

(1937) 12 CAL CK 0015
In the Calcutta High Court

Dacca Co-operative Industrial Union Ltd. APPELLANT

Vs

Dacca Co-operative Sankhya Silpa Samity Ltd. No. 1 and RESPONDENT
Others

Date of Decision : 21-12-1937

Acts Referred:

Co-operative Societies Act, 1912 — Section 43

Citation : AIR 1938 Cal 327

Judgement

1. This appeal is on behalf of the Dacca Co-operative Industrial Union Ltd., and is directed against the judgment and decree of the learned Additional District Judge of Dacca dated 17th July 1935 by which the judgment and decree of the Subordinate Judge of the same place were affirmed. The appellant was the defendant in the suit which was instituted by eight Co-operative Societies called the Dacca Co-operative Sankhya Silpa Societies Nos. 1 to 8. Both the appellant and the respondents are societies registered under the Co-operative Societies Act of 1912 and have their registered offices in the town of Dacca. For the sake of shortness we will hereafter call the appellant "the Union" and the respondents "the Silpa Societies". The eight Silpa Societies were members, i.e. share-holders of the Union. They became members of the Union in 1924 when they took shares of the face value of Rs. 12,000 each which they fully paid up. The Silpa Samities have as their members people of Dacca who manufacture articles from conch shells. One of the objects of the Union was to purchase conch shells from the Madras-Government under a monopoly contract and to sell them to its members. According to the bye-law of the Union, a member as share-holder could get advances or credit to the extent of ten times the face value of the shares held, and in the case of winding up, each share-holder was to be liable as a contributory to the extent of twice the face value of the shares. There are similar bye-laws in each of the eight Silpa Societies in their turn. The Union having, as already stated, in pursuance of one of its objects, obtained from the Madras Government a monopoly to purchase conch shells required for consumption in Bengal, purchased large quantities in 1925 and sold them on credit to the eight Silpa Societies. The balance of the price left outstanding in the year 1925 was

about Rs. 80,000. The Silpa Societies defaulted in paying the same in 1926 or 1927 or at any time thereafter in cash. In 1927 Rai Bahadur Jamini Mohan Mitter, the then Registrar of Co-operative Societies,, Bengal, visited Dacca on a tour of inspection. The representatives of the Silpa Societies complained to him that they were not receiving from the Union dividends on the shares held by them. It also appears that complaints were made by the Union that the Silpa Societies had not up to that time paid up their dues of 1925. A conference of the representatives of the Silpa Societies and of the Union was held at the Dak bungalow where Rai Bahadur Mitter was putting up. The result of the conference has been embodied in his inspection note dated 17th August 1927 which has been marked as an exhibit in the case. The material portion of his note runs as follows:

The Conch Shell Societies hold large shares in the Industrial Union, and it is against such shares that they obtain supplies of shells on credit; This is rather an inconvenient arrangement, as such. shares do not tend to strengthen the working capital of the Union on which profits are made. The best course would be to give them refund of shares, but at the same time to see that each Society retains sufficient shares to an amount not less than 1/10th of the value of the shells given on credit. The balance should be treated as deposit in the Union by the Conch Shell Societies on which interest should be paid. At the same time in calculating the price of shells to be ultimately recovered from the societies, interest should be taken into account. This arrangement will considerably lessen the tangle which has arisen over the declaration of dividend.

2. It is the case of the Silpa Societies that there were further talks between the parties in the presence of the Rai Bahadur on another occasion when he visited Dacca on inspection. According to them, the debt of the Silpa Societies to the Union on account of the price of shells supplied in 1925 was found to be Rupees 80,000 and the Rai Bahadur suggested that the Silpa Societies should surrender to the Union shares of the face value of Rs. 80,000 and retain the balance, i.e. shares of the face value of Rs. 16,000 to carry on transactions in future, and that the shares so surrendered would be taken to wipe off the liabilities of the Silpa Societies for the purchases of the year 1925., The version of the Union is different. It is that there was no question of wiping off the liabilities of 1925. The shares of the face value of Rs. 80,000 were to be surrendered to the Union, and Rs. 80,000 representing the value thereof was to be kept and treated as deposit by the Silpa Societies in the Union, and to enable the Silpa Societies to carry out, on credit, business with the Union, the Silpa Societies were to amend their bye-laws by extending the liability of a member or shareholder of the Societies as a contributory from twice the amount of the face value of the shares held by the member or share-holder to. five times the face value thereof. The Union maintain that these conditions were not fulfilled by the Silpa Societies with the result that the proposal for surrender of shares of the face value of Rs. 80,000 ultimately fell through, and that consequently the Silpa Societies remained liable to the Union for the sum of Rs. 80,000 with interest on account of conch shells,

