

(1959) 01 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Second Appeal No. 1 of 1954

Pathena Mandal Co-operative Stores Ltd. and Others

APPELLANT

Vs

Mangulal and Others

RESPONDENT

Date of Decision : 30-01-1959

Acts Referred:

Bharatpur State Co-operative Societies Act, 1915 — Section 41(6)
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1960 Raj 148 : (1959) RLW 484

Hon'ble Judges : D.S. Dave, J

Bench : Single Bench

Advocate : R.A. Gupta and R.P. Goyal, for the Appellant; R.C. Vyas, for the Respondent

Final Decision : Allowed

Judgement

D.S. Dave, J.—This is an appeal by some of the defendants against the order of the learned District Judge, Bharatpur, dated 19-10-1953, remanding the case for retrial.

2. The facts giving rise to it are that respondent No. 1 Mangulal filed a suit for recovery of Rs. 2412/8/- in the court of the Civil Judge, Bharatpur, on 22-12-1951. His case was that in January, 1949, a co-operative society in the name of Pathona Mandal Co-operative Stores Ltd., was formed and got registered. The plaintiff purchased 25 shares of Rs. 100/- each and thus his total contribution was Rs. 2500/-. About 2 years prior to the institution of the suit, the registration of the society was cancelled and a liquidator was appointed. It was further stated that the said co-operative society had incurred losses and therefore each shareholder was required to pay Rs. 3/8/- as loss on each share. Thus, the total loss which came to the share of the plaintiff was Rs. 87/8/- and he was entitled to receive the remaining amount of Rs. 2412/8/- back from the society. It was alleged that defendants Nos. 2 to 26, who were members of the society, had colluded amongst themselves and they had withdrawn their amount

without paying losses which came to their share. It was further alleged that they had taken away the plaintiff's money without any authority. It was, therefore, prayed that a decree for Rs. 2412/8/-be given against the defendants.

3. It seems from the record that the liquidator did not file any reply in the trial court. Some of the defendants, however, contested the case and one of their pleas was that a civil court had no jurisdiction to entertain and try the suit in view of the provisions of Section 41(6) of the Bharatpur State Co-operative Societies Act No. 1 of 1915. This objection found favour with the trial court which dismissed the suit. Aggrieved by that decree dated 9-2-53, the plaintiff went in appeal which was heard by the learned District Judge, Bharatpur. It was held by the learned Judge that the suit was triable by a civil court and. therefore, he set aside the decree and remanded the case for retrial. It is against this order that the present appeal has been filed under Order 43 Rule 1, C. P. C.

4. Learned counsel for the appellants has urged that under the Bharatpur State Co-operative Societies Act No. 1 of 1915, which will hereinafter be referred to as the Act, when the registration of the Co-operative society was cancelled by the Registrar u/s 38 of the Act, Shri Kishan Sahai was appointed as liquidator. u/s 41 of the Act, it was for the liquidator to determine the contribution, if any, which was to be made by the past members of the society and it was for him to investigate all claims against the society and further to determine by what person and in what proportion the costs of the liquidation were to be borne. Under Sub-section (2)(e) of Section 41, it was for the liquidator to give such directions in regard to the collection and distribution of the assets of the society as may appear necessary for the winding up of the aforesaid society. Then, it is further pointed out that Sub-section (6) of Section 41 clearly barred the jurisdiction of a civil court in respect of matters connected with the dissolution of the registered society except those, which were expressly provided_ by the Act and since there was no express provision in the Act, empowering a civil court to interfere in the matter like the present one, the civil court had no jurisdiction and the first appellate court has committed an error in setting aside the decree of the trial court and remanding the case. In support of his argument, learned counsel has referred to Secretary of State v. Mask and Co. AIR J940 PC 105, Rajdarkhan Jabbarkhan v. Rambhau Narayan, (S) AIR 1955 Nag 262 , and Somokanta Mohonta and Others Vs. Sarveswar Das and Another,

5. Learned counsel for the respondent has, on the other hand, tried to support the decision of the appellate court and he relies on Maung Po Maung v. Maung Aung Paw AIR 1925 Rang 38. Before proceeding to examine the arguments raised by learned counsel for either side, it would be proper to reproduce here the relevant provisions of Section 41! of the Act. They arc as follows:

"41. (1) Where the registration of a society is cancelled u/s 38 or Section 39 the Registrar may appoint a competent person to be liquidator of the society.

(2) A liquidator appointed under Sub-section (1) shall have power:

(a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office,

(b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;

(c) to investigate all claims against the society and subject to the provisions of this Act, to decide question of priority arising between claimants;

(d) to determine by what person and in what proportions, the costs of the liquidation are to be borne, and

(e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society.

(3)

(4)

(5)

(6) Save in so far as is herein 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."

