

(1937) 05 CAL CK 0029
In the Calcutta High Court

Beni Madhab Sikdar and Another

APPELLANT

Vs

Sarat Chandra Jana

RESPONDENT

Date of Decision : 05-05-1937

Acts Referred:

Co-operative Societies Act, 1912 — Section 42(6)

Citation : AIR 1937 Cal 643

Hon'ble Judges : M.C. Ghose, J

Bench : Division Bench

Judgement

M.C. Ghose, J.—This is a petition by the defendants from a preliminary decision in a suit instituted at Alipore Munsif's Court. Defendant 1 is the liquidator of a Co-operative Society at Birulia in Tamluk sub-division of Midnapore. That society was liquidated by an order of 12th September 1931 and defendant 1, an officer of Co-operative Credit Societies, was appointed liquidator. In the course of his duties as such liquidator, defendant 1 assessed the plaintiff-opposite party at Rs. 1,875 as debt due by him and called upon him to pay the amount. A registered letter demanding the money and threatening a certificate in the alternative was sent to the plaintiff who resides within the jurisdiction of Alipore. Thereafter the plaintiff instituted a suit at Alipore Munsif's Court claiming that he had indeed once been a member of the Birulia Society but he had long ago ceased to be a member and he was not liable for any debt to the Society. He further made a claim of Rs. 300 as due to him from the said Society. The suit was valued at Rs. 350 only. The defendant raised preliminary issues to the effect: (1) that the Court had no jurisdiction to try the suit having regard to the provisions of Section 42(6), Co-operative Societies Act; (2) that the suit ought to have been instituted at Tamluk or Midnapore and the Court at Alipore had no territorial jurisdiction to try the suit and (3) that the suit was under-valued, that on a proper valuation, the value would be Rs. 2,175 and the Munsif's Court had no jurisdiction to try the suit. On all the three points the decision of the Munsif was in favour of the plaintiff.

2. Upon hearing the learned advocates on both sides, and having regard to the decisions in *Mukand Lal v. Malhotra Bank*, Hafizabad AIR 1933 Lah 442 and *Vaikunta Bhat v. K, Sarvothama Rao* AIR 1936 Mad 574 it is clear that Section 42(6), Co-operative Societies Act, does not bar the present suit. By that section the liquidator is entitled to determine the contribution to be made by the members and past members of the Society. But if a party denies that he is a member, he is entitled to have that decision determined by the Court. The plaintiff's case here is that although he was a past member, he terminated his membership by a notice long before the liquidation and he is therefore not liable to any amount to the Society. The Court has jurisdiction to try the suit.

3. On the question of the territorial jurisdiction, the fact is that the plaintiff who is a learned advocate of the High Court with a well-established practice resides at Rash Behari Avenue in Calcutta within the jurisdiction of the Alipore Court and he received a registered letter there on 18th March 1936 and the Court has found that the demand contained in the letter from the liquidator gave rise to the cause of action in the suit. The cases in *Engineering Supplies Ltd. Vs. Dhandhanian and Co.*, and *Parameswara Pattar v. Viyathan Mahedevi* AIR 1923 Mad 272 were quoted to show the definition of a "cause of action" It consists of the entire set of facts which gave rise to the claim. It includes everything which, if not proved, gives the defendant an immediate right to judgment. It includes every fact which is material to be proved to entitle the plaintiff to succeed, It is urged for the petitioner that the plaintiff in order to succeed in the suit has only to show that the assessment made upon him by the liquidator is wrong. As soon as he has proved it, he will be entitled to succeed. It is not necessary for him to prove that he received a registered letter of demand from the liquidator. I am therefore of opinion that the Court below committed an error of law in holding that there was a territorial jurisdiction of Alipore in this suit. The suit should be laid at Tanaluk.

4. The third question is as to the pecuniary jurisdiction. The plaintiff was threatened with a demand of Rs. 1,875 and he made a counter-claim of Rs. 300. The question is what is the measure of the relief which he claims against the demand of a threatened certificate of Rs. 1,875. It has been urged that a mere demand or a certificate or even a decree for Rs. 1,875 would not be equal to a cash sum of Rs. 1,875. As stated in the Full Bench case (*Narayangunj Central Co-operative Sale and Supply Society Ltd. Vs. Mafizuddin Ahmed and Another*, the value of an action is the value to the plaintiff, the value of the property might be Rs. 1,000 only while the execution debt was Rs. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit. It is clear that a prosperous advocate of the High Court cannot claim a threatened certificate of Rs. 1,875 to be worth only Rs. 50 to him. In my opinion, the subject matter of the suit has been wrongly valued and, taken together with the counter-demand of Rs. 300, the value of the suit ought to be raised to Rs. 1,000.

5. The result is that the Rule is allowed in part. The suit will be valued at Rs.

1,000, court-fees paid accordingly and the suit will be transferred to the proper Court at Tamluk in Midnapore sub-division. Having regard to all the circumstances, the parties will bear their own costs in this Court. It is further ordered by consent of both parties that all the proceedings of the Alipore Court up to 24th February 1937 will stand good and the hearing of the suit at Tamluk will proceed from the stage reached at the Alipore Court.