purchased by them on credit in the year 1925. To recover this amount the Union served notices of demand on the Silpa Societies on 11th July 1930 (Ex. D Series). The Silpa Societies by their letter dated 25th July 1930 in reply to the said demand repudiated liability. They said that

nothing was due on account of the price of the shells, that even if anything was due, no interest was payable, and if there was any liability, that was barred by limitation (Ex. E).

3. Thereafter there was a meeting of the directors of the Union, and in accordance with a resolution passed on 12th September 1930, eight "disputes" in writing were filed by the Union against the eight Silpa Societies on 13th September 1930, before the Assistant Registrar of Co-operative Societies, Dacca Division. This officer had been vested by the Local Government with the powers of the Registrar to hear disputes or to refer them to arbitration under the rules framed u/s 43, Co-operative Societies Act. The disputes were registered on 15th September 1930. The Assistant Registrar did not himself hear the disputes, but on the same day referred them to the Inspector of Co-operative Societies, Dacca," whom he appointed the sole "Arbitrator" under Rule 22 (2) of the rules framed by the Local Government u/s 43 of the Act,, Khan Saheb Anwar Hossain, who was then the Inspector of Co-operative Societies, Dacca Sudder (Dacca town), received the papers from the Assistant Registrar on 16th September 1930, and issued notices to the Union and the Silpa Societies to appear before him on 24th September following with documents and witnesses. On getting the notice from the said Inspector, the Silpa Samities made an application to the Assistant Registrar pointing out that he had appointed an arbitrator without reference to them and asking for an opportunity to nominate an arbitrator. On 24th September the parties appeared before the Inspector and the matter was adjourned to 26th October following. On that day an officer of the Union was examined and cross-examined, and some persons representing the Silpa Societies were also examined. The written statements filed by the Silpa Societies before him are on record. The defence of the eight societies was common. Eight separate judgments were delivered by the Inspector on several dates between 4th November and 8th November 1930. The Inspector however destroyed these judgements and delivered one judgment covering all the cases on 10th November 1930, by which he allowed the claim of the Union, The explanation given by him for this procedure is that as the points were common, he thought it proper to deliver one judgment. The objections that were taken and urged by the Silpa Societies before Khan Saheb Anwar Hossain were in substance the following : (i) that no opportunity had been given to them to nominate another arbitrator; (ii) that the Board of Directors of the Union had no authority to start the proceedings; iii) that there was no liability, as by agreement with the Union the prices of shells had been set off against their shares of the face value of Rs. 80,000 which they had surrendered; (iv) that the claim was barred by limitation.

4. The said objections were overruled by the Khan Saheb. The Silpa Societies

thereupon filed 8 appeals before the Assistant Registrar on 9th December 1930. Besides raising the said objections, they made a grievance that the Khan Saheb had rushed through the proceedings, had not given them sufficient opportunity to place their evidence and that his proceedings were irregular and ultra vires". The Assistant Registrar asked them in writing to produce before him such oral and documentary evidence as they desired to produce. This opportunity they did not avail themselves of, and the appeals were argued on the materials already on record. Four points were urged before the Assistant Registrar on behalf of the Silpa Societies: (i) that the Inspector had no jurisdiction to decide the disputes. This point was placed on the footing that the Silpa Societies had not been given an opportunity to appoint an arbitrator of their own choice; (ii) that the claim of the Union had been satisfied by set-off of the said shares; (in) that the claim was barred by limitation; and (iv) that the Inspector had committed grave irregularities, inasmuch as he had given them, the appellants, no opportunity to place all the materials they had.

5. All these objections were overruled, and five appeals dismissed. The Assistant Registrar held that the appointment of one arbitrator by him without reference to the parties was justified under the rules that the claim was not barred by limitation, that there was no set-off as pleaded. He further held that there appeared to be no substance in the fourth point, as was manifest from the conduct of the appellants in not producing before him any evidence, though given an opportunity to do so. The present suit has been filed by the Silpa Societies for a declaration that the award of the Khan Saheb as confirmed on appeal is void, illegal and ultra vires. There is also a prayer for setting aside the same. In the plaint the proceedings before the Inspector are characterized as illegal, irregular and unfair, but there is no such allegation in respect of the proceedings before the Assistant Registrar on appeal. As we read the plaint, the whole basis is that the award of the Inspector was nullity on various grounds pleaded in the plaint, and that consequently the order of the Assistant Registrar on appeal was also void and of no effect.