6. It would appear from the provisions referred above that after the registration of a society is cancelled under S, 38, the Registrar is clothed with the power of appointing a competent person as liquidator of the society. Under Sub-section (2), the liquidator has been given power to determine the contribution to be made by the members and past members of the society to the assets of the society, to investigate all claims against the society and to give directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society. It is further clear from the language of Sub-section (6) that the jurisdiction of a civil court has been clearly barred "in respect of any matter connected with the dissolution of a registered society under the Act." The jurisdiction has been kept alive only with regard to those matters about which express provision has been made in the foregoing sections of the Act.

7. Learned counsel for the respondent has not been able to point out any provision under the foregoing sections of the Act whereby a civil court could exercise its jurisdiction in the present matter. His contention is that the present suit does not relate to a matter connected with the dissolution of a registered society. It is not disputed that the society was registered under the Act. The question of jurisdiction of a civil court thus turns upon the interpretation of the words "in respect of any matter connected with the dissolution of the registered society," Now, if the plaintiff's case were that the liquidator had ample funds in his hands and that he was knowingly avoiding payment of money to the plaintiff, the question would have been a little different. But what is alleged by the plaintiff

is that defendants Nos. 2 to 26 had colluded amongst themselves, that they had already taken away the funds of the society including the plaintiff's money and, therefore, he wanted a decree against them and the liquidator, This means that he wanted the court to find out as to what was the share of each one of the defendants Nos. 2 to 26, how much they had contributed, what amount was withdrawn by each one of them and how much they were required to contribute again to make up the loss incurred by the society. In my opinion, these are certainly matters connected with the dissolution of the society. Sub-section (2) of Section 41 requires that it is for the liquidator to determine those matters and the jurisdiction of a civil court is thus barred.

8. As regards the authority cited by learned counsel for the respondent, i.e. Maung Po Maung's case, AIR 1925 Rang 38, which has also been referred to by the first appellate court, it may be pointed out that in that case, the plaintiff who was a past member of the dissolved co-operative society had paid up all his dues and the liquidator had in his possession a sum of Rs. 262/6/- which he had collected out of sale proceeds of paddy, Instead of giving that money to the plaintiff, he utilised this sum in part payment of a debt to the defendant. It was in those circumstances that the plaintiff brought a suit against the defendant. It was observed by the learned judge after referring to section 42(6) as follows:

"To my mind, the matter in suit is purely one between Maung Anung Paw and Maung Pp Maung, and it in no way affects the action of the liquidator, nor is it connected except indirectly, with the dissolution of the society. What I think is that Section 42(6) was intended to prevent, was litigation in the Civil Courts in regard to the validity of the actions and decisions of a liquidator under the Act, except in respect of certain specified orders, which are appealable to a District Court, or which may be enforced as decrees of Courts."

It would thus appear that the facts of the above case are different and thus it is distinguishable from the present case.

9. Out of the authorities cited by learned counsel for the appellant, the first two have little bearing on the present case. In AIR 1940 105 (Privy Council) it was observed as follows:

"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.

It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure"".

This has been cited by learned counsel only to show that in the present case the plaintiff has not alleged that the liquidator had not complied with the provisions of the Act or that he had not acted in conformity with the fundamental principles

of judicial procedure and therefore the civil courts have no jurisdiction. Beyond this, it has no bearing on the present case. The above observations were only reiterated in Rajdarkhan Jabarkhan's case, (S) AIR 1955 Nag 262 in another context. The main case which is helpful to the appellant is that of Somokanta Mohonta and Others Vs. Sarveswar Das and Another, In that case, the liquidator had in the course of liquidation proceedings of a co-operative society directed payment of a certain sum by each of two members of the executive committee of the society. Those members in their turn sought to recoup themselves by suing the other members of the society for the recovery of that sum. The suits were decreed in their favour by the Munsif. The matter went up to the High Court of Calcutta in a revision which arose out of the execution of the said decrees. It was held by the learned Judges that

"the attempt on the part of the two members of the executive committee to pass on their liability to the other members of the society was, we think, a matter connected with the dissolution of the society and that consequently it was not a matter in respect of which the civil court had any jurisdiction."

The decrees were therefore held null and void and their execution was stopped. The present case is much stronger than the case cited above inasmuch as the plaintiff wants the court to determine, as pointed out above, the shares of 25 members of the society and to further find out how much they had withdrawn and what they are liable to contribute to make up the losses incurred by the society and repay its debts. To my mind, these are certainly matters connected with the dissolution of the registered society and therefore the civil court had no jurisdiction to enter into them u/s 41(6) of the Act.

10. The appeal is, therefore, allowed, the order of the appellate court is set aside and the decree of the trial court is restored. In view of the circumstances of this case, the appellants are left to bear their own costs.