

(1940) 01 PAT CK 0002
In the Patna High Court

Gaya Prasad

APPELLANT

Vs

Liquidator Sadr Central Co-operative Society

RESPONDENT

Date of Decision : 31-01-1940

Acts Referred:

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

Citation : AIR 1940 Patna 253

Hon'ble Judges : Rowland, J;Agarwala, J

Bench : Full Bench

Judgement

Agarwala, J.—This is an appeal by the decree-holder from a decision of the Subordinate Judge of Gaya confirming a decision of the Munsif. The relevant facts were as follows: One Sarjoo Lal was a Director of the Gaya Central Co-operative Bank and the holder of 40 partly-paid preference shares. In accordance with the rules of the Bank he had nominated the plaintiff as the person to whom moneys due to him were to be paid in the event of his death. On his death the Bank having gone into liquidation the liquidator called upon the plaintiff to pay the balance due on the preference shares left by Sarjoo Lal.

2. Thereupon the plaintiff instituted a suit for a declaration that the liquidator's order calling upon him to pay this balance was ultra vires and for an injunction restraining the liquidator from executing the contribution order. The suit was decreed and the liquidator filed an appeal to this Court. That appeal was dismissed with costs. The plaintiff then applied to the Civil Court for execution of the decree for costs. The Courts below have concurred in holding that the application is barred by Section 57(2), Bihar and Orissa Cooperative Societies Act (Bihar and Orissa Act, VI of 1935). That Sub-section provides:

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.

3. The plaintiff, appellant did not ask for or obtain the leave of the Registrar to institute the present execution proceeding. The only question to my mind is whether application in execution is a matter touching the affairs of the Society within the meaning of Sub-section 2 of Section 57. That Sub-section imposes a bar to certain proceedings in the case of a Society that is in liquidation. The affairs of a Society in liquidation are confined to the winding up of the Society and the payment of its debts, the collection of amounts due to it and of contributions from members from whom contributions are due in the event of the other assets of the Society being insufficient to pay its debts. The payment of debts of the Company whether decretal or otherwise is to my mind clearly a matter touching the affairs of the Society and the proceedings to realize such debts are barred by Sub-section 2 of Section 57 except by leave of the Registrar. I would therefore dismiss this appeal with costs.

Rowland, J.

4. I agree. The Subordinate Judge appears to have been of opinion that this execution proceeding was barred both by Sub-section 1 and by Sub-section 2 of Section 57, Bihar and Orissa Co-operative Societies Act, 1935. I entirely agree that this is barred by Sub-section 2 and it is not necessary to express an opinion as to the correctness of the Subordinate Judge's view that it was also within the mischief of Sub-section 1.