6. The first Court arrived at the conclusion that the award of the Inspector confirmed on appeal by the Assistant Registrar was void as being without jurisdiction, on each of the following grounds namely : (i) that disputes between members of a co-operative society and the society cannot be referred to the decision of the Registrar, or of the Assistant Registrar, if so empowered, u/s 43 (2), Clause (1) or under Rule 22 (1), nor can the latter refer them to arbitration. The award of the Khan Bahadur and the appellate proceedings therefrom were ultra vires; (ii) that there was in fact no dispute between the Union and the Silpa Societies. Hence the Assistant Registrar had no jurisdiction to entertain the claims of the Union or refer them to the Inspector for decision; (iii) that if the Registrar does not decide a dispute referred to him, he cannot refer it to an arbitrator, but the parties or one of them must so refer. The word "arbitration" connotes choice by the parties. Rule 22 (2) is accordingly ultra vires, and the award of the Khan Saheb and the subsequent proceedings were without

jurisdiction and so void; (iv) there was vagueness in the order of the Assistant Registrar appointing the arbitrator. There were 12 Inspectors under him, and Khan Saheb Anwar Hossain was only one of them. He therefore had derived no authority to arbitrate from the said order; (v) that Anwar Hossain was guilty of misconduct: (a) he did not give a proper hearing, (b) he took evidence in the absence of the Silpa Societies, (c) he gave time to the said Societies to state their cases, but before that he prepared his award, (d) he delivered eight awards in the eight cases but subsequently tore them up and substituted an award which he did not deliver in the presence of the parties; (vi) that Rule 22 (5) and (6) were ultra vires; and (vii) that the jurisdiction of the Civil Court was not barred.

7. The lower Appellate Court did not agree with the first, third and the sixth of the aforesaid reasons, but agreed with the others. It held that Rule 22 (2), (5) and (6) were intra vires, and that a dispute between a member and a co-operative society could be referred to the Registrar, or Assistant Registrar if so empowered, for decision, and could also be referred by the latter to one arbitrator appointed by him. All the findings of the trial Court touching the alleged misconduct of Anwar Hossain were not noticed or affirmed by the lower Appellate Court. The Court held that Anwar Hossain was on friendly terms with the Union and ought not to have been appointed arbitrator, that he did not apply his judicial mind to the case, and that his proceedings were grossly irregular, as he tore up the awards and later on delivered another award. In the result, that Court dismissed the appeal of the Union.

8. The Union has preferred this second appeal and assails the findings and conclusions of the lower Appellate Court. The respondents not only support the reasons of the lower Appellate Court, but also assail its conclusions on the grounds on which it held against them but on which the first Court had held in their favour. The whole matter in controversy has accordingly been opened up before us. Before we proceed to discuss the several important points which have been canvassed before us at great length, it is necessary for us to notice at this stage that before evidence was led in the trial Court, a preliminary point about the maintainability of the suit had been raised and decided. The matter came before this Court, and the judgment of the Division Bench which dealt with it is reported in *Dacca Co-operative Industrial Union, Ltd. Vs. Dacca Co-operative Sankha Silpa Samity, Ltd. and Others*, . We will have to deal hereafter with the precise effect of that judgment. We will first take up the following points together:

(a) Whether a dispute between a member and a registered co-operative society can be referred for decision to the Registrar or referred by him to arbitration, (b) Whether Sub-rules (2), (5) and (6) of Rule 22 framed by the Local Government under the powers conferred by Section 43 of the Act are ultra vires.

