

(1940) 05 CAL CK 0004
In the Calcutta High Court

Lakshmi Narayan Kolley

APPELLANT

Vs

Lalit Mohan Bhattacharjee, Secretary, Chatra-Serampore Co-operative Credit Society Ltd.

RESPONDENT

Date of Decision : 30-05-1940

Acts Referred:

Co-operative Societies Act, 1912 — Section 43

Citation : AIR 1941 Cal 152

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—The judgment-debtor is the appellant in this ease and the decree-holder is the Chatra-Serampore Co-operative Credit Society Ltd. It appears that in 1932 a dispute arose between the judgment-debtor and the Co-operative Credit Society, which was referred to the Registrar under the provisions of Rule 22 of the statutory rules framed u/s 43, Co-operative Societies Act (2 of 1912). The Registrar referred the matter to the Assistant Registrar who on 31st May 1932 recorded an order in favour of the Society which entitled the latter to realize the sum of Rs. 114-12-0 from the judgment-debtor together with interest at the rate of 9 3/8 per cent. per annum. No steps appear to have been taken to communicate this award officially to any of the persons affected thereby until 13th October 1935, when it was forwarded to the Society with the Assistant Registrar's letter No. 13449B of that date.. Admittedly, awards under Rule 22, Co-operative Societies Rules, are executable as decrees-and this being the case, the provisions of Article 182 (1), Limitation Act, will apply. It therefore follows that the -Society should have applied for execution within three years of the date of the award. Actually they instituted execution proceedings on. 26th October 1938, which was the re-opening date after the civil Court vacation of 1938. In these circumstances, the execution proceedings taken by the Society are within time if limitation runs from the date of the Assistant Registrar's letter, by which the award was communicated to the Society, but will be out of time if limitation is held to run from the date of the order which was made on 31st May 1932. The

question therefore which requires consideration is whether the date of the award should be deemed to be the date of the decision of the arbitrator or the date on which such decision is communicated to the party concerned.

2. Rule 22 of the rules under the Co-operative Societies Act, which prescribes the procedure to be followed in connexion with matters of this sort, does not provide that the decision of the Registrar or the award of an arbitrator appointed under the rule should be communicated to any of the parties directly interested in that decision or award. But obviously it must be taken to be the intention of the framers of the rules that a decision of this nature should be communicated to the parties affected thereby. In this connexion, it may be noted that there is also no provision in the rules contained in Schedule 2, Civil P. C., that, in connexion with an arbitration without the intervention of the Court, an award should actually be communicated to the parties concerned. In such matters, limitation as regards the filing of the award, runs from the date of the award under Article 178, Limitation Act, and it has been held by this Court in *Sreenath Chatterjee v. Kylash Chunder* ('74) 21 WR 248, *Dutto Singh v. Dosad Bahadur* ('83) 9 Cal 575 that in such a case the date of the award does not mean the date written therein, but the time when it is handed over to the parties, so that they may be able to give effect to it. Similarly, in connexion with the matter with which we are now dealing, it is clear that the party in whose favour an award has been made, cannot give effect to it until it has been communicated to him, and, in my view, the principles laid down in the above mentioned cases should be applied in calculating the period of limitation for executing as a decree an award made under Rule 22 of the rules framed under the Cooperative Societies Act. In this view of the case, the date of the award should be regarded as the date on which such award is officially communicated to the person or persons affected thereby. That date in the present case was 10th October 1935. As the last date for taking execution proceedings under Article 182 (1), Limitation Act, fell within the civil Court vacation of 1938, the requisite application for execution was made on the re-opening date, viz., on 26th October, so it must be regarded as within the time. The decision of the lower appellate Court is, therefore, correct and it will be affirmed. This appeal is consequently dismissed. I make no order with regard to costs. Leave to appeal under Clause 15, Letters Patent, is refused.