APPELLATE CIVIL.

FULL BENCH.

Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Macleod, and Mr. Justice Shah.

1918. *July* 30.

HANMANTRAM RADHAKISON, MINOR, BY HIS NEXT FRIEND HIS MOTHER AND CERTIFIED GUARDIAN JANIBAI, WIDOW OF RADHAKISON MARWADI (ORIGINAL PLAINTIFF), APPELLANT *v.* SHIVNARAYAN ASARAM MARWADI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), Order XXXII, Rule 7; Schedule II, clause 20—Minor—Arbitration—Reference to arbitration out of Court by minor's guardian—Award—Application by the guardian to have the award filed—Application not an agreement with reference to suit—Minor not entitled to protection of Order XXXII, Rule 7.

A dispute to which a minor was a party was submitted to arbitration out of Court by the minor's mother. After the award was published the mother, on behalf of her minor son, applied to the Court under Clause 20 of the Second Schedule of the Civil Procedure Code, 1908, to have the award filed in order that a decree might be passed on such award. The other party did not object to such filing and the award was accordingly filed and a decree passed thereon. Subsequently the minor through his mother sued to set aside the decree. The trial Court dismissed the suit. In appeal, as the Court was of the opinion that there was a conflict between the case of *Mahadev Balkrishna Kelkar* v. *Krishnabai*[1] and the case of *Vithaldas* v. *Dattaram*[2], the following question was referred to a Full Bench :—When a dispute to which a minor is a party has been submitted to arbitration out of Court, and the award made upon such submission has been brought into Court under Clause 20 of the Second Schedule, Civil Procedure Code, and the Court has been asked to file it and thereafter pass a decree upon it, neither party objecting, is not the Court bound to sanction this agreement to have the award filed and a decree passed upon it, as for the benefit of the minor, and so also to certify the decree? and if the Court fails to do so, is not the minor entitled to the protection of Order XXXII, Rule 7, of the Civil Procedure Code?

Held, the question must be answered in the negative.

Held, further, that there was no conflict between the cases of *Mahadev Balkrishna Kelkar* v. *Krishnabai*[1] and *Vithaldas* v. *Dattaram*[2].

*First Appeal No. 76 of 1916.

(1) (1896) P. J. 609. (2) (1901) 26 Bom. 298.

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FIRST appeal against the decision of R. T. Kirtane, First Class Subordinate Judge at Poona, in suit No. 395 of 1912.

Suit to set aside a decree.

Plaintiff's father Radhakison and his brother Asaram (father of the defendants) carried on a trading business in partnership. On Radhakison's death in 1907, disputes arose as to partnership business and the plaintiff being then a minor, his guardian mother referred the disputes to arbitration. The arbitrators made their award in 1908. The plaintiff, by his mother, applied to file the award under clause 20 of the Second Schedule, Civil Procedure Code, 1908. The application was registered as suit No. 345 of 1908 and the defendants having consented, a decree was passed in terms of the award. Shortly afterwards, the plaintiff's mother having discovered that the accounts produced by Asaram before the arbitrators were not correct and that the arbitrators had not properly scrutinized the accounts, sued as the guardian of the minor plaintiff to set aside the decree on the ground of fraud.

The Subordinate Judge dismissed the plaintiff's suit holding that the award decree was binding on the plaintiff.

On appeal to the High Court, it was contended that whether there was fraud or not, the plaintiff was clearly entitled under Order XXXII, Rule 7, Civil Procedure Code, 1908, to have the decree set aside. The appeal was argued on the 18th March 1918 before Beaman and Heaton JJ. when their Lordships made the following order of reference to the Full Bench :—

BEAMAN, J. :—The mother of the plaintiff, his natural guardian, referred certain partnership disputes between the plaintiff and the defendant to arbitration. The