9. In deciding these questions, the Preamble of the Act and the terms of Section 43 are matters for prime consideration, but the general scope of the Act must also be kept in view. The object of the Act is to promote thrift and self-help through cooperative societies. The Act first of all deals with formation and

registration of co-operative societies, and some questions which appertain to the stage of registration are required to be decided by the Registrar and his decision is made final (Section 7). The matters dealing with rights and liabilities of members and the duties and privileges of registered societies are next dealt with. These matters carry us to Section 28. Sections 29 to 34 deal with the property and funds of registered societies, and Sections 36 to 38 with inspection of and inquiries relating to the affairs of a registered society. The matter of dissolution of registered societies is then taken up, and Section 42 (6) provides that the Civil Court would have no jurisdiction in respect of any matter connected with the dissolution of a registered society. Section 43 then provides:

(1) The Local Government may, from time to time, for the whole or any part of the Province and for any registered society or class of such societies make rules to carry out the purposes of this Act. (2) In particular and without prejudice to the generality of foregoing power such rules may provide

for certain matters specified in Clauses (a) to (t) which follow. Clauses (1) and (s) of this sub-section which are of importance in this case run as follows:

The rules framed by the Local Government may-

(1) provide that any dispute touching the business of a society between members or past members of the society, or persons claiming through a member or past member, or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and the enforcement of the decision of the Registrar or the awards of arbitrators;

(s) subject to the provisions of Section 39 determine in what cases an appeal shall lie from the orders of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeal.

10. Rule 22 framed by the Local Government under the powers conferred by Section 43, of the Act is divided into eight sub-rules. The first sub-rule repeats the first portion of Clause (1), Section 43, and the only addition is that the dispute shall be made in writing, Sub-rule (2) says that on a reference being made to him, the Registrar shall, at his discretion, either decide the same himself, or shall appoint an arbitrator, or shall refer it to three arbitrators, in which case each party is to nominate one arbitrator and the third to be nominated by the Registrar who is to be the Chairman of the Board of Arbitrators. When any party fails to nominate an arbitrator within 15 days, the Registrar may himself make the nomination. This last mentioned sentence clearly contemplates the case when the Registrar in his discretion has decided that there should be three instead of one arbitrator. The third and fourth sub-rules deal with matters of procedure. Power is given to the Registrar or arbitrator or arbitrators, as the case may be, to summon witnesses, compel production of documents and

to administer oath, and they are directed to keep a summary of the evidence and to pronounce judgment (decision or award) on the evidence. The fifth sub-rule provides that any person aggrieved by an award may appeal to the Registrar within one month, and any person aggrieved by the original decision of the Registrar may within the said period prefer an appeal to the Commissioner of the division. Sub-rule (6) says that the original decision of the Registrar, and the award of the arbitrator or arbitrators if not appealed against within one month and the appellate decision of the Registrar or of the Commissioner when there has been an 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." Sub-rule (7) provides for execution of decisions and awards by the Civil Courts. Sub-rule (8) bars the appearance of legal practitioner in these proceedings for determining disputes.

11. The first thing that is to be noticed is that the Legislature has expressed itself in clear terms that setting up a tribunal or machinery for deciding disputes concerning the business of a Co-operative Society is one of the purposes of the Act, when such disputes arise between the following classes, viz. (a) between members or persons claiming through them inter se, or (b) between past members and persons claiming through them inter se, or between two parties of either of these categories, or (c) between any one of these classes on the one hand and the committee on the other, or (d) between any such party and any officer, or (e) between a committee and any officer. This is made clear by Clause (1) of Section 43 (2). The whole Act is designed to establish co-operative societies which would be able to assist their members by making loans and supplying materials on more favourable terms than could be secured from outside money lenders. The members are to have larger credit than they would have obtained in the outside market, the security of each society for the money lent or goods supplied to individual members being.. the Collective credit of all the members, for, every member or past member, subject to precise conditions defined either in the Act or the bye-laws, is a surety for the others. By providing that a society registered under the Act may become a member of another registered" society, a hierarchy of Co-operative Societies is contemplated, and as the principle is one of collective security of the members, the field of operation can be indefinitely extended. What the Act aims at, as indicated in the Preamble, is to make agriculturists, artisans and men of limited means, self-sufficient, and to enable them, to make as much profit as possible (put of their own labour, by preventing a good part of the proceeds of their own toil going to money lenders and middle men. In other words, the whole object of the Act is to make the peasants, artisans and men of limited means thrifty and place them above perpetual want. Wastage and spoliation of their substance is to be prevented. If these principles are kept in view, it would necessarily follow that the setting up of a tribunal, original or/and appellate, for the decision of disputes which may arise in connexion with the] liability of members to the society or inter se expeditiously and cheaply would be carrying out the objects of the Act: Zemindara Bank

Sherpur Kalan v. Suca AIR (1924) Lah 418 and Mathura Prasad and Another Vs. Sheobalak, .

