

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice
Sir William Burdett.

HARDEO SAHAI AND OTHERS (DEFENDANTS) v. GAURI SHANKAR
(PLAINTIFF).*

1905
May 31.

*Civil Procedure Code, sections 562 and 506 et seq.—Guardian and minor—
Arbitration—Authority of guardian to agree to a reference to arbitra-
tion on behalf of the minor.*

Semble that section 462 of the Code of Civil Procedure does not apply to proceedings under Chapter XXXVII of the Code. A minor party therefore will be bound by the consent of his guardian to refer the matters in dispute to arbitration, if there is no fraud or gross negligence although the Court has not under the provisions of section 462 sanctioned the agreement to refer. *Sheo Nath Saran v. Sukh Lal Singh* (1) and *Chengal Baddi v. Venkata Baddi* (2) followed.

THE suit out of which this appeal arose was one for partition of the property of a joint Hindu family. The plaintiff was the brother of two of the defendants and uncle of the four remaining defendants, who were minors, and were represented in the suit by one Babu Ram as their guardian *ad litem*. In the course of the suit an application was made to the Court under section 506 of the Code of Civil Procedure for an order referring the matters in dispute between the parties to arbitration, and an order of reference was made upon this application. The application was made on behalf of all the parties. All the adult parties signed it, and it was signed on behalf of the minor defendants by their guardian *ad litem*. The arbitrator in due course submitted his award and a decree was passed thereon which was in accordance with the award and not in excess of it. From this decree the defendants appealed to the High Court upon the ground that the guardian *ad litem* had not obtained the sanction of the Court under section 462 of the Code of Civil Procedure before agreeing on behalf of the minors to a reference to arbitration; and it was contended that the reference and all subsequent proceedings thereon were for this reason invalid.

Sir Walter Colvin and Babu Jogindro Nath Chaudhri, for the appellants.

The Hon'ble Pandit Sundar Lal, Pandit Moti Lal Nehru and Dr. Satish Chandra Banerji, for the respondent.

* First Appeal No. 253 of 1903, from a decree of Lala Mata Prasad, Subordinate Judge of Moradabad, dated the 24th of August 1903.

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STANLEY, C. J., and BURKITT, J.—A very narrow point has been discussed in this appeal. The suit out of which it has arisen was brought for the partition of joint family property. In the course of the proceedings an application was made to the Court under section 506 of the Code of Civil Procedure for an order referring the matter in issue for the determination of an arbitrator and an order of reference was made upon that application. The application was made on behalf of all the parties; all the adults signed it and the guardian of the minors signed it on behalf of the minors. Under the provisions of Chapter XXXVII of the Code of Civil Procedure a decree was subsequently passed upon the award, and this decree admittedly is not in excess of and is in accordance with the award. The point raised in this appeal on behalf of the appellants is that some of them at the time of the reference to arbitration were minors and that the leave of the Court contemplated by section 462 was not obtained before the application to the Court under section 506 was made. The contention of the learned advocate for the appellants is that before an application can be made to the Court under section 506, where minors are concerned, the leave of the Court to enter into the agreement to make an application under that section must first be obtained. We are of opinion that this contention cannot be supported. In the first place we do not think that section 462 has any application to the proceedings provided for by Chapter XXXVII of the Code, that is, to arbitration proceedings, which are special proceedings. Section 506 provides that if all the parties to a suit desire that any matter in difference between them shall be referred to arbitration, they may apply at any time in person or by their respective pleaders specially authorized in writing in this behalf to the Court for an order of reference. In this case all the parties to the suit expressed a desire to the Court that the matter in dispute should be referred to arbitration. There is nothing in the section or in the following sections which requires that the Court should give leave to the parties to make the application where minors are concerned, unless it be that section 506 is controlled by the provisions of section 462. It appears to us that an application made under

section 506 stands on a very different footing from the agreement or compromise contemplated by section 462. A somewhat similar question was considered by the Calcutta High Court in the case of *Sheo Nath Saran v. Sukh Lal Singh* (1). In that case the guardian of a minor, defendant in a suit, offered on behalf of the minor to abide by a deposition to be given by the plaintiff on oath and to be taken in a particular form under the Indian Oaths Act. In that case it was contended that the guardian was bound to get the leave of the Court to enter into this arrangement in order to bind the minor, inasmuch as the agreement was an agreement which had reference to the suit. It was there held, following an earlier case in the Madras High Court of *Chengal Reddi v. Venkata Reddi* (2) that section 462 did not apply to the case, and that in circumstances such as we have stated the minor defendant is bound by the consent of his guardian if there is no fraud or gross negligence on the part of the latter, although the Court did not sanction the agreement under section 462. If section 462 does not apply to such a case as that to which we have referred, *a fortiori*, as it appears to us, it does not apply to proceedings taken under Chapter XXXVII. But assuming that section 462 does apply, it will not help the appellants. A decree has been passed upon the award which was made by the arbitrator, and that decree has become final and cannot be impeached except on one of the grounds mentioned in section 522, that is, only if and in so far as the decree is in excess of or not in accordance with the award. It is not suggested that the decree in this case is in excess of or not in accordance with the award. Whether or not, then, section 462 applies, it appears to us that the contention of the learned advocate for the appellants must fail. We therefore hold that no appeal lies, and dismiss the appeal with costs.

• *Appeal dismissed.*

(1) (1899) I. L. R., 27 Calc., 229.

(2) (1889) I. L. R., 12 Mad., 483.

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