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plaintiff was then a minor. The plaintiff's mother took the award to Court, and applied under clause 20 of the Second Schedule, Civil Procedure Code, for a decree in terms of the award, the defendant consenting. A decree was passed, but not certified to be for the benefit of the minor. Finding himself dissatisfied with the award and the decree passed upon it, the plaintiff through his mother as guardian has brought this suit to have the decree set aside on the ground *inter alia* of fraud. It is contended before us that whether there was fraud or not, the plaintiff is clearly entitled under Order XXXII, Rule 7, Civil Procedure Code, to have the decree set aside, and the question is whether he is so entitled or not? Were the point free from authority I should have had no hesitation in holding that he was. So it was held upon exactly similar facts in the case of *Mahadev Balkrishna* v. *Krishnabai*[1] by Parsons and Ranade JJ. But a Division Bench consisting of Sir Lawrence Jenkins and Chandavarkar JJ., came to a contrary conclusion in the case of *Vithaldas* v. *Dattaram*[2], and very definitely overruled the earlier decision. This was not through inadvertence, since the judgment of the lower Court was expressly based upon the case of *Mahadev Balkrishna* v. *Krishnabai*[1]. It is plain that the later decision could not have been given in opposition to the earlier without reference to a Full Bench, but for the latitude allowed Courts in shutting their eyes or not, to case-law which is not in the authorized reports. It is significant that although the Court must have known that it was overruling the decision of Parsons and Ranade JJ., when it decided the case of *Vithaldas* v. *Dattaram*[2], no reference is to be found in the judgment to that decision. We find here then a direct and irreconcilable conflict of judicial decision. We have no other course open to us than to refer the

(1) (1896) P. J. 609. (2) (1901) 26 Bom. 298.

point to a Full Bench for authoritative settlement. In doing so I will state as briefly as I can why, with all respect to the learned Judges responsible for it, I think the later decision wrong, and the earlier decision right.

It is true that the words of Order XXXII, Rule 7, will not apply to the agreement to refer out of Court, made by any one acting for a minor. It is none the less true that all such agreements are in essence contractual since their effect is to abridge or extend, as the case may be, strict contractual rights. But since *ex hypothesi* such agreements to refer and resultant references, as well as awards made on them, are outside the control of the Court and beyond its jurisdiction, such cases are not within the contemplation of Order XXXII, Rule 7. Such submissions to arbitration by guardians *de facto* of minors, and awards upon them would, I apprehend, always be voidable by the minor concerned on attaining his majority, just as all his other contracts would, to the same extent, subject to the same conditions. But when a Court *has* intervened, the case is radically different. Upon general principle and, neglecting for a moment the actual language of Order XXXII, Rule 7, it is safe to say that whenever and upon whatever procedure, under what conditions so ever, a Court has made a non-contentious decree, a decree, that is to say, which is analysable into a decree by consent, affecting a minor's rights, that decree must be certified to be for the minor's benefit, and if it is not then it is voidable (without there being any need to prove fraud) at the minor's option. This statement of general principle which I believe to be universal and without any exception is a necessary consequence of the rule that all Courts when dealing with the affairs of minors are charged with a special duty, the duty, that is, of protecting the minor's interests. It is not enough that a guardian *ad litem* should be appointed;

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when a compromise is effected, that is to say, whenever the Court does not decide for itself what the minor's rights are, it is bound, before making a decree in terms of the compromise, to satisfy itself as far as it can that the minor has been properly protected, and that his interests have not been sacrificed in any way. If the Court does not do this, and what is more, place it clearly on record that it has done so before binding the minor by its decree, it has fallen short of its duty, and its decree is at once voidable at the minor's option on attaining majority. Such being the widest scope of the law, and expression of the principle upon which it rests, it will be seen that the actual language of Order XXXII, Rule 7, really does cover every proper case. And there is no difficulty at all in showing that it covers the case before us, as well as the case before the Court in *Vithaldas* v. *Dattaram*[1]. The learned Judges there appear to have thought that the only agreement in question was the agreement, out of Court, to refer the matters in difference to arbitration. That however is not so. Where a suit has been brought and the parties (one of them being a minor) submit to arbitration under the control of the Court, it has been held that the agreement to submit is not such an agreement as is contemplated in Order XXXII, Rule 7, and does not require the sanction of the Court. There are two answers here: (1) In strictness this is an agreement and the mere fact that the Court grants the application amounts by implication to the Court sanctioning it up to that point: (2) But it is obvious that the Court cannot at that stage decide whether the agreement is or is not for the benefit of the minors. That can only be known when the award is made. It may be very much in the minor's favour, or it may be very much against him. The same is true of a like

(1) (1901) 26 Bom. 298.

