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There is nothing, therefore, which renders it inappropriate to hold that Ramsing was an agent of the other brothers within the meaning of Article 89 of the Indian Limitation Act.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

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July 2.

ERACHSHAW DOSABHAI TODDIWALA (ORIGINAL DEFENDANT), APPLICANT v. DINBAI, WIFE OF ERACHSHAW DOSABHAI TODDIWALA (ORIGINAL PLAINTIFF), RESPONDENT⁶.

Presidency Small Cause Courts Act (XV of 1882)—Jurisdiction of Presidency Small Cause Courts—Claim by Parsi wife to recover costs incurred by her in a matrimonial suit—Arrears of maintenance at the rate fixed by arbitrators—Award—Practice and procedure.

A suit by a Parsi wife to recover costs incurred by her in a matrimonial suit and to recover arrears of maintenance at a rate fixed by arbitrators in their award, is one cognizable by the Presidency Court of Small Causes.

THIS was an application under extraordinary jurisdiction from the decision of K. M. Jhaveri, acting Chief Judge of the Presidency Court of Small Causes at Bombay.

The plaintiff sued the defendant in the Parsi Chief Matrimonial Court at Bombay, for restitution of conjugal rights and obtained a decree. The parties lived together but they quarrelled and separated soon after.

The plaintiff again sued the defendant in the Presidency Court of Small Causes at Bombay to recover

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certain articles or their value. The dispute was referred by the parties to arbitration. The arbitrators were also empowered to arbitrate on other disputes between the parties. In course of time, the arbitrators delivered their award, whereby they ordered the defendant, among other things, to pay to plaintiff a sum of Rs. 800 for costs incurred by her in the matrimonial suit, and to pay her maintenance at the rate Rs. 25 per month.

The plaintiff sued the defendant once more to recover from him the sums of Rs. 800 for costs, and Rs. 275 for arrears of maintenance, in the Presidency Court of Small Causes at Bombay.

The learned Chief Judge awarded the claim.

The defendant appealed to the Full Court, and was granted no rule.

The defendant applied to the High Court.

K. N. Koyajee, for the applicant.

S. B. Dadyburjor, for the opponent.

FAWCETT, J. :—In this Civil Extraordinary Application we are asked to interfere with a decree passed by the Chief Judge of the Presidency Small Cause Court awarding the opponent certain sums on the ground that that Court had no jurisdiction to entertain the claims on which that relief was given. One of the claims relates to a question of costs regarding which we need only say there is no reason to differ from the view taken by the Full Court that there was jurisdiction,

Regarding the other claim the main facts are as follows. The applicant and opponent are husband and wife. It appears that within six months of their

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marriage they quarrelled and separated, and in November 1916 the wife obtained a decree for restitution of conjugal rights from the Parsi Matrimonial Court. For a short time thereafter they lived together, although it is alleged this was only by way of show, and then they separated again, which separation continues till now. A few months after the decree for restitution, the wife sued the husband in the Small Cause Court for return of certain articles of furniture and a Government Promissory Note, or their value. The suit was referred to arbitration, and along with it certain other disputes were also referred to the same arbitrators. In the reference a list is given of matters in dispute between the parties to be decided by the arbitrators, and the first of these included the question what monthly allowance should be given to the wife by the husband for her maintenance, and from what time, in case the husband declines to live with his wife or *vice versa*. On this point the arbitrators in their award decided that the husband should pay Rs. 25 to the wife every month in advance as her monthly allowance. This award is dated the 8th of April 1918, and in 1919 the opponent sued the applicant in the Small Cause Court for the enforcement of the award. One of the prayers was for an order to the applicant to pay Rs. 275 as arrears of maintenance at the rate of Rs. 25 per month determined by the arbitrators. The applicant in the suit urged that the award for payment of a maintenance allowance in case the husband and wife lived separate was against public policy, and therefore invalid. But this contention was disallowed by the Court. The Full Court also saw no reason to think that the reference or the award was illegal on that point.

