

(1943) 02 CAL CK 0012
In the Calcutta High Court

Meherdi Munshi

APPELLANT

Vs

Inspector, Co-operative Societies, Golpara circle and Ex.
Officio Liquidator, Tiamari Janahari Manohari Goalia Bank
Under Liquidation

RESPONDENT

Date of Decision : 02-02-1943

Acts Referred:

Co-operative Societies Act, 1912 — Section 42(2)(b), 43

Citation : AIR 1944 Cal 245

Judgement

1. The plaintiff is the appellant in this case and the appeal arises with reference to a suit brought by the plaintiff for a declaration that an Order of contribution made by the liquidator of a certain co-operative banking society was null and void. The Order in question purported to have been made under the provisions of section 42 (2)(b), Co-operative Societies Act and was in respect of the sum of Rs. 261-7-0. The plaintiff's case was to the effect that there had been no proper compliance with the rules framed by the Government of Assam u/s 43 of the Act as no proper enquiry had been held and no evidence was taken by the liquidator before the issue of the order.

2. The suit was defended by the Inspector of Co-operative Societies, Goalpara, who had been appointed as liquidator of the society under the provisions of section 42 (1), Co-operative Societies Act. His case was to the effect that the suit was not maintainable, that it was barred by limitation and that contribution Order had been legally made. Both the Courts below decided that the liquidator's Order was legal and, further, the lower appellate Court held that the plaintiff's suit was barred by limitation. It is, however, admitted in this Court that no question of limitation can possibly arise.

3. The learned advocate for the respondent has put forward a preliminary objection to the effect that the civil Courts have no jurisdiction to deal with this matter having regard to the provisions of section 42(6), Co-operative Societies Act. The learned Munsif dealt with this point and considered that he was bound by a decision of Section K. Ghose J., in Shillong (Assamiya) Cooperative Bank,

Ltd. v. Chiniram Medhi 41 C. W. N. 670 and he held that the civil Court had jurisdiction to entertain the plaintiff's suit. This point was not discussed in the judgment of the learned Subordinate Judge. Section 42(6), Co-operative Societies Act on which the learned advocate for the respondent relies is in the following terms:

Save in so far as is hereinbefore expressly provided, no civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

4. The learned advocate for the appellant contends that this subsection should not be held to be applicable in a case such as that with which we are now dealing because the plaintiff's case is to the effect that the liquidator had not held an enquiry as contemplated by the provisions of Rule 41 and in particular he has referred me to Rule 41 (j) which requires the liquidator to keep short notes of the depositions of persons summoned to give evidence. It would appear, however, from Clause (e) and (f) of Rule 41 that the liquidator has a discretion in the matter of summoning persons to give evidence and that the question of holding a semijudicial enquiry would only arise in a case in which the liquidator did not think it necessary to make a summary Order under Clause (e) of the rule.

5. Even if it be assumed, however, that the provisions of Rule 41 actually contemplate some sort of a semi-judicial enquiry by the liquidator before he makes a contribution Order u/s 42(2)(b), Co-operative Societies Act, the question which requires consideration is whether failure to comply with the provisions of the rules would in itself be sufficient to confer jurisdiction on the civil Court to entertain a suit the purpose of which was to question the validity of such an order. The learned advocate for the appellant relies on certain observations contained in S.K. Ghose J.'s judgment in Shillong (Assamiya) Cooperative Bank, Ltd. v. Chiniram Medhi 41 C. W. N. 670. In that case, however, the learned Judge was dealing with an Order which the Registrar of Co-operative Credit Societies had made with regard to a dispute under the provisions of a Rule corresponding to Rule 32(7) of the present rules u/s 43 of the Act. This Rule purported to give finality to a decision of the Registrar with reference to such a dispute. The learned Judge, however, had no occasion to consider the effect of section 42(6), Co-operative Societies Act. Another case on which the learned advocate relies is that in Dacca Co-operative Industrial Union, Ltd. Vs. Dacca Co-operative Sankha Silpa Samity, Ltd. and Others, .That was also a case which fell under Rule 22(6), Bengal Government Rules which corresponds to Rule 32(7) of the Assam Rules to which reference has already been made. In the last cited case the learned Judges held that the civil Court had jurisdiction to entertain a suit in which the appointment of an arbitrator and the procedure adopted by him had been called into question. It would appear, however, from the judgment in that case that the basis of the decision was that the Rule presupposed the valid appointment of an arbitrator. The plaintiffs had actually questioned the power to appoint the arbitrator and it followed that a question of jurisdiction was involved

as, according to the plaintiffs' case, an Order made by a person who could not be legally appointed an arbitrator would be of no effect. The present case does not relate to an Order made either by the Registrar or by an arbitrator under Rule 32(7). On the other hand, the Order which has been called in question was one which was issued by a liquidator in connexion with the dissolution of a registered society.

6. In a case such as this it might possibly be argued that a civil Court has jurisdiction to interfere with an Order made by a liquidator if it could be shown that the society in question had not been validly dissolved for it is clear that the language used by the Legislature in section 42(6) of the Act presupposes a valid and proper dissolution of a society in accordance with the terms of the Act. In the present case, it has not been contended that there was no compliance with the requisite formalities set forth in section 39 in connexion with the dissolution of the society. On the other hand, the plaintiff's case is merely to the effect that, after the Order of dissolution had been made, a defect in procedure occurred in connexion with the subsequent steps taken by the liquidator before a contribution Order was made against the plaintiff. In my opinion, there can be no doubt that it was the intention of the Legislature to oust the jurisdiction of the civil Court with regard to the proceedings taken by a liquidator after an Order for the dissolution of the society has been made. If any person has a grievance with regard to any of the matters mentioned in Rule 41 it is open to him to move the Registrar in the matter and this official has power under Rule 42 to modify or reverse an Order made by the liquidator under Rule 41. No further remedy is provided either by the rules or by the statute. Similar views have been expressed by the Allahabad High Court in Mathura Prasad and Another Vs. Sheobalak, and by the Bombay High Court in Ganpat Ramrao v. Krishnadas Padmanabh AIR 1920 Bom. 62. A different view seems to have been taken by the Lahore High Court in Anjuman-i-Imdad Qarza Bahami Bafindagan Katra Hakimian, Amritsar v. MehrDin AIR 1937 Lah. 931 but in the latter case the learned Judges do not appear to have given full effect to the language which has been used by the Legislature in section 42(6) of the Act and I prefer to follow the views which had been previously adopted by the High Courts of Allahabad and Bombay.

7. In view of what I have stated above, I must hold that the civil Courts have no jurisdiction to entertain the plaintiff's suit. This appeal must, therefore, be dismissed on grounds other than those on which the judgment of the learned Subordinate Judge is based. I make no Order with regard to costs. Leave to appeal under Clause 15, Letters Patent, is refused.