agreement made, before the parties have come to Court at all. But while in the former case I suppose no one would contend that the Court need not sanction the decree upon the award and declare it to be for the minor's benefit, the decision under examination holds that this is quite unnecessary when the preliminary steps, the reference to arbitration, and the award were anterior in time to the Court having any knowledge of the facts or jurisdiction over the parties. In every case of the kind a decree by consent implies an agreement somewhere, and if the Court is wholly ignorant of the fact of any such agreement having been made, at the time it was made, or the terms upon which it was made, nevertheless before it can pass a decree it is in a position to ascertain from the terms of the decree it is asked to make and a comparison between those terms and the facts which it will insist upon knowing whether the underlying agreement has been for the minor's benefit or not. The validity of this general statement is not touched, much less impaired, by the circumstance that in the particular case before us the application under clause 20 of the Second Schedule was made by the minor. If the matter was from that moment to go through uncontested up to decree, then the terms of the award were evidence enough of what agreement had been come to by the parties, and material enough to put the Court on enquiry whether before converting it into a decree the Court would take it to be for the benefit of the minor. Now if we return to Order XXXII, Rule 7, and compare its language with clause 20 of the Second Schedule it is plain that an application under the latter will at once take the form of a suit, in which if a minor is a party he must be either plaintiff or defendant. He must therefore be represented. He must have a guardian. Either, in any particular case, he had or he had not. If he had, then one at least of

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the verbal difficulties stated in the Court's judgment in *Vithaldas* v. *Dattaram*[1] is removed. If he had not, then the decree could not possibly stand. No decree could be made by any Court affecting a minor's rights unless the minor were represented in the suit. Thus we have in effect a suit in which the minor represented in fact by the guardian, his mother, is plaintiff, and the defendant here was the defendant. The prayer of the plaint is to decree an agreement which has been arrived at by process of arbitration out of Court. All its terms are now known, that is to say the terms of the result of the agreement to refer, namely, the contents of the award. The law permits and therefore of course contemplates defences. This, like any other suit, may be contentious. But if it is not, if both parties say to the Court, we are agreed in desiring your decree in the terms we have laid before you, and if one of those parties is a minor, surely this is an agreement within the letter, as it most certainly is within the spirit of Order XXXII, Rule 7. Else it appears to me that minors would be exposed to gross abuses everywhere. Their nominal guardians might always submit their disputes to arbitration, and bring in an award asking for a decree in terms of the award after settling with the nominal defendant, and the Court would only have to pass a decree without taking the trouble to investigate the merits to bind the minor, and so make itself the instrument, and the most effective instrument, of defrauding him of his just rights. Of course it may be answered that excluding a minor in these circumstances from the protection of Order XXXII, Rule 7, does not mean that he is wholly deprived of redress. He can still prove that he was not adequately represented, or that the consent decree was obtained by fraud. But these are often difficult ways, when many years have passed. I see no reason at all why the

(1) (1901) 26 Bom. 298.

minor should not have the much simpler, the much easier, the unqualified relief provided by Order XXXII, Rule 7.

In my opinion the answer to the question which I would refer to the Full Bench is that all cases of the kind do fall within the language and intention of Order XXXII, Rule 7 and that in the case before us the plaintiff is entitled to have the decree set aside.

The following is the question referred to the Full Bench :—

When a dispute to which a minor is a party has been submitted to arbitration out of Court, and the award made upon such submission has been brought into Court under clause 20 of the Second Schedule, Civil Procedure Code, and the Court has been asked to file it and thereafter pass a decree upon it, neither party objecting, is not the Court bound to sanction this agreement to have the award filed and a decree passed upon it, as for the benefit of the minor, and so also certify the decree? and if the Court fails to do so, is not the minor entitled to the protection of Order XXXII, Rule 7, Civil Procedure Code ?

HEATON, J. :—The facts out of which arises the dispute before us are these: The plaintiff is a minor ; his father was a partner in a firm ; on his death disputes arose as to the business of the firm. It was agreed to refer these disputes to arbitration, this agreement being signed by the mother and natural guardian on behalf of the plaintiff. An award was made. The plaintiff through his mother as guardian applied to the Court as provided by para. 20 of the Second Schedule to the Civil Procedure Code that the award should be filed. Thereupon the application was numbered and registered as a suit, notices were issued, there was no contest and eventually a decree was made in terms of the award.

