
(1938) 10 MAD CK 0036
In the Madras High Court

Hejmady Co-operative Society by the present Official
Liquidator Mr. K. Sarvothama Rao

APPELLANT

Vs

H. Veeraiya Naika

RESPONDENT

Date of Decision : 06-10-1938

Acts Referred:

Citation : AIR 1939 Mad 282 : (1938) 48 LW 903 : (1938) 2 MLJ 980

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This is an appeal arising out of an application by the liquidator of a Co-operative Society u/s 47(6) of the Madras Co-operative

Societies Act. Section 47(3)(b) describes the powers of the liquidator in the following terms:

To determine from time to time the contribution to be made or remaining to be made by the members or past members or by the estates or

nominees, heirs or legal representatives of deceased members or by any officers or former officers to the assets of the society such contributions,

including debts due from such members or persons.

2. The liquidator in the present case passed an order determining what contribution should be made by the members under this sub-section and

applied to the Court under Sub-section (6) which runs as follows:

Save as provided in Sub-section (5) orders under this section shall on application be enforced by any Civil Court having local jurisdiction in the

same manner as a decree of such Court,

to enforce the order against the respondent. The respondent raised the plea that he was not a member of the society and therefore was not bound

by the liquidator's order.

3. Both the Courts below instead of adjudicating upon this plea have held (1) that the liquidator had no jurisdiction to decide whether the

respondent was a member or not and (2) that the Court itself to which the application was made under Sub-section (6) would be equally

powerless to decide this question.

4. It is very difficult for me to understand how the Courts below could have brought themselves to reach a conclusion like this which is so

manifestly inconvenient to everybody concerned in the case. It is quite obvious that in one sense the liquidator must have jurisdiction to decide who

are members and who are not. Otherwise it is of course impossible for him to pass any kind of intelligible or reasonable order under Sub-section

(3)(b). The whole question of the calculation of the contribution to be made by the members will of course depend upon the number of these

members. Unless the liquidator can satisfy himself at least provisionally as to the number of members in the society no order under the sub-section

will be possible. The matter has been considered to some extent by a Bench of this Court of which I was a member in *Savcar U. Vaikunta Bhat*

Vs. K. Sarvothama Rao, Official Liquidator of Uppinangady Co-operative Society No. 1198, Sub-Deputy Registrar of the Mangalore Section, .

All that is stated in that judgment is:

We are unable to find in the Act any clear indication that the liquidator can determine in such a way that this determination is not subject to be set

aside by the Civil Courts, who are liable either as members or as past members of the society to contribute to the assets of the society.

5. The situation therefore is that in the present case, the liquidator has decided that the respondent is a member. This decision would be subject to

any proceedings which may be taken by either party in the Civil Court to set it aside. Neither party has taken any such proceeding. The liquidator

however relying on his own view of the status of the respondent has applied under Sub-section (6). The respondent raised the plea that he is not a

member. That plea when analysed amounts to this, that the liquidator has no jurisdiction to pass the order against him which he now wishes the

Court to enforce. When a plea is raised involving the question of the nullity of the decree sought to be exercised that plea has clearly to be decided

by the executing Court. There seems to be no bar at all to the Court below following what is obviously the most convenient procedure in this case,

and proceeding to decide whether the respondent is or is not a member bound by the order of the liquidator. It is impossible for me to understand

why without deciding this question, the lower Courts should immediately assume that simply because the liquidator has included the respondent

amongst the list of members, he (the liquidator) has done something which he has no jurisdiction to do.

6. This appeal which incidentally, I may notice, has not been seriously opposed on behalf of the respondent will accordingly be allowed and the

application restored to the file of the learned District Munsiff of Karkal for disposal according to law after finding whether the respondent is a

member of the society or not.

7. Costs will abide the event.