

(1939) 07 CAL CK 0031
In the Calcutta High Court

Chatra Serampore Co-operative Credit Society Ltd.	APPELLANT
Vs	
Bijay Krishna De and Others	RESPONDENT

Date of Decision : 19-07-1939

Acts Referred:

Co-operative Societies Act, 1912 — Section 43

Citation : AIR 1940 Cal 162

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—This appeal is by the Chatra Serampur Co-operative Credit Society Ltd., which was the principal defendant in-a suit brought by Bejoy Krishna De and 1 others. The suit was dismissed by the trial Court but on appeal it was decreed. The-facts giving rise to the present appeal may be briefly stated as follows : One Suprovab Addy borrowed money from the Chatra. Serampur Co-operative Society Ltd. which will hereafter be described as the Society. The two plaintiffs stood surety for the repayment of the money borrowed by Suprovat. Suprovat defaulted in paying the money. A dispute then arose between the Society on the one side and Suprovat and the two plaintiffs who are the sureties on the other regarding the repayment of this sum. This dispute was referred to the arbitration of one Batabyal under Sub-rule 2 of Rule 22, Cooperative Societies Act. Batabyal made an award against Suprovat and the two sureties. From this award, an appeal was taken to the Assistant Registrar of Co-operative Societies under Rule 22, Sub-rule 5. The Assistant Registrar dismissed the appeal. Thereafter, the Society proceeded to execute the award against the two sureties. The two sureties have now instituted this suit for setting aside the award, making the Society, the principal defendant.

2. The defence taken by the Society is twofold. The first part of the defence related to the merits of the case. The Society contended that the decision of the Assistant Registrar was correct. The second branch of the defence was that no suit lay for setting aside an award made pursuant to Rule. 22 of the rules framed

u/s 43, Cooperative Societies Act. Reliance was placed on Sub-Rule 6 of Rule 22 which says that the order of the Registrar or Commissioner on appeal shall not be liable to be called in question in any Civil or Revenue Court and shall be in all respects final and conclusive. The trial Court gave effect to the contention that Rule 22, Sub-rule 6 was a bar to the suit. The lower Appellate Court held that this sub-rule was ultra vires and on that ground went into the merits of the case and held that the claim made against the plaintiffs was barred by limitation.

3. The first point taken on behalf of the appellant is that the lower Appellate Court was in error in holding that Rule 22(6) was ultra vires. It is now well established that Rule 22, Sub-rule 6 is not ultra vires. This has been decided by a Division Bench of this Court in *Dacca Co-operative Industrial Union Ltd. Vs. Dacca Co-operative Sankhya Silpa Samity Ltd. No. 1 and Others*, . The exact point which is now raised in this case was considered in the case referred to and it was held that Sub-rule 6 of Rule 22 which declares that the decision of the appellate tribunal is final and that the Civil Courts have no jurisdiction to interfere with it was not ultra vires. I am bound by this decision and I would add, with respect, that I entirely agree with the views expressed therein. The decision of the Assistant Registrar cannot, in my opinion, be interfered with on the ground that Sub-rule (6) of Rule 22 is ultra vires.

4. The learned advocate appearing on behalf of the respondents then raised another contention in support of the judgment of the learned Judge. He said that the claim as against the sureties was barred by limitation and that, therefore, the reference to arbitration was made without any jurisdiction. He contended further that all the subsequent proceedings were also without jurisdiction and on this ground he says that this Court should interfere with the award and the order passed on appeal from the award inasmuch as the order was passed without jurisdiction. In support of this argument he points out that although limitation so far as the debtor was concerned was saved by a payment of interest such payment would not save limitation as against the sureties. For this proposition, he relies on the decision in *Brojendro Kishore v. Hindusthan Co-operative Insurance Society Ltd. A.I.R.(1918) Cal. 707*. He says that the order on appeal from the award on the face of it shows that the claim was barred by limitation and that, therefore, this Court has jurisdiction to set aside the order inasmuch as it was an order passed without jurisdiction. In my opinion, this contention is unsound. I do not propose to decide whether in this case the claim of the Society was barred as against the sureties. This question would depend on the further question whether all the provisions of the Limitation Act would apply to proceedings under Rule 22, Co-operative Societies Act. Even if it be held that the decision reported in *Brojendro Kishore v. Hindusthan Co-operative Insurance Society Ltd. A.I.R.(1918) Cal. 707* referred to above was binding upon the tribunal constituted under Rule 22 aforesaid, all that can be said is that the tribunal has committed an error. True, it is an error of law but it is not such an error as would make the decision of the tribunal one made without jurisdiction. In my opinion, the decision of the Assistant Registrar is final and conclusive and

the Civil Court has no jurisdiction to re-open the question. That being so, this appeal must be allowed and the decree passed by the lower Appellate Court must be set aside and the decree of the trial Court must be restored. The appellant will get its costs throughout.