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The minor now, again through his mother as guardian, sues to avoid the decree on the ground that he is entitled to do so by the provisions of Rule 7 of Order XXXII. The question before us is whether he is entitled to do so or not, whether in short, Rule 7 of Order XXXII governs the case. If it does, the plaintiff certainly can avoid the decree, if there was an agreement as to or a compromise of the suit entered into without the leave of the Court. First of all we have to determine whether there was an agreement or compromise. I think there was. Where, as here, there was a suit to file the award followed after due notice to the defendants by a decree without contest, we must, I think, assume either a tacit or explicit agreement that the award should be filed. It may be urged that this is a question of fact; if so we can determine it in this appeal which is a first appeal. But when this view, that there was a tacit or explicit agreement between the plaintiff and defendants that the award should be filed without contest, was mentioned in argument, there was no objection made, as I understand, to the assumption. I, therefore, assume that there was a tacit or explicit agreement. If there was an agreement either express or tacit then there was, it seems to me, an agreement of the kind contemplated by Rule 7 of Order XXXII. Suppose there had been a contest in the suit and that then the contest had been dropped and the award filed by consent. If so it could not, I think, be successfully argued that Rule 7 of Order XXXII would not apply. Equally to my thinking it cannot be argued successfully, that the rule does not apply when there is no contest.

The point is one of great general importance, for if that rule does not apply to uncontested decrees obtained on awards, the door is opened to the evils in their worst form which the rule is intended to prevent: for we

know how easily widows are cajoled or deceived and how often they are induced to sacrifice the interests of minor sons.

My learned Brother has explained that a reference to a Full Bench is imperative in this case. It is the more so because in a recent case of *Kheratali Roshanalli* v. *Mahmadali Nadarali*[1] we delivered a judgment which in principle is irreconcilable with the judgment in *Vithaldas* v. *Dattaram*[2]. For myself I venture still to think that we are right and that the judgment in *Vithaldas' case*[2] was not right: at least would not be right now, for the words of section 141 of the Code are so explicit as to compel us to apply Rule 7 of Order XXXII, to suits on wards as well as to other suits. When we dealt with second appeal No. 711 of 1916, however our attention was not called to the decision in *Vithaldas' case*[2].

The reference was heard by a Full Bench consisting of Scott C. J., Macleod and Shah JJ., on the 30th July, 1918.

Bahadurji with *S. Y. Abhyankar*, for the appellant.—This reference has been made to settle the conflict between *Mahadev Balkrishna* v. *Krishnabai*[3] and *Vithaldas* v. *Dattaram*[2].

The Second Schedule to the Civil Procedure Code provides for three alternative courses. Clause 1 deals with a reference through the Court. Secondly, clause 17 refers to a reference outside the Court, which reference is made a rule of the Court. Procedure governing both these kinds of reference is identical. Thirdly, clauses 20 and 21 relate to a reference entirely outside the Court, which reference is not made a rule of the Court. Here,

(1) (1918) S. A. No. 711 of 1916 (Un. Rep.)

(2) (1901) 26 Bom. 298.

(3) (1896) P. J. 609.

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too, the procedure subsequent to the filing of the award is the same as in the first two cases. In the third case directly an application is made to the Court to file an award under clause 20, it is to be registered as a suit wherein the applicant becomes the plaintiff and the other party becomes the defendant.

In the present case, the reference was under clause 17. It ended in a decree which was taken without a contest. That decree, to be valid, ought to have been certified under Order XXXII, Rule 7, since the plaintiff was a minor: *Mahadev Balkrishna* v. *Krishnabai*[1]; *Vithaldas* v. *Dattaram*[2].

[SHAH, J.:—Your argument must go to the full length that whenever there is an award to which a minor is a party, the Court should apply Order XXXII, Rule 7 at the time of passing a decree in its terms.]

On general principles, whenever there is a suit in which a minor is interested, it is the duty of the Court to apply its mind to Order XXXII, Rule 7. Here, also, there is such a suit.

When there is an agreement to refer a dispute to arbitration, there is also an implied agreement to abide by the result of the reference. This implied agreement is carried out by asking the Court to pass a decree on the basis of the award. To this extent, it is a compromise on behalf of a minor with reference to a suit: see *Pragdas* v. *Girdhardas*[3]; *Atmaram* v. *Bhila*[4].

Setalvad and *Coyajiee* with *S. R. Bakhle*, for the respondents, were not called upon.