12. If the Local Government by rules sets up such a tribunal on the view that proceedings in a Civil Court would be more lengthy and dilatory, and would keep the persons for whose benefit the Act is intended engaged in the pursuit of litigation for a good part of their time, when they could have been more usefully employed in their legitimate occupations, and that such proceedings would also be more expensive, and would eat away the great part of the return of their labour, we do not think that such rules would be ultra vires. It may be that such rules may not come within the express terms of any of the different clauses of Sub-section (2), Section 43 of the Act, such as Clause (1) or Clause (s); these clauses are only illustrative, but they would derive their life and support from the general power conferred on the Local Government by Sub-section (1) of the said section. In this view neither the inartistic language employed in Clause (1) which has been so much criticized before us by the respondent's advocate, nor the limited scope of Clause (3) which contemplates appeals against "orders of the Registrar only, should in our judgment be allowed to restrict the extent of the rule-making power to implement the avowed objects of the Act. As the matter has been canvassed in great detail before us, we may notice the arguments of the respondents based on Clause (1) and Clause (s), Section 43 (2): A great part of those arguments proceeds upon the fallacious assumption that the rules in question would be intra vires, only if they could be brought within the terms of the specific clauses. The argument also is that even if the rules are intra vires, there is no provision either in the Act or in the rules for the decision of a dispute between a member and a Co-operative Society by a special tribunal, and that these disputes can only be settled by "the Civil Courts. We would examine the last point first. The words "concerning the business of a society" occurring in Section 43 (2), Clause (1), and in Rule 22 (1) cannot be limited to disputes concerning the inter-alia management of the society, for, if that were so, the mention of disputes between past members inter se would be out of place;

13. The principal business of a society, as we have noticed above, being to finance its "members a dispute concerning the financial obligations of its members to the society would be a dispute concerning the business of the society: Mafizuddin Ahmad Vs. Narayanganj Central Co-operative Sale and Supply Society, Ltd. and Another, . The society is an artificial person, a body corporate under the Act. It must act, speak and wrangle through human agencies. In every co-operative society there must be a committee (see Section 22) which has been defined in the Act as the "governing body of a registered society to whom the management of its affairs is entrusted". Advancing loans to its members and receiving repayments and recovering the loans are acts of management, and fall within the ordinary duties, and powers of the committee. The committee is to make the demand for repayment from a member on behalf of the society, and if the demand is resisted, then arises a dispute between the member and the committee. The proceedings to recover the money from the

member, no doubt, must be carried on in the name of the society, because it is by the Act made a juristic person, but the immediate occasion for the said proceedings is the dispute between the executive of the society and the member concerned. We hold accordingly that the use of the word "committee" in Section 43 (2), Clause (1) and R.22 (1) is sufficient to indicate a dispute with the society itself, and enable proceedings to be initiated and carried on before the authority referred to therein in the name of the society. The view we are taking is supported by the judgment of S.K. Ghose J. in, *Ram Krishna Sen v. Haripore Co-operative Bank* 89 CWN 1301.

14. Regarding the question as to whether Sub-rules (2), (5) and (6) of Rule 22 are ultra vires or not, the respondent's advocate says that Clause (1) merely lays down that if the Registrar so directs, the matter shall be referred to arbitration; this means that when a dispute is referred to the Registrar, if he decides it himself, well and good, but if he does not, he can only direct the parties to refer it to arbitration: the Registrar himself cannot refer the matter to arbitration, this can be done only by the parties. Secondly, it is argued that arbitration means the decision of a dispute by a Judge of the parties' choice. It is said that the first part of Sub-rule (2), in so far as it contemplates the decision by an arbitrator appointed by the Registrar, is ultra vires, because no choice is given to the parties or any of them: it really empowers the Registrar to force a tribunal on the parties against their will. Regarding Sub-rule (5) the learned advocate says that Section 43 (2), Clause (1), speaks of the decision of an arbitrator or arbitrators as an award. An award is by essence final, that is non-appealable, unless by statute an appeal is provided for as in the Land Acquisition Act. In support of this he refers to the case in *Rangoon Botatoung Co. v. Collector of Rangoon* (1912) 39 IA 197. He says that the Legislature accordingly omitted to mention awards in Clause (s) of Section 43 (2), and he contends accordingly that the appeal to the Assistant Registrar was incompetent. Regarding Sub-rule (6) of Rule 22, he says that it goes beyond Clause (1) of Section 43 (2), which does not empower the Local Government to declare by rule as final or conclusive either the decision of the Registrar or the award of an arbitrator or arbitrators, and that where such was intended, the Act in express terms said so. For this he refers to Section 7 where the Registrar's decision in certain matters is made final, and to Section 42 (6) in which the orders mentioned in that section are made immune from attacks in the Civil Courts. Clause (1) of Section 43 (2) in our judgment has the meaning shown below.

