

CHELLARAM v BUDHRANI and other

Supreme Court (in chambers)

Unsworth, C.J.

26 January 1967.

Arbitration — enforcement of award — summary procedure — Arbitration Ordinance, s. 21.

The procedure provided by s. 21 of the Arbitration Ordinance (Cap. 6, 1964 Ed.) should be used only in reasonably clear cases.

Case referred to in the judgment.

In re Boks & Co. and Peters, Rushton and Co. Ltd., [1919] 1 K.B. 491.

Application

This was an application for enforcement of an award.

A.V. Stagnetto for the applicant.
Sir Joshua Hassan for the respondents.

27 January 1967: The following judgment was read—

This is an application for the enforcement of an award under s. 21 of the Arbitration Ordinance. The respondents oppose the application and contend that the award is not binding upon them on the ground that they were not parties to the arbitration which, they say, was between the applicant and the firm of D. Essardas of Tangier. In these circumstances and, having regard to the fact there may also be an issue of damages to be decided, it is submitted on behalf of the respondents that the matter should be dealt with in an action on the award and not by means of the summary procedure prescribed by s. 21. In reply to this the applicant says that the summary procedure should be followed as there is no dispute on the validity of the award: the only dispute is as to the parties to the award and it is submitted that this dispute can properly be decided on the present application if it is adjourned to open court in order that evidence may be taken.

Section 21 of the Arbitration Ordinance is based on s. 12 of the English Arbitration Act, 1889 (now replaced by the Arbitration Act, 1950), and the principles to be applied are set out in the case of *In Re Boks & Co. and Peters, Rushton and Co. Ltd.*¹. In that case the principles were stated in this way by Swinfen Eady M.R.²—

“It is well settled that the procedure by action upon an award is one that ought to be pursued where the objections raised are such as to render the validity of the award a matter of doubt. Where there is no objection to the award, or where the objections raised are such as can be easily disposed of, the summary procedure is prompt and convenient; but where there are matters which may gravely affect the validity of the award, then it is proper that they should be dealt with by an action in which the facts can be fully ascertained, and no order should be made giving leave to proceed summarily under the award.”

Scrutton, L.J., in the same case said that he accepted the views of the Master of the Rolls but stated the principles in somewhat wider terms. He said this³—

“this summary method of enforcing awards is only to be used in reasonably clear cases. It is not intended on the application for leave to enforce an award to try a complicated or disputed or difficult question of law. If it is not reasonably clear that the award should be enforced, the party seeking to enforce it must be left to his remedy by action, when the matter can be raised on proper pleadings and dealt with in proper form.”

¹ [1919] 1 K.B. 491.

² At p. 496.

³ At p. 497.

Applying to the present case these principles, as explained by Scrutton, L.J., I consider that this is not a clear case as there is a dispute of a kind which, in my view, should be raised in pleadings and dealt with in an action on the award: it is not a case in which relief ought to be given by enforcing it in a summary manner.

For the reasons I have stated and without expressing any opinion as to the rights of the parties, I refuse this application.