SCOTT, C. J.:—The question referred to the Full Bench is as follows:—When a dispute towhich a minor is a party has been submitted to arbitration out of Court,

(1) (1896) P. J. 609.
(2) (1901) 26 Bom 298.
(3) (1901) 26 Bom. 76 at p. 78
(4) (1912) 15 Bom. L. R. 223 at p. 228.

and the award made upon such submission has been brought in to Court under Clause 20 of the Second Schedule, Civil Procedure Code, and the Court has been asked to file it and thereafter pass a decree upon it, neither party objecting, is not the Court bound to sanction this agreement to have the award filed and a decree passed upon it, as for the benefit of the minor and so also certify the decree? and if the Court fails to do so, is not the minor entitled to the protection of Order XXXII, Rule 7, Civil Procedure Code?

It is necessary to read this question with the main facts in the suit, namely, that a reference to arbitration was made, or agreed to, by a mother on behalf of her minor son, and after the award was published, the mother on behalf of the son applied under clause 20 of the Second Schedule of the Civil Procedure Code that the award should be filed in order that a decree might be passed upon it. The minor thus became, through his next friend, the applicant.

If the other party to the reference raises no objection to the application, and the award is filed and a decree passed in accordance with it, it does not appear to me that it can be said that there has been any agreement on behalf of the minor with reference to the suit in which the next friend is acting, although were the minor the defendant in such a suit as is numbered under clause 20 of the Second Schedule, it might be that a promise given on behalf of the minor to allow the award to be filed without opposition and a decree passed in accordance with it would be an agreement on behalf of the minor with reference to the suit. If a plaintiff gets everything that he applies for without objection by the defendant, it cannot be said that there is a decree by consent in the strict sense of that term. It is only a decree upon the submission of the defendant,

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The fact that the defendant does not object would not impose upon the Court the necessity of sanctioning anything as a condition precedent to filing the award and passing a decree upon it. The judgment of Mr. Justice Heaton, one of the referring Judges, puts the question of agreement as a matter of assumption of an undisputed fact. He says "where as here, there was a suit to file the award followed after due notice to the defendants by a decree without contest, we must, I think, assume either a tacit or explicit agreement that the award should be filed. It may be urged that this is a question of fact; if so, we can determine it in this appeal which is a first appeal. But when this view, that there was a tacit or explicit agreement between the plaintiff and defendants that the award should be filed without contest, was mentioned in argument, there was no objection made, as I understand, to the assumption. I, therefore, assume that there was a tacit or explicit agreement." That assumption, as it seems to me, comes to this that the defendant let it be known that he was not objecting to the filing of the award. I do not think that that amounts to an agreement or compromise on behalf of the minor plaintiff with reference to the suit within the meaning of Order XXXII, Rule 7. It also appears to me that there is no conflict between the two cases alluded to in the referring judgments. Mr. Justice Parsons and Mr. Justice Ranade say in *Mahadev Balkrishna Kelkar* v. *Krishnabai*[1]: "It is admitted that the sanction of the Court was not obtained either to the original agreement of reference to arbitration made by Vinayak Balkrishna Kelkar on behalf of his sons or to the agreement of the same person that the award should be filed or to the decree. It is, in our opinion, essential under section 462 of the Code that the leave of the Court should

[1] (1896) P. J. 609 at p. 610.

have been obtained to the agreement before a decree was passed on it." That, as I understand, is the second agreement mentioned, namely, that the award should be filed. That would be an agreement on behalf of a minor defendant after the application had been numbered as a suit. In *Vithaldas* v. *Dattaram*[1], Sir Lawrence Jenkins delivering the judgment of the Court said: "Can, then, the decision be supported on the ground that there has been no such leave as section 462 contemplates? We think not. That section obviously contemplates the existence of a guardian and a pending litigation: but here, when the agreement was entered into, there was neither a guardian for a suit nor a suit." I infer from the judgment in the case of *Mahadev Balkrishna Kelkar* v. *Krishnabai*[2] that the Court there was of opinion that the original agreement of reference before there had been any application numbered as a suit, would not require the leave of the Court.

The question referred must, I think, be answered in the negative.

MACLEOD, J.:—The suit in which this reference has been made was filed by the plaintiff, a minor, to set aside the decree passed in his favour on an award. The agreement to refer was made on his behalf by his mother as his guardian, and the grounds on which he applied to have the decree set aside were that the accounts submitted to the arbitrators by his deceased father's partner were not correct, that his guardian was not in possession of true information at the time of the award, and that the award had been obtained by fraud. In the trial Court the suit was dismissed.

