terms of the award where the court sees no cause to remit the award or to set it aside. Section 18 provides for making interim orders. Section 30 which is in Chap.V sets out the grounds on which an award may be set aside.

(1) (1870) 6 Ch. App. 22.

Finally, we come to s.19, which is the section on the interpretation of which the decision of this case depends. Section 19 reads as follws :—

> "Where an award has become void under sub-section(3) of section 16 or has been set aside, the court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred."

Before we consider what s.19; provides we might advert to two matters. In the first palce, it is not disputed before us that the English Arbitration Act does not contain a provision similar to s.19; the consequence of this is that the decisions of English Courts may not be of much assistance on this particular aspect of the matter before us. Secondly, there was a parallel provision in para. 15(2) of Sch. II of the Code of Civil Procedure before 1940 as to the order to be passed by the court when setting aside an award, which was in these terms :—

> "(2) Where an award becomes void or is set aside under cluse (1), the court shall make an order superseding the arbitration and in such case shall proceed with the suit."

It will be seen from this provision that when a court set aside an award under Sch. II the reference had to be superseded also, and the court was enjoined to proceed with the suit, the provision being contained in that part of Sch. II which dealt with arbitration in suits. But the provision also applied to cases covered by para. 17 read with para. 19 and also by implication to arbitrations outside court under para 21. But s.19 of the Act has clearly made a departure from the parallel provision contained in Sch. II, para. 15 (2) and we have therefore to see what is the extent of the departure made by it.

It is clear from s.19 that there are three matters which have to be borne in mind in arbitration

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proceedings. There is first the arbitration agreement. Next comes the reference to arbitration and lastly the award. Section 19 provides *inter alia* that where an award has been set aside, the court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred. The section therefore leaves it to the discretion of the court when it decides to set aside an award, whether to supersede the reference or not. It may not supersede the reference at all in which case though the award may be set aside the reference will continue. But if it supersedes the reference it has also, inconsequence to order that the arbitration agreement on the basis of which the reference was made would cease to have effect with respect to the difference referred. It is only therefore when the court orders supersession of the reference that the consequence follows that the arbitration agreement ceases to have effect with respect to the subject matter of the reference The intention of the legislature in making this change in the consequences to follow the setting aside of an award is clear in as much as the provision recognises that there may be different kinds of arbitration agreements, some of which might be exhausted by the reference already made and the award following thereon which has been set aside while others may be of a more comprehensive nature and may contemplate continuation of the reference relating to the same dispute or successive references relating to different disputes covered by the arbitration agreement. The legislature has therefore given discretion to the court under s.19 to decide when it sets aside an award what the consequences of its order setting aside the award will be. If the court finds that the arbitration agreement is of the kind which exhausts itself after the first reference is made or if it finds on account of the reasons

which have impelled it to set aside the award that there should be no further reference of the dispute to arbitration, the court has the power to supersede the reference and thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred. On the othere hand if the court finds that the arbitration agreement is of a general nature and contemplates continuation of the reference with respect to the same dispute or successive references with respect to differnt disputes arising under the terms of the arbitration agreement it may not supersede the reference with the result that the reference as well as the arbitration agreement on which it is based survives. In such a case there can in our opinion be no doubt, that where the reference and the arbitration agreement survive the same dispute may go before the arbitrators again provided there is machinery provided in the arbitration agreement which makes this possible. It will thus be seen that the discretion vested in the court under s.19 depends upon the nature of the arbitration agreement in particular cases and it is on a consideration of those terms that the court may decide in one case to supersede the reference and order the arbitration agreement to cease to have effect after taking into account the reasons which have impelled it to set aside the award and another not to set aside the reference with the result that the reference and the arbitration agreement subsist; and if the arbitration agreement provides for machinery to have further arbitration on the same dispute or other disputes arising under the arbitration agreement it is permissible to have further arbitration on the same dispute or other disputes. The same discretion is given to the court with respect to arbitration under Chap. III of the Act dealing with "arbitration with intervention of a court where there is no suit pending," as s.20(5) provides that after the arbitration agreement has been ordered to be filed, the arbitration shall proceed

