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depend on the decision of the Jaipur-Kotah scheme. If that scheme is upheld, on re-hearing, the exclusion will continue. But if that scheme is not upheld, the position may have to be reviewed in connection with this portion of the Ajmer-Kotah route. In the circumstances no relief can be granted to the appellants of the Ajmer-Kotah route at this stage.

The appeals are hereby dismissed with costs—one set of hearing costs.

Appeals dismissed.

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April 17

M/S. SURAJMULL NAGARMULL

v.

STATE OF WEST BENGAL

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Arbitration—Arbitrator appointed under the Defence of India Act, if a court—Right to appeal against the award, if and when, exercisable—Defence of India Act, 1939 (35 of 1939), ss. 19(1), 19(1)(f) and (g), 19(3)(c)—Defence of India Rules, 1939, rr. 75A, 19, second proviso.

The appellants were tenants of three warehouses and vacant land, which were used for storage of jute belonging to the appellants. By an order issued under r. 75A of the Rules framed under the Defence of India Act, 1939, the warehouses were requisitioned by the Government. An arbitrator was appointed under s. 19(1)(b) of the Defence of India Act to fix the amount of compensation payable to the owner. The claim of the appellants to compensation for loss of earning, and for "loss of business" was rejected by the arbitrator. An appeal filed by the appellants against the arbitrator was dismissed by the High Court at Calcutta, as not maintainable.

Held, that the arbitrator appointed under s. 19 of the Defence of India Act is not a court, nor is a tribunal subject to the appellate jurisdiction of the High Court. By the Act a right to appeal against the award of the arbitrator is

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conferred, but the exercise of that right is restricted in the manner prescribed by the rules framed under the Act. By the second proviso to r. 19 an appeal does not lie against an award of the arbitrator where the amount of compensation awarded does not exceed Rs. 5000/-. An award dismissing the claim in its entirety is one in which the amount awarded does not exceed Rs. 5000/—and therefore an appeal lay to the High Court.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 403 of 1959.

Appeal by special leave from the judgment and order dated June 27, 1955, of the Calcutta High Court in Appeal from Original Decree No. 28 1948.

A. V. Viswanatha Sastri and *B. P. Maheshwari*, for the appellant.

B. Sen, P. K. Chatterjee and *P. K. Bose*, for the respondent.

1962. April 17. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—Messrs. Surajmull Nagarmull—who will hereinafter be referred to as the appellants—were tenants of three warehouses and vacant land appurtenant there—topopularly known as the Shamnagar Jute Godown—sbelonging to Sri Hanuman Seva Trust. The warehouses were used for storage of jute belonging to the appellants. By an order dated August 17, 1943 and issued under Rule 75A of the Defence of India Rules, 1939, the warehouses were requisitioned and possession thereof was taken on September 21, 1943. As the amount of compensation payable to the owner of the warehouses could not be fixed by agreement an Arbitrator was appointed under s. 19(1)(b) of the Defence of India Act, 1939. Before the Arbitrator, Sri Hanuman Seva Trust claimed compensation as owners of the warehouses. The appellant claimed compensation for loss of earnings, "damage to business" and cost

of removal of 18,000 maunds of jute and some iron implements, which the appellants claimed had to be removed in consequence of the order of requisition. The appellants estimated the compensation at Rs. one lakh. The Arbitrator by his order dated December 13, 1947 observed that the appellants had failed to prove any actual loss of business in consequence of the requisition, and rejected the claim of the appellants.

Against the order passed by the Arbitrator an appeal was preferred to the High Court of Judicature at Calcutta. The appellants valued the claim at Rs. 1,50,000/-. At the hearing of the appeal, the State of West Bengal contended that the appeal was not maintainable in view of the provisions of s. 19(1)(f) and (g) and s. 19(3)(c) of the Defence of India Act and the 2nd proviso to r. 19 framed under the Defence of India Act. The High Court upheld the contention raised by the State of West Bengal and dismissed the appeal. With special leave the appellants have appealed to this Court.

Under cl. (1) of s. 19 of the Defence of India Act, 35 of 1939, it is provided, in so far as it is material :

> "Where under section 19A or by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say :—
>
> x x x x
>
> (f) An appeal shall lie to the High Court against an award of the Arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this

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behalf by rule made by the Central Government.

