(1941) 09 PAT CK 0020

In the Patna High Court

Domi Ram Chaudhuri APPELLANT

Vs

Liquidator, Nawadah Bazar Co-operative Society RESPONDENT

Date of Decision : 10-09-1941

Acts Referred:

Bihar and Orissa Co-operative Societies Act, 1935 — Section 57(2)
Public Demands Recovery Act — Section 18

Citation : AIR 1942 Patna 148

Hon'ble Judges : Harries, C.J;Fazl Ali, J

Bench : Full Bench

Judgement

Fazl Ali, J.—This is a Letters Patent appeal by the plaintiff against a decree of Agarwala, J., in a second appeal. The plaintiff is a member of the Nawadah Bazar Co-operative Society which is now in liquidation. The Registrar of Co-operative Societies had made an award against the plaintiff in respect of a sum of Rs. 1200 odd. To enforce the award the liquidator took proceedings under the Bihar and Orissa Public Demands Recovery Act for the realisation of this amount, and the Certificate Officer attached a house belonging to the plaintiff. The plaintiff objected to the attachment on various grounds, one of which was that he was an agriculturist and consequently the house could not be attached under see. 18, Public Demands Recovery Act. The objection was overruled and the plaintiff thereafter instituted the present suit to restrain the liquidator from selling the house and to obtain a release of the house from attachment. The suit was dismissed by the Munsif but decreed on appeal. The liquidator thereupon preferred a second appeal, and Agarwala J. held that the suit of the plaintiff was not maintainable in view of the provisions of Sub-section (2) of Section 57, Bihar and Orissa Co-operative Societies Act. Sub-section (2) of Section 57 of the Act provides as follows:

While a society is in liquidation, no suit or other legal proceeding shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.

2. It is not disputed that the leave of the Registrar was not obtained by the plaintiff before the institution of the suit, and the question is whether the suit can be proceeded with in view of this provision. If this is a suit on a matter touching the affairs of the society, it is clear that the suit could not be instituted and cannot be allowed to be proceeded with. It is contended on behalf of the appellant that this is not a suit touching the affairs of the society, because all that the plaintiff wants to be adjudicated in the suit is that u/s 18, Public Demands Recovery Act, his house cannot be attached. In my opinion, however, this contention cannot be accepted. The liquidator in this case is proceeding as a liquidator to realise certain debts due to the society, and he wants to realise the debts by the sale of a house belonging to the plaintiff. The object of the suit is to prevent the liquidator from realising the debts in question by the sale of the house. It is difficult to hold, in these circumstances, that the suit is not a suit on a matter touching the affairs of the society. In Section 44(7) it is provided that when the affairs of a society have been wound up, the liquidator shall deposit the records of the society in such place as the Registrar may direct.

3. The preceding Sub-sections of this section lay down as to how the affairs of the society are to be wound up. Section 44(3)(a) empowers the liquidator to institute and defend suits and other legal proceedings on behalf of the society by his name of office, and Clause (b) empowers him to determine and realise all sums due to the society from any person. It is thus clear that the realisation of a sum due to the society is an affair of the society, and unless such debt is realised "the affairs of the society" cannot be wound up under Sub-section (7) of Section 44. It was further pointed out by the learned advocate appearing on behalf of the liquidator that Expl. (1) to Section 48(1) of the Act provides that a claim by a registered society for any debt or demand due to it from a member, etc., shall be a dispute touching the business of the society even in case the only point at issue is the ability to pay or the manner of enforcement of payment. Here there is a dispute between the parties as to the manner of enforcement of payment because a certificate has already been obtained in regard to the debt. There can be no doubt that the dispute between the parties is a dispute touching the business of a registered society according to this Act, and it seems to me that it is very difficult to hold that though the suit ''involves a dispute touching the business of a society it is not a suit touching the affairs of the society. In my opinion the learned Judge of this Court has rightly held that the suit could not have been instituted and cannot be proceeded with under Sub-section (2) of Section 57, Bihar and Orissa Co-operative Societies Act. Our attention was drawn on behalf of the appellant to Section 5, Public Demands Recovery Act, which runs as follows:

(1) When any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form; Provided that in the case of an order framed by a liquidator under the Co-operative Societies Act, 1912, the written requisition shall be sent by the Registrar of Co-operative Societies, Bihar and Orissa. (2) Every such

requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable, with a fee of the amount which would be payable under the Court-Fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

4. It was contended on behalf of the appellant that according to this provision the Registrar would be virtually in the position of the plaintiff in the certificate proceeding, and he would also be a certificate holder in the sense in which that expression has been used in the Act. That being so, it is said that the present suit is in fact a suit against the Registrar and therefore Section 57(2) should not be applied to this case. Now, this argument, in my opinion, cannot help the appellant. The argument amounts to this that the suit should have been brought not against the liquidator but against the Registrar. If that is so, the suit must fail, because it has not been brought against the proper party. The argument also cannot prevent the application of Section 57(2), because in fact the suit has been brought against the liquidator. If the suit is brought against the liquidator and it appears that it is a suit in regard to a matter touching the affairs of the society, Section 57(2) is clearly applicable, and the suit cannot be allowed to be proceeded with. As a last resort a prayer was made on behalf of the appellant that he may be granted permission to withdraw the suit with liberty to bring a fresh suit. In my opinion this prayer cannot be allowed at this stage. There is no doubt that we have the power to allow the appellant to withdraw the suit, but as was pointed out in Rajrikh Pandey v. Sham Shanker Dubey .I.R. 1930 Pat. 410, where a suit has reached the stage of a Letters Patent appeal it would not be right to allow the plaintiff to withdraw the suit in order to bring a fresh one. I would, in these circumstances, dismiss this appeal with costs.

Harries, C.J.

I agree.