15. If a dispute is filed before the Registrar, he can do any of three things : (i) he can if he so chooses decide it himself; (ii) he may decline to adjudicate simpliciter. In that case the parties are left to their normal remedy in the Civil Court; or (iii) he may decline to adjudicate himself, but at the same time think that the matter is fit for "arbitration".

16. In the last mentioned case, he is to give a direction in that behalf that is, that the matter "shall be referred to arbitration" or in other words, that the

parties cannot seek the enforcement of their rights by recourse to any other tribunal, which means in substance that they cannot go to the Civil Court for enforcement of their rights. If the word "arbitrator" used in Section 43 (2), Clause (1) be held to mean a Judge whom both the contestants have concurred in selecting, and the word "award" means the adjudication of such a Judge, the party against whom the dispute had been filed would be in a position to bring about a stale-mate by refusing to concur in the selection. When in the course of the arguments we pointed this out to the learned advocate of the respondent, he said that in that contingency the other party would be at liberty to file his claim in the Civil Court, a position which we cannot appreciate, seeing that it would defeat the whole purpose of the (Legislature as embodied in Clause (1). The intention clearly is that when the Registrar gives directions for "arbitration" the parties would have no right to have recourse to any alternative proceeding, much less to the comparatively expensive procedure of litigation in the Civil Courts. The use of the word "award" to mean the adjudication of a special tribunal or a special Judge, in the selection of which the parties or any of them may have had no hand, is not unknown in Indian legislation (e.g. the Land Acquisition Act), and we think that the words "arbitration" and "award" in Section 43 (2), Clause (1) have been used merely to signify a special tribunal and the order of a special tribunal, as contra-distinguished from a Civil Court and the decree of Civil Court respectively. That special tribunal may or may not in all respects or substantially conform to the characteristics of an arbitration tribunal strictly so called. The conferment of a right of appeal from the decision of such a tribunal does not involve any inherent inconsistency. If, as we hold, it is within the objects of the Act to set up a special tribunal for the decision of disputes, the power to create such a tribunal in our opinion includes the power to set up an appellate authority, which would create more confidence and a greater sense of security in the disputants. Clause (s) of Section 43 (2) in our judgment is not the only provision giving rule-making power to set up a tribunal of appeal. As the Local Government has been given power to create by rules a special tribunal to decide disputes of the nature and between the parties mentioned] in Section 43 (2), Clause (1), the jurisdiction of such special tribunal, would in our opinion be exclusive. Clause (1), gives that indication, when it says that the Registrar, if he so chooses, may direct that the dispute shall be referred to arbitration. In giving by sub-r, (6) of Rule 22 a finality to the decision of the special tribunal, the Local Government did not in our opinion transgress its powers, but carried out the implications of Clause (1) as well as of general law. We accordingly reject the contention that Sub-rules (2), (0) and (6) of Rule 22 are ultra vires.

17. We will now consider whether the reasons given by the Court of Appeal and which reasons have also been urged before us by the respondent's advocate are sound. If the appointment of Anwar Hossain as "arbitrator" (we repeat the words of the Act and the rules) was bad, all the subsequent proceedings would of course be null and void. By holding that Sub-rule (2) of Rule 22 is intra vires, we have already held that the Assistant Registrar (who had been invested with the

