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that section 6 of the Act is directed against attempts to seduce the virtue of a woman or a girl for the purpose of prostitution, whether with or without her consent or whatever her age. It may be that in some cases brothel house keepers may themselves be procuresses. In other cases they may be different and may be connected either intimately or casually. But of their intimate connection as demand and supply there can be no doubt. The section is directed against both a brothel-keeper and her procuress. In my opinion the brothel-keeper who avails herself of the supply of the procuress is guilty of abetment of the offence under section 6 of Bom. Act XI of 1923. The brothel-keeper facilitates the prostitution and completes it.

J. S. K.

APPELLATE CIVIL

Before Mr. Justice Fawcett and Mr. Justice Mirza.

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MAHADEV NARAYAN NERKAR (ORIGINAL DEFENDANT No. 2), APPLICANT *v.* NARAYAN DATTATRAYA SAMANT AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 3), OPPONENTS.*

Civil Procedure Code (Act V of 1908), Schedule II, paragraph 1—Arbitration—Submission—"All parties interested"—Suit for partnership accounts—Defendant alleged to be retired partner not joining in arbitration—Arbitration proceedings not nullified.

In a suit for partnership accounts the plaintiff alleged, but defendant No. 2 denied, that defendant No. 3 had retired and was not liable to account. Defendant No. 3 did not appear, but the other parties to the suit subsequently referred their disputes to arbitration which resulted in an award. When the award was brought into Court, defendant No. 2 attacked it as nullity, on the ground that defendant No. 3 had not signed the submission :

Held, overruling the contention, that the circumstances gave rise to an inference that defendant No. 2 wanted to have a quick decision of the disputes between him and the plaintiff and did not press his contention about defendant No. 3's liability.

Per FAWCETT, J. :—"I do not think that any general rule can be laid down whether a defendant, who has not put in an appearance and who does not contest the suit, is or is not a party interested within the meaning of this paragraph [sub-paragraph (1) of paragraph 1 of Schedule II to the Civil Procedure Code, 1908]; and each case must, I think, be decided upon its own particular facts."

*Civil Revision Application No. 123 of 1926.

THIS was an application under the civil revisional jurisdiction, against a decree passed by I. D. Munim, Subordinate Judge at Bassein.

The facts are stated in the judgment of Fawcett, J.

A. G. Desai, for the applicant.

P. B. Shingne, for opponent No. 1.

FAWCETT, J. :—In this case, the applicant was defendant No. 2 in a suit for partnership accounts, etc., which was filed against him and two other defendants. The plaintiff alleged that defendant No. 3 had retired in the year 1921 and that he was not liable to account. Defendant No. 2 in a written statement to some extent controverted this allegation. He said that it was not settled at the time of defendant No. 3's retirement what were the amounts outstanding between the different partners, and he added a prayer, which might be taken as covering relief as to the amount due from defendent No. 3 as well as the other partners upon taking accounts. Among the issues that were subsequently raised, No. 3 was, " what were the terms of the partnership business after defendant No. 3 retired from it," and No. 5 was, " what is found due on taking accounts to each of the parties in suit." Defendant No. 3 did not appear at all in the suit, and it proceeded against him *ex parte*. The plaintiff and defendants Nos. 1 and 2 later on referred the suit to the arbitration of a pleader, who submitted an award which was accepted by the plaintiff and defendant No. 1. Defendant No. 2, however, raised various objections, and one of them was that defendant No. 3 had not signed the submission paper or the application about it. The Subordinate Judge held all his objections to be unsustainable, and that defendant No. 3 was not a person interested in the matters

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referred to arbitration within the meaning of paragraph 1 of Schedule II of the Civil Procedure Code. Accordingly, in his opinion, his not joining in the reference did not invalidate it. Defendant No. 2 comes to us in revision and asks us to hold that the reference to arbitration was *ultra vires* in consequence of defendant No. 3 not having joined in the reference, and that the award, therefore, is a nullity.

