

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.
 ISHAR DAS AND OTHERS (DEFENDANTS) v. KESHAB DEO AND OTHERS
 (PLAINTIFFS).*

1910
 June 6.

Civil Procedure Code (1908), schedule II, section 1—Award—Reference by parties interested—Defendant who did not appear not joining—Validity of reference.

A suit was brought against several persons, one of whom was a minor. An official of the court was appointed guardian *ad litem* for the minor defendant, but he did not put in an appearance. The parties, with the exception of the minor applied to the court to refer the matters in dispute to arbitration. The reference was made and an award was given by the arbitrators, whereby the minor was exempted from the plaintiff's claim. Objections were taken to the award, but they were overruled and a decree passed in accordance with the award. *Held* that the minor, not having put in an appearance, nor contested the suit, was not a person interested in the matters which were referred to arbitration, within the meaning of section 1, schedule II of the Code of Civil Procedure, and his not joining in the reference did not invalidate it. *Pitam Mal v. Sadiq Ali Khan* (1) applied.

THIS was a suit for the recovery of money from a firm of which the defendants were stated to be members. There were prior defendants, one of whom, Bhagwan Das, was a minor at the date of the suit. By order of the Court an official of the Court was appointed his guardian *ad litem*; written statements were filed by the defendants other than Bhagwan Das. No appearance was entered on behalf of Bhagwan Das. The plaintiffs and the defendants other than Bhagwan Das, applied to the Court to refer the matters in dispute to arbitration. An order of reference was accordingly made and an award was given by the arbitrator. Numerous objections were taken to that award in the Court of first instance. These objections, one of which was that the reference was invalid by reason of the fact that all the defendants had not joined in it, were overruled by the learned Munsif, who passed a decree in accordance with the award. On appeal the learned District Judge held that no appeal lay. The defendants appealed to the High Court.

Munshi *Gulzari Lal* (with him *Babu Surendra Nath Sen*),
 for the appellants.

Dr. *Tej Bahadur Sapru*, for the respondents.

* Second Appeal No. 1221 of 1909, from a decree of D. R. Lyle, District Judge of Aligarh, dated the 4th of September, 1909, confirming a decree of Aghore Nath Mukerji, Munsif of Kasganj, dated the 30th of June, 1909.

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STANLEY, C. J., and GRIFFIN, J.—The suit out of which this appeal arises was one for recovery of money due from a firm to which the defendants in the suit are said to belong. There were four defendants in the suit, one of whom, named Bhagwan Das, was a minor at the date of the suit.

By order of the Court an official of the Court was appointed his guardian *ad litem*; written statements were filed by the defendants other than Bhagwan Das. No appearance was entered on behalf of Bhagwan Das. The plaintiffs and the defendants other than Bhagwan Das, applied to the Court to refer the matters in dispute to arbitration. An order of reference was accordingly made and an award was given by the arbitrator. Numerous objections were taken to that award in the court of first instance. These objections, one of which was that the reference was invalid by reason of the fact that all the defendants had not joined in it, were overruled by the learned Munsif, who passed a decree in accordance with the award. On appeal the District Judge held that no appeal lay.

In second appeal to this Court it is contended that there was no valid reference to arbitration inasmuch as all the parties to the suit had not joined in the reference, and that therefore the award was void *ab initio* and the defendants had a right to appeal. The case has been argued at considerable length by the learned vakil for the appellants and the learned advocate for the respondents; numerous authorities have been quoted to us, and the ruling of their Lordships of the Privy Council reported in I. L. R., 29 Calc., 167, discussed at great length. We do not, however, consider it necessary to go into the question dealt with in that appeal in this case. In *Pitam Mal v. Sadiq Ali* (1) it was held by a Bench of this Court that the words "all the parties to a suit" in section 506 of the Code of Civil Procedure referred to the succeeding words of the same section "any matter in difference between them in the suit" and would not necessarily include parties who did not put in any appearance at all, and between whom and the parties to the submission there was not in fact any matter in difference in the suit. This decision was passed when the Code of Civil Procedure of 1882 was in force.

(1) (1898) I. L. R., 24 All., 229.

Section 506 is to the following effect:—"If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgement is pronounced, apply in person or by their respective pleaders specially authorized in writing in this behalf to the court for an order of reference." There is, as we consider, a significant alteration in the wording of this section as reproduced in the Code now in force. Section 1 of the second schedule of the present Code is as follows:—"Where in any suit all the parties *interested* agree that any matter in difference between them shall be referred to arbitration, they may at any time before judgement is pronounced, apply to the court for an order of reference." The modification in the law now made in the present Code appears to bear out the interpretation which was put upon section 506 of Act XIV of 1882 by this Court. In the present case Bhagwan Das never put in an appearance or contested the suit, and in the events which happened he appears to have nothing whatever to do with its result, inasmuch as by the award he was exempted from the plaintiff's claim. Under these circumstances the appellant, Bhagwan Das, does not appear to us to be a person interested in the matters which were referred to arbitration between the plaintiffs and the remaining defendants. The conclusion at which we have arrived is that the award cannot be challenged by reason of the fact that Bhagwan Das was not a party to the reference. We dismiss the appeal with costs.

Appeal dismissed.

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