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in accordance with, and shall be governed by, the other provisions of the Act so far as they can be made applicable. Further we find that the same discretion has been given to the court in the matter of arbitration in suits provided under Chap. IV, was s. 25 provides that "the provisions of the others Chapters shall, so far as they can be made applicable, apply to arbitration under this Chapter." The proviso to s. 25 gives discretion to the court in any of the circumstances mentioned in ss. 8, 10, 11 and 12, instead of filling up the vacancies or making the appointments, to make an order superseding the arbitration and proceed with the suit, and where the court supersedes the arbitration under s. 19 it shall proceed with the suit. The scheme of the Act therefore is whether the arbitration is under Chap. II, Chap. III or Chap. IV, to give discretion to the court to decide whether to supersede the reference or not. Where it decides to supersede the reference it has to order that the arbitration agreement shall cease to have effect with respect to the difference referred ; but where it decides not to supersede the reference and the reference and the arbitration agreement subsist and if there is machinery provided in the arbitration agreement for making a further reference or for continuing the same reference, further arbitration can take place. The contention therefore urged on behalf of the appellant that once the award is set aside the arbitrator becomes *functus officio* and consequently there can be no further reference with respect to the dispute decided by the award which is set aside, must fail in view of the specific provisions of s. 19 of the Act.

We have already said that generally speaking, the arbitrator becomes *functus officio* after he has given the award; but that does not in our opinion mean that in no circumstances can there be further arbitration proceedings where an award

is set aside or that the same arbitrator can never have anything to do with the award with respect to the same dispute. Section 13 (d), for example, gives power to the arbitrator to correct in an award any clerical mistake or error arising from any accidental slip or omission. Further s.16 gives power to the court to remit the award to the arbitrator for reconsideration. Therefore, when it is said that the arbitrator is generally *functus officio* after he has made the award, it only means that he cannot change that award in any matter of substance himself. But that does not take away the court's power to remit the award for reconsideration under s. 16 or to refuse to supersede the reference even though the award is set aside leaving it to the parties to take such further action under the arbitration agreement for further arbitration if it is possible so to do under the terms of a particular arbitration agreement. We are therefore of opinion that whatever may be the position in the absence of a provision similar to s. 19 of the Act there can be no doubt that s. 19 gives power to the court not to supersede the reference and so leave the arbitration agreement effective even when it sets aside award and thereupon it will depend upon the terms of the arbitration agreement whether arbitration proceedings can go on with respect to the same dispute or with respect to some other disputes arising under the arbitration agreement. This was the view taken in the *Barangore Jute Factory case*(1). Similar view has been taken in *Rallis India Ltd.* v. *B.V. Manickam Chetti & Co.*(2) and in *Firm Gulab Rai Girdhari Lal* v. *Firm Bansi Lal Hansraj*(3). We think that this view is correct.

It is not in dispute that the reference was not superseded in this case when the award was set aside in May 1953. It will therefore depend upon

(1) [1958] 62 C.W.N. 734. (2) A.I.R. 1956, Mad. 369.
(3) A.I.R. 1959, Punj. 102.

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the terms of the arbitration agreement in this case whether it was possible to have further arbitration with respect to the same dispute. We have already set out the term in the contract relating to arbitration and it is clear that that term is very wide in its amplitude and contemplates reference of disputes as and when they arise between the parties to the Chamber. Further as the Chamber is constituted the arbitrator in this term of the contract and as the Chamber consists of a large number of members and has its own rules for constituting arbitral tribunals. It is in our apinion quite possible on the terms of such an arbitration agreement to constitute another tribunal to decide the same dispute where the reference remains pending and has not been set aside under s. 19, provided there is machinery for appointing different persons as arbitrators under the rules of the Chamber. It is however urged that this is a second reference of the same dispute and this at any rate is not contemplated by the term relating to arbitration in the contract. We are not impressed by this argument. Stress in this connection has been laid on the letter of September 7, 1953, in which the respondent said that it begged to refer the matter for arbitration *de novo*. Those words do not in our opinion show that a second reference was being made of the dispute. The letter begins by saying that the Chamber was aware that the previous award had been set aside. It was in those circumstances that the respondent told the Chamber that it begged to refer the matter for arbitration *de novo*. In the context this can only mean that the respondent was asking the Chamber to take up the reference again as the reference had not been superseded and arrange to continue the arbitration proceedings further. The only question therefore

that will arise is whether under the rules of the Chamber it was possible to constitute another tribunal to consider this dispute again. If that is possible, we fail to see why the arbitration proceedings should not go on further as the reference was not superseded in this case, and the arbitration agreement subsisted.