The first question that arises is, what is the meaning of the words " all the parties interested " in sub-paragraph (1) of paragraph 1 of the Second Schedule of the Code, in particular, with reference to a defendant, who does not put in an appearance and does not contest the plaintiff's suit. Authorities on this particular question are somewhat conflicting. It has been held by the High Court of Allahabad that a defendant, who does not put in an appearance, nor contest the suit is not a " party interested " within the meaning of this paragraph, and that the mere fact that such defendant has not joined in an application will not invalidate the award. See *Ishar Das* v. *Keshab Deo*,[1] *Sabta Prasad* v. *Dharam Kirti Saran*[2] and *Ajudhia Prasad* v. *Badar-ul-Husain*.[3] On the other hand, it has been held by the High Court of Calcutta in *Laduram Nathmull* v. *Nandalal Karuri*[4] and that of Madras in *Potita Pavana Panda* v. *Narasinga Panda*,[5] that the mere fact that the defendant has not put in an appearance and does not contest the suit is no ground for holding that he is not a party interested within the meaning of this paragraph; and the Madras High Court has further held that a party may be interested, though no relief is claimed against him: *Subbarao* v. *Appadurai Aiyar*.[6] In the last named case there were

(1) (1910) 32 All. 657.
(2) (1912) 35 All. 107.
(3) (1917) 39 All. 489 at p. 495.
(4) (1919) 47 Cal. 555.
(5) (1919) 42 Mad. 632.
(6) (1924) 48 Mad. L. J. 142.

clear grounds for saying that the defendant No. 4 in the suit under consideration was an interested party in the result of the suit. Similarly, in *Indur Subbarami Reddy* v. *Kandadai Rajamannar Ayyangar*,[1] where in a suit for partnership accounts two out of three defendants made an application to the Court to refer the matter in dispute to arbitration, but the representatives of defendant No. 3, who was then deceased, were not parties to the application, which was, however, granted, there were grounds for saying that defendant No. 3 was clearly a party interested, because he was a partner at the time when the partnership incurred the liability in respect of which the partnership suit was brought; and the main test must, I think, be whether the party who has not joined in the reference was interested in the matter in difference that was referred to arbitration. This is what is laid down by Dawson Miller, C. J., in *Raghunath Sukul* v. *Ramrup Raut*,[2] where he says (p. 781) :—

"In my opinion the words 'all the parties interested' do not mean necessarily all the parties to the suit, but all the parties interested in any matter in difference between them which they wish to refer."

I do not think that any general rule can be laid down whether a defendant, who has not put in an appearance and who does not contest the suit, is or is not a party interested within the meaning of this paragraph; and each case must, I think, be decided upon its own particular facts.

In the present case, undoubtedly, in view of the defendant's pleadings and the issues, there is ground for the contention that defendant No. 3 was interested in the result of the suit, and, therefore, in the matters that were referred to arbitration, provided that the question of defendant No. 3's liability either to the plaintiff or to defendant No. 2 was among the matters

[1] (1902) 26 Mad. 47. [2] (1923) 2 Pat. 777.

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that were intended to be the subject of arbitration. The reference to arbitration has been read out to us. It is in rather general terms and no specific issues were referred to the arbitrator. It is in the following form :—

> "In order to decide the said suit we the undersigned appoint Mr. Partap as arbitrator to hear the contentions of the parties, look into the papers, and decide from what party what amount is either to be received or to whom what amount is to be paid, and whatever decision he will make will be acceptable to us and we will abide by it and we will not appeal against it. Therefore the order should be made appointing Mr. Partap as arbitrator and the case should be referred to him for being decided."