(g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section."

Sub-section (3), in so far as it is material, provides :—

"(3) In particular and without any prejudice to the generality of foregoing power, such rules may prescribe :—

x x x

(c) the maximum amount of an award against which no appeal shall lie."

By notification dated March 22, 1945, Rules were framed under s. 19 relating to arbitration for settlement of compensation. Rule 19 of the Rules provided :

"19. Any appeal against the award of the Arbitrator shall be presented within six weeks from the date of receipt by the Collector the party by whom the appeal is preferred of the copy of the award sent under Rule 17 :

Provided further that no appeal shall lie against an award made under these Rules where the amount of compensation awarded does not exceed Rs. 5,000 in lump or Rs 250 per mensem."

The Arbitrator appointed under s. 19 of the Defence of India Act is not a court or a tribunal subject to the Appellate jurisdiction of the High Court. By the Defence of the India Act a right to appeal against the award of the Arbitrator is conferred, but that right is restricted in the manner prescribed

the rules. It is provided by the second proviso to Rule 19 that an appeal shall not lie against an award where the amount of compensation does not exceed Rs. 5000/-.

The claim of the appellant was rejected by the Arbitrator and they were not awarded any compensation. Mr. Vishwanatha Sastri appearing on behalf of the appellants, contends that by cl. (f) of s. 19 (1) the Legislature provided a right of appeal against all awards and has imposed a restriction only in those cases were some amount is awarded but the amount so awarded is less then Rs. 5,000/-. Counsel submits that the restriction limiting the right of appeal must be strictly construed. He says that where for any reason no compensation at all is awarded the bar contained in cl. (f) of s. 19(1) and the second proviso to Rule 19 would not apply. In our judgment, there is no force in that contention. An appeal is a creature of statute. The Arbitrator not being a court subordinate to the High Court, an appeal would lie only if it is expressly so provided. The Legislature has provided that where the amount of compensation awarded does not exceed Rs. 5,000/- no appeal shall lie against the award. The rule does not contemplate that the bar to the maintainability of the appeal will be effective only if some amount is awarded but the compensation so awarded is less than Rs. 5,000/-. If the Arbitrator rejects the claim and refuses to award anything the case would, in our judgment, fall within the 2nd proviso to Rule 19 as being one where the amount of compensation awarded does not exceed Rs. 5,000/-.

The 2nd proviso to Rule 19 enacts a rule of which a parallel is difficult to find. The right to appeal does not depend upon the claim made by the claimant either before the acquiring authority or the Arbitrator or before the High Court : it depends solely upon the amount of compensation awarded

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by the Arbitrator. But, however, unusual the rule may appear to be, it would not open to the Court to extend the right to appeal and to enable a claimant whose claim has been rejected completely to appeal to the High Court. The right to appeal is exercisable only if the amount awarded exceeds Rs. 5,000/-.

In that view of the case, the High Court was right in not entertaining the appeal. The appeal fails and is dismissed.

Appeal dismissed.

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April 12.

KAPUR CHAND GODHA

v.

MIR NAWAB HIMAYATALIKHAN AZAMJAH

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Contract—Province accepting performance from third person in full satisfaction of claim—If can sue promisor for balance—Indian Contract Act, 1872 (9 of 1872), ss. 41, 63, illustration (c).

In January 1937 one M & Co. sold and delivered jewellery valued at about 13 lakhs to the respondent, the Prince of Berar. The Prince acknowledged in writing the purchase of the jewellery and the price thereof and passed various acknowledgments in respect of the debts due and the last of such acknowledgments was made for sum of Rs. 27,79,000. In April 1948, the appellants presented their bill and were informed in January, 1949, that the Nizam had passed the bill. In February, 1949, when Hyderabad was under military occupation, a Committee was set up by the Military Governor to scrutinise all debts of the Prince of Berar and his younger brother. The claim of the appellants was considered by the Committee which recommended that the appellants should be paid a sum of Rs. 20 lakhs in full satisfaction of their claim. The appellants were paid the sum of Rs. 20 lakhs in two instalments. The appellants tried to pass a receipt when they received the second instalment reserving their right to recover the balance under the pronote from the