This brings us to the rules of the Chamber relating to the appointment of arbitral tribunals. It is urged on behalf of the appellant that there is no provision in these rules for appointment of an arbitral tribunal where an award made by an earlier tribunal is set aside say, for misconduct. If this contention is a justified it will certainly not be possible to appoint another arbitral tribunal to decide the reference after the award made on it by the earlier tribunal is set aside. Reliance however is placed on behalf of the respondent on rr. V, VII and X made by the Chamber for the appointment of arbitral tribunals. It appears that no reliance was placed on r. V in the High Court; reliance however was placed on rr. VII and X in the High Court. The High Court held that r. VII justified the appointment of the tribunal in the present case, though it was of the view that r. X would not justify it. The appellant on the other hand contends that none of the three rules authorises the appointment of a fresh tribunal after an award is set aside and therefore there is no machinery under the terms of the arbitration agreement by which the arbitration can be further carried on, it being not disputed that the earlier tribunal whose award had been set aside on account of misconduct could not be again appointed.

Rule V(1) provides for an application for arbitration. Rule V(2) lays down that "on receipt of such application the Registrar shall constitute a court for the adjudication of the dispute." It is urged on

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behalf of the respondents that a fresh tribunal could be constituted under r. V (2) after the award of the earlier tribunal had been set aside, as the Registrar is authorised to constitute a court on receipt of an application by the Chamber under r. V (1). We are of opinion that this contention is not well founded. Rule V(2) applies to the first appointment after the receipt of the application and that appointment was made in this case and the award of the tribunal appointed under r. V (2) was set aside. Rule V (2) does not in our opinion contemplate a second appointment after the award of the court appointed under it on receipt of the application has been set aside. The respondent cannot sustain the appointment of a fresh tribunal under r. V (2).

Rule VII has been pressed into service by the High Court in this connection and it has been held on the basis of the *Barangore Jute Factory's case* (1) that r. VII justified the appointment of a fresh tribunal in a case where an award made by the earlier tribunal is set aside. In that case the High Court was conscious that it was stretching the rule in applying it to the situation where an award is set aside. Rule VII says that "if the Court have allowed the time or extended time to expire without making any award, and without having signified to the Registrar that they cannot agree, the Registrar shall constitute in manner aforesaid another Court which shall proceed with the arbitration and shall be at liberty to act upon the record or the proceedings as then existing and on the evidence, if any, then taken in the arbitration or to commence the arbitration *de novo*." Rule XXV makes provision that the award shall be made within four months or within such extended time as may be agreed to between the parties to the reference. Rule VII obviously refers to a case where the time or the extended time

(1) (1958) 62 C.W.N. 734.

allowed to the tribunal has been allowed to expire; it cannot refer to a case where the tribunal has made the award within the time fixed but later that award is set aside by court. It would in our opinion be stretching the language of r. VII too far to make it applicable to a case like the present. We cannot therefore agree with the High Court that r. VII justified the appointment of a fresh tribunal in the present case.

This brings us to r. X. The High Court thought that this rule could not apply. Rule X is in these terms :—

> "If any appointed arbitrator or umpire neglects or refuses to act or dies or become incapable of acting the Registrar shall substitute and appoint a new arbitrator or umpire as the case may be in manner aforesaid and the Court so reconstituted shall proceed with the arbitration with liberty to act on the record of the proceedings as then existing and on the evidence, if any then taken in the arbitration, or to commence the proceedings *de novo*."