The arbitrator was to hear the contentions of the parties, and this leaves open the question whether defendant No. 3's liability was referred to him. The defendant No. 2 signed the submission to arbitration knowing that defendant No. 3 was not going to be a party to it, and the arbitration was carried on without any notice to defendant No. 3. In the circumstances, I think, a legitimate inference arises that defendant No. 2 wanted to have a quick decision of the disputes between him and the plaintiff and did not press his contention about defendant No. 3's liability. It is not a case where defendant No. 3 was still a partner in the business and so was necessarily interested in the accounts; he had retired, and in the circumstances it rests, in my opinion, upon the applicant to satisfy the Court that defendant No. 3 was a party interested in the matter referred to arbitration. Having regard to defendant No. 2's conduct, I think, that he was not really a party interested in these matters, and that had the arbitrator passed an award, of which defendant No. 2 approved, no question would have been raised about defendant No. 3's omission to join in the reference. I think the circumstances clearly point to this objection being an after-thought, owing to the award being one, of which defendant No. 2 did not

approve. Therefore, I do not see sufficient reason to interfere in revision with the decision of the Subordinate Judge, and I would dismiss the application with costs.

MIRZA, J. :—I agree. The suit was in respect of partnership accounts from the year 1919 up to the date of the filing of the suit, when the partnership was dissolved. Originally, all the parties to the suit had been partners. But on March 26, 1921, defendant No. 3 retired from the partnership. It must be taken that by this retirement under the provisions of section 253, sub-section (7), of the Indian Contract Act, the partnership was dissolved as between all the other members of the partnership as well as the retiring partner. The plaintiff alleged that at the time of the retirement of defendant No. 3 it was agreed that defendant No. 3 had no right in the assets of the partnership, nor was he liable in respect of the debts of the partnership. He claimed no relief against defendant No. 3 who was made only a formal party to the suit as the suit was in respect of partnership accounts. The remaining partners having agreed to continue the partnership business must be regarded as having formed a new partnership as from the date of the retirement of defendant No. 3. The suit, therefore, must be taken to have been in respect of two partnership accounts. Defendant No. 2 by his written statement paragraph 6 raised a point that defendant No. 3's liability to contribute towards the loss of the partnership of which he was a member continued. He also raised an issue to have it determined what amount would be found due to each party on the taking of the partnership accounts. On these allegations it would appear that defendant No. 3 would have an interest in the suit. But, it is open to a party at any stage of the proceedings to abandon his claim in whole or in part. Defendant No. 2 seems to

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have abandoned his claim against defendant No. 3 when the suit was referred to arbitration. At that stage of the proceedings defendant No. 3, in my judgment, ceased to be interested in the subject-matter of the litigation. No notice of the arbitration proceedings was served upon defendant No. 3, and he was not a party to those proceedings. In these circumstances, the judgment of the lower Court seems to me to have proceeded on correct lines.

Per Curiam:—The rule is discharged with costs. Liberty to the plaintiff to take out the decretal amount and costs of the rule that were paid into Court under this Court's order.

R. R.

APPELLATE CIVIL

Before Mr. Justice Patkar and Mr. Justice Baker.

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THE SHOLAPUR MUNICIPALITY (ORIGINAL PLAINTIFF), APPELLANT *v.* SHIVRAM BHAGWANT SARODE (ORIGINAL DEFENDANT), RESPONDENT.*

District Municipal Act (Bom. Act III of 1901), sections 3 (14), 40, 70, 81A and 140—Right to collect fees from persons selling fodder on Municipal land—Power of Municipality to sell or lease right to contractors.

Under the District Municipal Act (Bom. Act III of 1901), the Municipality has no power to lease or sell to contractors the right to collect the fees leviable from persons selling fodder on Municipal land, and a contract to auction the right is *ultra vires* and unenforceable.

Municipal Council, Kumbakonam v. *Abbahs Sahib*[1] and *Dundee Harbour Trustees* v. *D. & J. Nicol*,[2] referred to.

SECOND APPEAL against decision of D. D. Cooper, Assistant Judge at Sholapur, confirming the decree passed by A. K. Phadkar, Subordinate Judge at Sholapur.

Suit to recover damages. The facts material for the purposes of this report are stated in the judgment of Mr. Justice Patkar.

P. V. Kane, for the appellant.

*Second Appeal No. 736 of 1926.

[1] (1911) 36 Mad. 118. [2] [1915] A. C. 550 at pp. 556-561.