**(1940) 11 PAT CK 0007**

**In the Patna High Court**

Liquidator Nawadah Bazar Co-operative Society — APPELLANT

Vs

Domi Ram Chaudhary — RESPONDENT

**Date of Decision :** 21-11-1940

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63, 80
Co-operative Societies Act, 1912 — Section 42(1)
Public Demands Recovery Act — Section 46

**Citation :** AIR 1941 Patna 438

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

**Bench :** Division Bench

## Judgement

Agarwala, J.—The plaintiff respondent is a member of the Nawadah Bazar Co-operative Society in liquidation. The Registrar of Co-operative Societies made an award against him in respect of Rupees 1200 odd. The liquidator thereupon took proceedings under the Bihar and Orissa Public Demands Recovery Act for realisation of this amount and the certificate officer has attached a house belonging to the plaintiff.

2. The plaintiff objected to the attachment on two grounds. First, on the ground that the amount claimed from him is not due and secondly on the ground that he was an agriculturist and that consequently the house was exempt from attachment u/s 18 of the Act. The objections were overruled.

3. The plaintiff has therefore instituted the present suit to restrain the liquidator from selling the house and to obtain a release of the house from attachment. The plaintiff''s case was that he borrowed Rs. 290 from the Society and that in respect of this debt Rs. 214 was still duo from him but he denied that anything more was due from him. He alleges that he did approach the society for a further loan of Rupees 600 and that the secretary of the society induced him to sign an acknowledgment for the money in anticipation of the loan being granted but that in fact it was never granted. He averred that the secretary had fraudulently made entries in the books to evidence the alleged loan of Rs. 600. The defendant

denied the alleged fraud and pleaded that the suit was not maintainable; the plaintiff''s allegation that he was an agriculturist was also denied. Both the Courts below have found that there was no fraud. The first Court held that Section 46, Public Demands Recovery Act, was a bar to the maintainability of the suit. The appellate Court however has disagreed with that view and, holding that the plaintiff is an agriculturist, has decreed the suit.

4. In this appeal by the defendant appellant the first contention is that the suit is barred by Section 80, Civil P.C., for want of notice, it being contended that the liquidator of the society is a public officer within the meaning of that section.

5. In Anna Leticia De Silva v. Govind Balvant AIR 1920 Bom. 50 a receiver appointed under the Provincial Insolvency Act was held to be a public officer within the meaning of Section 80, Civil P.C., and a similar view was taken of a receiver appointed in a civil suit, in Prasaddas Sen and Others Vs. K.S. Bonnerjee, .

6. In Sangakhda Kalan Co-operative Bank Hoshangabad v. Ayodhyaprasad Shiamlal AIR 1939 Nag. 232 Pollock J., sitting singly, held that a liquidator appointed by the Registrar u/s 42(1), Cooperative Societies Act, (2 of 1912) is a public officer. Assuming that the liquidator appointed under the Bihar and Orissa Cooperative Societies Act (6 of 1935) is a public servant within the meaning of Section 80, Civil P.C., that alone is not sufficient to decide the question whether the present suit is maintainable or not without notice. Section 80 bars the institution of a suit unless notice has been given only when the suit is against a public officer and is in respect of any act done or purporting to be done by the public officer in his official capacity. The mere fact that the public officer concerned is a defendant in the suit is not sufficient to determine whether a notice is required u/s 80. For instance, when an Official Assignee or a Receiver is impleaded in a suit to realise a charge on the property of the insolvent which is vested in him, and no act or omission on the part of the receiver is alleged, notice is not necessary: see Skippers and Co. Vs. E.V. David and Others .

7. In the present suit no relief is claimed against the liquidator of the society. The object of the plaintiff in the suit is to obtain a decision as to whether his house is liable to be attached, he being an agriculturist as has been found by the Court of appeal below.

8. The facts in the Nagpur case Bishun Chand v. Gridhari Lall AIR Nag. 232 to which I have referred were somewhat similar to those of the present case. There the Registrar had issued an award against one Ramcharan for a debt due by the latter to the Co-operative Society of which he was a member, and in execution of the award the liquidator attached a house. Two other persons objected to the attachment on the ground that the house belonged to them. The objections were overruled and they instituted a suit under Order 21, Rule 63, Civil P.C., to establish their title. No notice having been served on the liquidator it was held that the suit could not be maintained. In the Bombay case Siquiera v. Noronha

 

AIR 1934 P.C. 144 referred to above the defendant had been appointed a receiver in an insolvency matter. The plaintiff brought a suit out of which the appeal arose for a declaration that the property belonged to her and not to the insolvent. The Court held that since the receiver was appointed under the Provincial Insolvency Act he became a public officer and was protected by Section 80, Civil P.C., against any plaintiff who filed a suit against him with regard to any act done by him as such receiver without giving the requisite notice. With great respect to the learned Judges who decided that case I am unable to find what act it was that the receiver had done or purported to do in his official capacity. The true scope of Section 80 is best illustrated by the Calcutta case to which I have referred. There the Official Receiver of the High Court had been appointed in a civil suit to act as a receiver. A suit was instituted against him claiming damages for willful default and neglect in his duty as receiver and it was held that the suit could not proceed in the absence of notice u/s 80. In my opinion, the present suit is not against the receiver in respect of any act done or purporting to be done by him in his official capacity requiring the service of notice u/s 80. The next objection of the maintainability of the suit was based on Sub-section (2) of Section 57, Bihar and Orissa Cooperative Societies Act. That Sub-section provides

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

9. Section 44(3)(a) empowers a liquidator to institute and defend suits and other legal proceedings on behalf of the society by his name or office and Clause (b) empowers him to determine and realise all sums due to the society from any person. By the opening words of the Sub-section, however, the powers of the liquidator are made subject to the power of control and revision of the Registrar of Co-operative Societies and Sub-section (6) provides that the orders of the Registrar in revision, if any, shall be final. Section 56 empowers a Registrar on application or of his own motion to revise any order passed by a person exercising the powers of a Registrar or by a liquidator u/s 44.

10. The result of these various provisions appears to be, in their application to the facts of the present case, that the liquidator was empowered by Section 44(3)(a) to take proceedings to execute the award, and the plaintiff, being aggrieved by the liquidator''s action in taking such proceedings failed to apply to the Registrar to interfere with the liquidator''s act or to grant leave for the institution of a suit u/s 57(2). He instituted a suit without asking the Registrar to exercise his powers of revision or to grant leave for the institution of the suit. In my opinion, he was not entitled to do so and the suit must fail in the absence of the Registrar''s sanction for its institution.

11. I would therefore allow this appeal and set aside the decree of the Court below. The appellant is entitled to his costs throughout. Leave to appeal under

the Letters Patent is granted.

 