powers of the Registrar by a notification of the Local Government) had power to appoint a single "arbitrator" to decide the dispute filed before him. He exercised that power by "appointing the Inspector of Co-operative Societies, Dacca." The word "Dacca" here means the town of Dacca, for, in the order-sheet the expression-"Dacca Division" is used where the Division is meant. When the witnesses said that there were at the time 12 Inspectors under the Assistant Registrar, who was Assistant Registrar of the Dacca Division, they meant that there were 12 Inspectors of Co-operative Societies in the Dacca Division. Both the Courts below have failed to notice the word "Dacca" in the Assistant Registrar's order. We accordingly hold that Anwar Hossain was validly nominated as "arbitrator". There was obviously a dispute between the Union and the Silpa Societies. The former made a written demand claiming Rs. 80,000 with interest. Shortly before proceedings were started before the Assistant Registrar, and the latter denied the claim. The assertion of one and the denial of the other constituted the dispute. Both the Courts below have sadly fallen into error in thinking that because the plea of the Silpa Samities was that the claim had according to them been wiped out before 1930, there was no dispute in 1930 which could be referred to arbitration. Equally untenable is the view that because the claim of the Union was a bad one or even a false one, there was no dispute. There would in our judgment be a dispute, so long as a claim is asserted by one party and denied by the other, be the claim a false or a true one, or whether it ultimately turns out to be false or true. The pleadings and contentions of the Silpa Samities before Anwar Hossain and before the Assistant Registrar on appeal and the decisions of both these officers amply illustrate that there was a serious dispute between the parties in respect of a large, and not an absolutely groundless, claim.

18. There only remains for us to consider the effect of the irregularity in the conduct of the proceedings before Anwar Hossain. These irregularities, if the findings arrived at by the trial Court be correct, are of the gravest character. He was guilty of misconduct in the sense in which that word is used in arbitration proceedings. All the findings of the first Court were not, however, affirmed by the Appellate Court. There is no evidence or suggestion that the eight awards which he tore up when he delivered later on his single final award were different in effect from the latter. He had examined a witness of the Union, it may be, in the absence of Silpa Society No. 4, which society was only affected by this additional evidence. The allegation was that he had not given sufficient opportunity to Silpa Societies to produce evidence. These alleged irregularities and at least some of the serious ones were made grounds of appeal before the Assistant Registrar by the Silpa Societies. If the appeal to that officer was a competent one, and we have held it to be so, as Sub-rule (5) of Rule 22 is *intra vires*, these complaints on behalf of the Silpa Societies lose much of their importance, as the appellate tribunal gave them opportunities to place fresh evidence before it, an opportunity which the said Societies avoided. No complaint is made by the Silpa Societies regarding the procedure followed by the Assistant Registrar when he heard the

appeals, and none against his conduct. There is no finding, either. If the "award" of Anwar Hossain be a nullity, then and then only the decision of the Assistant Registrar on appeal would go, but if that "award" is not a nullity, no such result would follow. If an award, assuming these proceedings to be arbitration proceedings, be the result of the misconduct of the arbitrator, or if the procedure of the arbitrator, be materially irregular, it has to be set aside by taking appropriate proceedings; it is not a nullity *Sreenath Ghosh v. Raj Chandra Pal* (1867) 8 WR 171 and the cases collected in *Banerjee on Arbitration*, Edn. 4, pp. 325 et seq. The appropriate proceedings for such purpose in the case before us was the appeal to the Assistant Registrar. It is urged by the respondent that the view we are thus taking is inconsistent with the judgment of the Division Bench in this self-same case reported in *Dacca Co-operative Industrial Union, Ltd. Vs. Dacca Co-operative Sankha Silpa Samity, Ltd. and Others*, , which it is contended is *res judicata* between the parties. It is urged that that ease decided that if Anwar Hossain "had" abused his powers" and "his procedure was wholly irregular and illegal," the suit would be maintainable. *Guha and Bartley JJ.*, there point out that the point about the maintainability of the suit arose before any evidence was taken. In the plaint the power to appoint an arbitrator as also the appointment of Anwar Hossain was questioned. These last mentioned questions depended upon fact, and if the facts established those allegations in the plaint, the whole of the proceedings would have been null and void and the Civil Court would have undoubted jurisdiction to declare them void. In the course of the judgment, the fact that the plaint also charged misconduct to Anwar Hossain and alleged grave irregularities on his part was noticed, but the matter then for consideration was whether the suit was to be thrown out in limine or not. That this Court did not intend to decide the matter about the maintainability of the suit finally, if only the facts of misconduct and irregularity were established, apart from the absence of authority in Anwar Hossain to decide the dispute, is apparent from the guarded language used at the bottom of p. 845 of the report. The passage runs thus:

An order if made by a person appointed as arbitrator, who could not be appointed such an arbitrator under law; an order made by such an arbitrator in the absence of powers conferred upon from is a nullity and cannot affect the rights and obligations of the parties.

19. We accordingly overrule all the contentions of the plaintiffs-respondents, set aside the judgments and decrees of the Courts below, allow the appeal and dismiss the plaintiffs' suits with costs throughout.