In first appeal, the 8th ground of appeal was as follows: "The decree passed on the award contravenes

(1) (1901) 26 Bom. 298. (2) (1896) P. J. 609 at p. 610.

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the provisions of Order XXXII, Rule 7 of the Civil Procedure Code." When the appeal came on for argument this point seems to have been raised as a preliminary point, for if it was successful, there was no necessity to go into the question of fraud. The difficulty in dealing with the point arises from the fact that it was not taken at the hearing and there is, therefore, no evidence on the record of any agreement which had been entered into on behalf of the minor with reference to the suit by his next friend, and therefore, the agreement which has now been relied upon by the appellant had to be assumed from the facts already recorded.

Now the only agreement entered into by the minor's guardian was the agreement to refer. But it was argued for the appellant, as far as I can gather, that the agreement to refer implied a further agreement that when the award was made on the reference it was to be filed and a decree passed on it under paragraph 20 of the Second Schedule. In the first place, I do not think that we can infer from the agreement to refer the matter in dispute to arbitration, a further agreement to abide by the award, but even if we could, the agreement to refer was made before suit and any further agreement implied therein would also be before suit. All that appears on the record to have happened was that the award was made in favour of the minor. His guardian then filed an application under paragraph 20 of the Second Schedule that the award should be filed. Sub-paragraph (2) states that the application should be in writing and should be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. Sub-paragraph (3) states that the Court should direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be

filed ; and under paragraph 21, where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment in accordance with the award. Notice in the ordinary course was issued, the application came on for hearing, and the defendant raised no objection to the award such as he might have raised under paragraph 14 or 15 of the Second Schedule. After that it was the Court's duty to pronounce judgment in accordance with the award. Therefore it cannot be said that there had been any agreement by the guardian after the application to file the award had been made and the matter became a suit, which required the sanction of the Court under Order XXXII, Rule 7.

But even assuming that the defendant, after the application to file the award had been made, had promised that he would not take any objection under paragraps 14 and 15 of the Second Schedule, it cannot be said that there was an agreement by the minor's guardian which would come within Rule 7 of Order XXXII. The mere fact that the defendant consented that a decree should be passed in accordance with the award, which involved no action on the part of the guardian, would not in any sense constitute an agreement by the guardian. Therefore dealing with the question which has been referred, I should be inclined to say that if the defendant in a suit by a minor plaintiff registered under paragraph 20 of the Second Schedule, Civil Procedure Code, raises no objection to the award being filed, and a decree passed thereon, there is no agreement by the guardian of the minor such as would come within the meaning of Order XXXII, Rule 7. Therefore I agree

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with what has been said by the learned Chief Justice. I may also add that there does not seem to me to be any conflict between the decisions referred to in the referring judgments in *Mahadev Balkrishna Kelkar* v. *Krishnabai*[1] and *Vithaldas* v. *Dattaram*[2]. In the first case the minor was a defendant and his guardian had agreed to judgment against him, while in the latter the only agreement on the record was the agreement to refer which was made as in this case at a time when no suit was in existence. *Mahadev Balkrishna* v. *Krishnabai*[1] was referred to in the argument and the learned Judges evidently considered that it did not cover the case before them.

SHAH, J. :—I agree with the learned Chief Justice. I only desire to add that the question referred to us is rather in a general form, and that my answer must be taken to be limited to the question read with reference to the undisputed facts of the case.

On the 4th October 1918, the appeal came up again for disposal before Beaman and Heaton JJ., when their Lordships delivered the following judgments :—

BEAMAN, J:—Since the decision of the Full Bench precludes us from giving the plaintiff in the events that have happened the unqualified relief provided for by Order XXXII, Rule 7, Civil Procedure Code, it appears to us looking into the pleadings that there is no other sufficient reason for disturbing the decree of the lower Court. The grounds upon which the plaintiff appears to have expected relief were limited to such as would ordinarily be considered on objection of parties to an award before the award was filed and converted into a decree. There could be no doubt that had the decree following upon the recording of the award in 1908 been between adults, it would have been final and unappealable.

(1) (1896) P. J. 609.

