
(1932) 04 CAL CK 0005
In the Calcutta High Court

Central Co-operative Stores Ltd.

APPELLANT

Vs

Santinidhan Roy

RESPONDENT

Date of Decision : 25-04-1932

Acts Referred:

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

Citation : AIR 1933 Cal 631 : 145 Ind. Cas. 834

Judgement

1. These are three appeals which are directed against the order of the Subordinate Judge of Jalpaiguri, dated 23rd May 1931, passed in certain proceedings arising out of execution of orders purporting to have been made u/s 42, Clauses (b) and (d), Co-operative Societies Act (11 of 1912). The application was made at the instance of the liquidator who was appointed under Sub-section (1), Section 42. Amongst objections to the execution of these orders the principal objection taken was that the orders which were sought to be executed in these three proceedings out of which the three appeals arise were not orders made u/s 42, Clauses (b) and (d) of the Act. The order which was filed was the order dated 26th March 1930, in which it is recited that previous orders had been made on 18th February 1929, assessing contributions on all share-holders to the fullest extent of their respective liabilities u/s 42(2), Clause (b), Act 11 of 1912, and this order of 26th March is said to be in continuation of that order. The Munsif who dealt with the matter in the first instance overruled the objection of the members of the Society who took these objections. Against these orders appeals were taken to the Court of the Subordinate Judge and the learned Subordinate Judge has reversed the decision of the Munsif mainly basing his decision on this: that the order of 18th February 1929 which must be taken to be the foundation of the liquidators' proceedings u/s 42, Clauses (b) and (d) is not before the Court. He points out that no copy of that order was filed for execution by the civil Court.

2. Under these circumstances he dismisses the application of the liquidator in each of these three proceedings. The liquidator has consequently preferred these appeals and it is contended on his behalf that the order of 26th March 1930 was

in substance the order which the liquidator purported to, pass under the provisions of Section 42, Clauses (b) and (d). In one of the appeals, viz., No. 415 of 1931, Mr. Gupta who appears for the respondent points out that the order of 26th March 1930, purporting to have been passed by the liquidator shows that the contribution towards the assets and the costs of the liquidation amount to Rs. 106; whereas in accordance with the order of 18th February 1929 the cost of liquidation and the contribution towards the assets amount to Rs. 99. It is said that there is a substantial variation from the order which was passed on 18th February. He contends therefore that as the order of 18th February which was for a smaller sum, was not before the Court it could not be said that the latter order really complies with the requirements of the section read along with the rules which under the Act were made by the local Government under the provisions of Section 43, Clause (t). It is argued for the respondent that proceedings taken before the liquidator u/s 42, Clauses (b) and (d), are to some extent in the nature of quasi judicial proceedings. For according to Rule 29, Clause (e), Bengal Government Rules, the liquidator may issue summonses to persons whose attendance is required either to give evidence or to produce documents. He may compel the attendance of any person to whom a summons has been issued and for that purpose issue a warrant for his arrest.

3. In order to arrive at any conclusion on the question of the determination of the liabilities of any member of a society, some evidence is required by the rules to be taken. It does not appear that this procedure was followed so far as the order of 26th March 1930, was concerned, and that was the order which was before the Court. In these circumstances we are of opinion that the Subordinate Judge was right in dismissing the three applications out of which these appeals arise. It is not necessary therefore to consider the validity or otherwise of the preliminary objection taken by Mr. Gupta in Appeal No. 415. The result accordingly is that these appeals fail and must be dismissed. We assess the hearing fee in M.A. No. 415 of 1931 at one gold mohur. There will be no order as to costs in the other appeals.