

[APPELLATE CIVIL JURISDICTION.]

1872.
Sept. 4.*Miscellaneous Special Appeal No. 4 of 1871.*

VA'SUDEV VISHNU, a Minor, by his Mother
and Guardian RAMA'BA'I.....*Appellant.*

NA'RA'YAN JAGANNA'TH.....*Respondent.*

*Minor—Representation of minor in a suit—Proceeding in the nature of a
suit—Award—Civ. Proc. Code, Sec. 327—Act XX. of 1864, Sec. 2.*

As proceedings taken to file and enforce an award under Sec. 327 of the Civil Procedure Code are of the nature of a suit within the meaning of Sec. 2 of Act XX. of 1864, a minor must be represented in such proceedings by a person holding a certificate of administration.

THIS was a miscellaneous special appeal from the order of the Hon'ble G. A. Hobart, District Judge of Khandesh, in Miscellaneous Appeal No. 16 of 1870, confirming the order of the First Class Subordinate Judge at Dhúlia.

Naráyan Jagannáth filed in the Court of the Subordinate Judge at Dhúlia an award made in his favour by arbitrators appointed without the intervention of a Court. The award bore date the 27th August 1867, and was filed in the Subordinate Court on the 21st October 1867 for enforcement against the minor, Vásudev Vishnu, and another, under the provisions of Sec. 327 of the Civil Procedure Code. The minor, Vásudev, was represented by one Bháskar Vásudev who held no certificate of administration under Act XX. of 1864. The Subordinate Judge, after notice to the parties, ordered the award to be enforced. In appeal, the District Judge confirmed the order of the Court of first instance.

In the petition of special appeal it was urged, among other objections, that Bháskur Vásudev, holding no certificate of guardianship, had no authority to proceed in the case as representative of the minor Vásudev.

The appeal was argued before MELVILL and KEMBALL, JJ., on the 4th September 1872.

Shántarám Náráyan for the appellant.

1872.

VA'SUDEV
VISHNU
C.
NARAYAN
JAGANNA'ATH.

Macpherson (with him *Vishvanáth N. Mandlik*), for the respondent.

PER CURIAM :—This is an appeal against an order of the District Judge of Khandesh, directing execution against the applicant of a decree passed on an award. It appears that the proceedings, which Section 327 of Act VIII. of 1859 requires to be taken on an application to file an award, were taken when the applicant, who was, and still is, a minor, was not represented by a person holding a certificate of administration. He could not, therefore, be heard against the application, the proceedings on which were of the nature of a suit (Section 2, Act XX. of 1864). It follows that there is no valid decree against the applicant, and that the order for execution, which is appealed against, must be set aside so far as it affects him.

Order annulled with costs.

[APPELLATE CIVIL JURISDICTION.]

Sept. 11.

Appeal from Parsee Matrimonial Court.

ARDESAR JAHÁNGIR FRA'MJI *Appellant.*

AVA'BA'I..... *Respondent.*

Restitution of conjugal rights—Parsee Marriage and Divorce Act (No. XV. of 1865), Secs. 36 and 40—Civ. Proc. Code, Sec. 200—Execution of decree.

A decree for restitution of conjugal rights under the Parsee Marriage and Divorce Act is enforceable only in the manner provided in Section 36 of the Act; such provision is in substitution of, and not in addition to, the ordinary remedies provided by Sec. 200 of the Code of Civil Procedure.

THIS was an appeal from an order made by MELVILL, J., while sitting as Judge in the Parsee Chief Matrimonial Court at Bombay, on the 29th June 1871.

Ardesar Jahángir obtained a decree against his wife, Avá-bái, on the 29th March 1869, directing her to return to her husband and to render to him all conjugal rights. Avábái did not return to her husband in obedience to this decree,