
(1914) 06 CAL CK 0046
In the Calcutta High Court

Abdul Quadir

APPELLANT

Vs

Shahbazpur Cooperative Bank

RESPONDENT

Date of Decision : 19-06-1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73
Co-operative Societies Act, 1912 — Section 20

Citation : (1915) ILR (Cal) 377

Hon'ble Judges : Holmuzood, J;Chapman, J

Bench : Division Bench

Judgement

Holmwood and Chapman, JJ.—This is a Rule which was obtained by the decree-holder in an application u/s 73 of the CPC made by a Co-operative Society for enforcing a charge u/s 19 of Act II of 1912. The application was undoubtedly made u/s 73, and under that Section we are of opinion that the Co-operative Society could have no priority to other creditors, unless there are one or more persons than one who have made applications to the Court for the execution of decrees for payment of money passed against the same judgment-debtors. To hold otherwise would be to give these Co-operative Societies a power which even Government in its much discussed certificate procedure does not claim. They would chum in other words to recover money without either decree or certificate or any legal title to enforce their debt. Admittedly, there is no charge, in this case within the meaning of Section 20 of the Co-operative Societies Act, so that the proviso to Section 73 does not come in. It is possible that u/s 19, the Society might have raised an objection to the attachment by reason of other Sections, of the Code of Civil Procedure; but with that we are not concerned. It appears to us perfectly clear that u/s 73 the claim of a Co-operative Society cannot be enforced unless they have a decree or a charge u/s 20.

2. The Rule, therefore, must be made absolute and the order of the lower Court set aside without prejudice to any action which the Society may seem fit to take, if so advised.

3. The petitioner is entitled to his costs in this Rule.