We are of opinion that it was open to the Registrar under this rule to appoint a fresh tribunal because the earlier tribunal had become incapable of acting in view of the fact that its award had been set aside on the ground of misconduct. It has been urged on behalf of the appellant that the words "becomes incapable of acting" apply only to physical inability to act and in particular stress is laid on the collocation of words where these words follow the word "dies". We are however of opinion that these words cannot take their colour from the word "dies" and are a separate category by themselves and must be interpreted on their own. Now there is no doubt that generally speaking an arbitrator may become incapable of acting because of some physical cause, for example, he may fell ill or may go mad and so

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on. But we do not think that these words only refer to physical incapacity; in our opinion, they refer to any kind of incapacity, which may supervene after the appointment of the arbitrators, even to an incapacity from before but which was not known to the parties, or in this case to the Chamber before they are appointed. We may in this connection refer to the opinion of Russel ("Russel on Arbitration", 15th Edn., p. 187), where dealing with similar words in s. 10(b) of the English Arbitration Act of 1950, it has been said as follows :—

> "It would appear that the word 'incapable' in section 10(b) must refer to some incapacity arising after the date of the appointment, or not known to the parties at that date."

Clearly therefore, the words "becomes incapable of acting" do not merely refer to physical incapacity but to any kind of incapacity which arises after the appointment or which was there before the appointment but was not known to the parties or to the Chamber in this case. Take, for example, the case of persons appointed by the Chamber to decide a dispute; after the appointment, one arbitratior acquires an interest in the subject-matter of the dispute. Obviously such a person must be held to have become incapable of acting even though there is no question of any physical incapacity on his part. We are therefore of opinion that the words "becomes incapable of acting" in r. X are of wide amplitude and do not refer to cases only of physical incapacity but to any kind of incapacity arising after the appointment or even before the appointmer t provided it was not known to the parties, or to the Chamber in the present case. We cannot therefore agree with the High Court that r. X will not apply to the present case.

What has happened in this case is that the previous tribunal made an award. That award has

been set aside on account of misconduct. In the circumstances we are of opinion that the previous tribunal has become incapable of acting as arbitrator to decide this dispute because of its misconduct. Further as the reference has not been superseded and the arbitration agreement subsists, it was in our opinion open to the Chamber, on the request of the respondent, to appoint another arbitral tribunal under r. X. Therefore, as there is a machinery by which fresh arbitrators can be appointed according to the terms of the arbitration agreement read with the rules of the Chamber and as the reference has not been superseded, the appointment of a fresh tribunal and the carrying on of the arbitration further were within the terms of the arbitration agreement.

No other point has been urged on behalf of the appellant in this appeal to challenge the correctness of the decision of the High Court. Therefore, appeal No. 309 must fail.

Turning now to appeal No. 525, it is enough to say that it is similar to appeal No. 309 in all respects except one. The difference is that in this case the appellant objected to the appointment of a fresh tribunal and an application was made under s. 33 of the Act paying for the relief that no arbitration agreement existed after the earlier award had been set aside and therefore there could be no further arbitration. For reasons which we have already given this contention must fail, for it is not in dispute that this appeal also when the earlier award was set aside there was no supersession of the reference and the arbitration agreement is in the same terms as in the other appeal. What happened in this case was that the learned Single Judge allowed the application and revoked the authority of the Chamber to arbitrate. There was then an appeal by the present respondent

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which was allowed on the basis of the *Barangore Jute Factory case* (1). Thereupon the present appeal has been brought to this Court by special leave. It has been contended on behalf of the appellant that the order under s. 33 was not appealable in view of the provisions of s. 39 of the Act and therefore the High Court had no jurisdiction in appeal to set aside the order of the learned Single Judge. This point as to jurisdiction was not taken before the appeal court nor has it been taken in the special leave petition to this Court or in the statement of case. It seems that the appeal was entertained in the High Court on the view that an appeal lay under the Letters Patent from an order of a Single Judge. Even if we were to entertain this argument the respondent will be entitled to ask for special leave to appeal against the order of the Single Judge and we will be justified having regard to the course of events and the view expressed in the companion appeal in granting leave after condoning the delay and in passing the same order which has been passed by the High Court in appeal. Technical requirements of procedure may of course be fulfilled by following the course suggested but no useful purpose will be served thereby. For reasons which we have already given the order of the appeal court is right. There is no reason to interfere with it and this appeal will also have to be dismissed.

We therefore dismiss the appeals with costs—one set of hearing costs.

Appeal dismissed.

(1) (1958) 62 C.W.N. 734.