(2) (1901) 26 Bom. 298.

There are no such allegations of fraud, as far as I can see, in the pleadings here as would entitle the adult plaintiff situated as this minor-plaintiff was in 1908 to have a consent decree set aside. And there is no other ground at all upon which a consent decree can be set aside as between those *sui juris*. A minor might be entitled to larger indulgence and would certainly be heard if he were alleging inadequate representation and of course positive fraud. But mere misconduct on the part of arbitrators is a matter proper to be inquired into when an award upon reference to arbitration out of Court is brought into Court and by consent of parties converted there into a decree. I confess I much regret that in the opinion of the Full Bench the provisions of Order XXXII, Rule 7, are not capable of the extension of which we thought they were capable when we referred the matter, because I think that it is very obvious that the law being as it is now authoritatively declared to be, there is nothing to prevent the grossest abuses being practised by designing persons upon minors, even where their guardians may desire to deal honestly by them, but their ignorance and incompetence as in the case of most illiterate women quite unfit them to do so. And it seems to me that frauds of that kind will be more specious, more difficult to detect and more easy of accomplishment by adopting the very procedure, which did no doubt greatly influence the Court dealing with this application under section 462 in 1908. I can well understand that a Court not being put upon its guard or inquiry might well say to itself: "If I give the plaintiff all he asks for, it is clear that I can be doing him no injustice." And that too appears to have been the decisive reason, or certainly one of the decisive reasons of the judgment of the Full Bench. Unfortunately, however, what thus appears to be so reasonable might easily be made the cloak of that very mischief against which

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every Court of Equity is bound to be vigilant and wary when dealing with the interests of minors. To give a simple illustration of what I mean, let me suppose that a minor had a perfectly good claim of Rs. 50,000. Let me suppose that his ignorant and illiterate mother was cajoled by the debtor, or possibly even bribed, to bring a suit for no more than Rs. 20,000. To give colour to the whole proceedings the defendant might put in a written statement and then not contest the suit so that the Court by the process of reasoning I have suggested might easily convince itself that it could be doing the minor no possible injustice if it decreed him his claim with all costs. Yet the actual truth would be that the minor would have been defrauded of Rs. 30,000.

However that may be, we must take the law as it is given in the judgment of the Full Bench and leave such consideration as moved my learned Brother and myself when we referred the point to take effect possibly should any alteration of rules afterwards be thought necessary. As the law now stands I am unable to discover any sufficient reason for interfering with the decree of the Court below. We are not to forget that this decree of 1908 was actually executed and the money taken, let us hope, to the use of the minor. The child was very young then. Even now when this suit was brought he is said to be only seven years of age. It is clear, therefore, that some one must have put his guardian up to bringing the present suit, and the suggestion is that that person is Ghanasham, who has good reason to bear a grudge against the defendant here and wished to harass him in this indirect manner. We are not in a position now to go into the actual merits of the accounts of 1908, much less of course to inquire into the conduct of the arbitrators. In my opinion the latter would not be a relevant issue in the present litigation. But I am not very much concerned about the result, since I am fairly

satisfied that no substantial injustice has really been done to the minor. Had it been, had I felt convinced that equity required the ripping open of that old decree, I might possibly have found a way upon general principles to see the wrong righted. As it is, I do not think that there is any need to have recourse to very wide general principles of that kind or to take the present matter out of the four corners of the law within which it properly belongs.

I would, therefore, now confirm the decree of the Court below and dismiss this appeal with all costs.

HEATON, J.:—I concur.

Decree Confirmed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Hayward.

SAVLA BIN TUKARAM MALI AND OTHERS (ORIGINAL PLAINTIFFS NOS. 2 TO 5), APPELLANTS *v.* SANTYA VALAD PARSHYA MAHAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 8), RESPONDENTS.*

1918. *August* 19.

Bombay Revenue Jurisdiction Act (X of 1876), section 4 (a)†—Bombay Hereditary Offices Act (Bombay Act III of 1874), section 18‡—Mahar Watan—Existence of the Watan can be investigated by the Civil Court—Jurisdiction of Civil Court—Suit by villagers to declare that the skins of their dead animals belonged to them.

* Second Appeal No. 305 of 1917.

† The material portion of the section runs as follows :—

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :—

(*a*) Claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act III of 1874 or any other law for the time being in force, or of any other village-officer or servant.