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**(1954) 07 P&H CK 0012**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Ex. Second Appeal No. 207 of 1953**

Dharam Pal

APPELLANT

Vs

The Jagadhri Thatera Co-operative Society

RESPONDENT

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**Date of Decision :** 08-07-1954

**Acts Referred:**

**Citation :** AIR 1954 P&H 268

**Hon'ble Judges :** Kapur, J

**Bench :** Single Bench

**Advocate :** Shamair Chand and P.C. Jain, for the Appellant; K.S. Chhachhi, for the Respondent

**Final Decision :** Allowed

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## Judgement

Kapur, J.—This is a judgment debtor's appeal against an appellate order of Additional District Judge, J. N. Kapoor, dated 12-12-1952 confirming the order of the executing Court dismissing the objections of the judgment-debtor.

2. The appellant was alleged to be a member of a Co-operative Society which went into liquidation. His liability was determined by the liquidator u/s 42(2)(b), Co-operative Societies Act, and it was finally confirmed by the Industrial Registrar, Co-operative Societies.

3. When the liquidator took proceedings for recovery of money through a Civil Court the Judgment-debtor objected that he had never been given any notice by the liquidator before his liability was determined, and the Courts below relying on a judgment of Falshaw J. in -- "Inder Singh v. Anjuman Imdad Quarza" Civil Revn. No. 691 of 1951 (Punj) (A) have held that notice by a liquidator was not necessary and that a notice given by the Assistant Registrar is sufficient to make a member or a past member liable.

4. The objection of the present appellant was that he was not a member or a past member within the meaning of the words as used in the Co-operative Societies Act and therefore no liability could be imposed upon him.

5. Section 42, Co-operative Societies Act, deals with winding up and Section 42(2)(b) is as follows:

"42(2)(b). A liquidator appointed under Sub-section (1) shall have power (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society."

Therefore the law imposes upon the liquidator the power to determine the liability of members. Rule 25 made u/s 43 of the Act prescribes the rules for winding up and Rules 26(d), (e) and (g) prescribe what the liquidator should do and they are as follows:

"(d) The liquidator shall proceed to determine the assets and liabilities of the society as they stood at the time of the cancellation of its registration, and shall determine the contributions to be made by the members and past members respectively to the assets of the society. He shall also determine by what persons and in what proportions the costs of the liquidation are to be borne.

(e) The liquidator may Issue a summons to any person whose attendance is required either to give evidence or to produce documents. He may compel the attendance of any person to whom a summons is issued and for that purpose issue a warrant for his arrest through the civil court exercising jurisdiction in the area in which the society operates.

(g) He shall make an order noting the names of members and past members of the society and the amount to be realized from each as contribution under Clause (b), Sub-section (2) of Section 42, and as costs of liquidation under Clause (d) of the same sub-section. This order shall be submitted to the Registrar for his approval, and he may modify it or refer it back to the liquidator for further enquiry or other action."

And in Rule (g) is given what orders he can make and it also prescribes that the order shall be submitted to the Registrar for his approval, and he can modify it and refer it back for further enquiry or other action, and it is this order which is to be sent to the Civil Court for execution.

6. The appellant submits that the learned Judge has taken an erroneous view of the law because the liquidator cannot determine the liability of a person without giving him notice and he has relied on several judgments of the Lahore High Court, and I will quote only two Bench decisions firstly -- "Mahbub Hussain Shah v. Anjuman Imdad Qurza" AIR 1942 Lah 129 (B), which was followed by another Bench in -- "Abdul Ghani v. Anjuman-in-Imdad Qarza Bahami", Chak No. 127 RB AIR 1942 Lah 237 (C). In both these Judgments it was held that any determination by a liquidator without giving an opportunity to the person whose liability is to be determined is a nullity as this is contrary to natural justice and these two judgments have the weight of very high authority. By Rule 26(d) the liquidator has to determine the contributions to be made by the members and past members and by Rule (e) he is given the power to summon persons to give

evidence or to produce documents and then follow Rules (f) and (g). The latter entitles the liquidator to make an order noting the names of members and past members and the amounts to be realized from them.

The sequence indicates that the liquidator is by the rules empowered to summon evidence and the object can be none other than to determine the liability of a member on the evidence before him. Such evidence cannot be one-sided, for no "quasi" judicial tribunal can act without hearing both sides. That appears to be the effect of 8. 42(2) (b) also.

7. The notice by the Registrar is not contemplated by the statute or the rules and the power given to him is of a limited nature more in the nature of a revising authority who can approve, modify or order further enquiry. The notice sent by him is therefore contrary to law and is ineffectual.

8. For the respondents an unreported Single Bench judgment of this Court "Civil Revn. No. 691 of 1951 (Punj) (A)", decided by Falshaw J., has been quoted, but it appears that the judgments which have been quoted before me were not brought to the notice of the learned Judge. Besides, the learned Judge was not very much impressed by the doctrine of natural justice which is a cardinal principle of administration of justice in this country, and which has been emphasised by the Supreme Court in -- *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, (per Mahajan J.) and in -- *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, and in -- *Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras*, I would therefore respectfully differing from the the opinion of the learned Judge prefer to follow the Bench decisions of the Lahore High Court supported as they are by the statute and rules. As the liquidator proceeded without hearing the parties his orders are a nullity and they cannot therefore be executed. I would therefore allow this appeal, set aside the orders of the Courts below and dismiss the application for execution. The appellant will have his costs in this Court and in the Courts below.