For the applicant it is contended that the dispute was a matrimonial one in regard to which the Small Cause

Court had no jurisdiction, and in support of this contention reliance is placed upon *Bai Gulbai v. Behramsha* ⁽¹⁾. I shall refer to that case later on. I will first deal with the position as it appears to me. The suit out of which this application arises was one for the enforcement of an award, in which certain sums were claimed as being payable under the award. Such a suit is recognised by the Civil Procedure Code, Schedule I, Appendix A of which contains a Form No. 10 for the plaint in such a suit, and many such suits have been filed in this country. Thus in *Simson v. Mc-Master* ⁽²⁾ it was held that such a suit was cognizable by the Provincial Small Causes Court. It has further been held in *Fardunji Edalji v. Jamsedji Edalji* ⁽³⁾ that a suit on an award to recover a certain sum of money allowed by the arbitrator is not a suit for specific performance of the award, but a suit for the recovery of money and for relief incidental thereto. This is in accordance with the English Law under which the plaintiff may either claim the amount awarded as the sum directed to be paid by the agreement to refer, in which is implied an agreement to perform the award, or may claim damages for breach of the agreement: see Russell on Arbitration and Award, 10th Edition, p. 265. Similarly in *Bhajahari Saha Banikya v. Behary Lal Basak* ⁽⁴⁾, Mookerjee J. says that when the Court orders the payment of a certain sum of money in such a suit, it really directs payment of compensation for non-compliance with the provisions of the award, and that it cannot be correctly maintained that pecuniary damages in the case of a breach of contract for the payment of money are equivalent to the specific performance of a contract. It follows that the suit cannot be treated as one for specific performance of a contract so as to be

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⁽¹⁾ (1913) 16 Bom. L. R. 211.

⁽³⁾ (1903) 28 Bom. 1.

⁽²⁾ (1890) 13 Mad. 344.

⁽⁴⁾ (1906) 33 Cal. 881 at p. 886.

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beyond the cognizance of a Presidency Small Cause Court. It has also been decided in *Kawasji v. Sirinbai* ⁽¹⁾ that an agreement between a Parsi husband and wife for their living separate is a lawful and binding agreement. That being so, the reference to arbitration of the question as to the amount of the wife's maintenance in the event of their separation was in my opinion quite legal. In Halsbury's Laws of England, Vol. I, p. 444, Article 945, in dealing with the nature of the disputes that may be referred to arbitration, it is expressly stated that a husband and wife may refer to arbitration the terms on which they should separate, because they can make a valid agreement between themselves on that matter; but they cannot refer to arbitration the question whether or no their marriage was a nullity or should be dissolved, because on those matters they cannot make any agreement between themselves. In view of the ruling in *Kawasji v. Sirinbai* ⁽¹⁾, to which I have already referred, this passage plainly applies to the present case. If the reference of this dispute was legal, the award also was within the powers of the arbitrators.

The decision in *Bai Gulbai v. Behramsha* ⁽²⁾ is not in my opinion relevant to the question of the jurisdiction of the Small Cause Court to entertain this suit and pass a decree for arrears of maintenance. That decision merely says that if a Parsi wife sues for permanent alimony, she must do so in a particular manner and in a particular Court. It does not in any way affect the ruling in *Kawasji v. Sirinbai* ⁽¹⁾, that an agreement between a Parsi husband and wife in such a case is a legal one. The ordinary rule in regard to a suit to enforce an award is that "every award is enforceable by action in every Court of competent jurisdiction"—see Halsbury's Laws of England, Vol. I, p. 475, Art. 992.

⁽¹⁾ (1898) 23 Bom. 279.

⁽²⁾ (1913) 16 Bom. L. R. 211.

The Small Cause Court had jurisdiction to entertain the suit in the form in which it is framed ; and the fact that the wife, in the absence of any agreement between herself and her husband, or any award such as has been proved in this case, could only sue for alimony in the Parsi Matrimonial Court, cannot in my opinion affect the jurisdiction of the Small Cause Court in this case. It might be different if the award were being filed in this Court under section 15 of the Indian Arbitration Act, for section 2 of the Act limits the awards which can be dealt with under that Act to awards in matters which could form the subject of a suit. Here the opponent's suit is one which the law allows, and which has been brought in the proper Court for the adjudication of a monetary claim such as that which was the subject-matter of the suit. In my opinion, therefore, the application fails and the Rule should be discharged with costs.

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Rule discharged.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

KONDAN MARD DAMU AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS
 v. INDARCHAND BACHARAJ (ORIGINAL DEPENDANT No. 5), RES-
 PONDENT*.

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 July 12.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 13—Accounts—
 No data showing exact amount of principal sum—Court can form reasonable
 estimate of the amount from the amount of consideration stated in the deed.*

In taking accounts under section 13 of the Dekkhan Agriculturists' Relief Act, in the absence of data showing exactly how much principal has been

* Second Appeal No. 752 of 1919.