
(1936) 02 MAD CK 0021
In the Madras High Court

Savcar U. Vaikunta Bhat

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 05-02-1936

Acts Referred:

Co-operative Societies Act, 1912 — Section 42(6)

Citation : AIR 1936 Mad 574 : (1936) ILR (Mad) 895 : (1936) 43 LW 730 : (1936) 70 MLJ 604

Hon'ble Judges : Venkataramana Rao, J;King, J

Bench : Full Bench

Judgement

Venkataramana Rao, J.—The main question argued in this appeal is whether the suit is barred by Section 42(6) of the Co-operative

Societies Act. The facts necessary for the disposal of this question may be briefly stated. The plaintiff became a member of the Rural Credit

Society, Uppinangady, in 1914. His case is that he resigned his membership and withdrew his share capital in 1918; The society went into

liquidation in 1923, and one Giriappa became the liquidator and he passed an order on 9th July 1925, that the plaintiff was not liable; subsequently

the present liquidator Mr. Kannan Nair succeeded him and he passed an order Ex. II. on 6th December 1927 directing the plaintiff to contribute a

sum of Rs. 500. To avoid coercive process, the plaintiff paid the amount and seeks a refund of the same. The plaintiff's contention is that u/s 23 of

the Co-operative Societies Act, 1912, which governs the case his liability continued only for two years from the date of his ceasing to be a

member and this liability ceased in 1920 and the liquidator has no jurisdiction u/s 42(2)(b) of the Act to levy any contribution from him. The answer

of the liquidator is that the order made by him being a matter connected with the dissolution of the society, no suit will lie to contest the same by

reason of Section 42(6) of the Act which runs as follows:

Save in so far as 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.

2. It is a cardinal principle of the construction of Statutes that an enactment which seeks to oust the jurisdiction of Civil Courts should be construed

strictly. The construction of the said clause in accordance with this principle is that before the jurisdiction of the Civil Court is ousted it must be a

matter within the jurisdiction of the liquidator, though it may be a matter connected with the dissolution of the society. Therefore the question is, has

the liquidator jurisdiction to pass the order in question u/s 42(2)(b) which is in these terms:

A liquidator appointed under Sub-section 1 shall have power to determine the contribution to be made by the members and past members of the

society respectively to the assets of the society.

3. Thus the condition precedent to the exercise of jurisdiction by the liquidator is that the person who is directed to contribute should be a member

or a past member. If it is disputed, the liquidator would have no jurisdiction to determine the liability, but if there is no question that a person is a

member or a past member the liquidator will have jurisdiction to assess the contribution according to the provisions of the Act. In this case the

plaintiff is admittedly a past member, i.e., once a member but has now ceased to be. The liability of such a past member is determined by Section

23 which provides thus:

The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a

period of two years from the date of his ceasing to be a member.

4. The liquidator will determine his liability in accordance with the provisions of the section and then assess him for the proper amount of

contribution. The scheme of the Act seems to be that the liquidator is expected to deal expeditiously and at comparatively little expense with all

questions relating to the assessment of contribution for getting in the assets as speedily as possible and deal with them finally. This is the view taken

by Bhide J, in *Muhamad Barkat Ali v. Anjuman Imdad Qarza* AIR 1935 Lah. 330. Mr. Sitharama Rao contends that this view is not sound. His

contention is that according to the plain language of Section 42(2)(b) the liquidator will have power to determine only the contribution, i.e., fix the

amount when there is no dispute as to liability, but when the liability is disputed he has no jurisdiction to determine it and that the condition

precedent to the assumption of jurisdiction is the existence of a liability. He relies strongly on the Privy Council ruling in (1889) ILR 17 590 (Privy

Council) . As the matter is not free from doubt and is of some importance I think it desirable that the question should be decided by a Bench and I

accordingly refer the same to a Bench.

5. These second appeals coming on for final hearing after reference.

6. The Judgment of the Court was delivered by

King, J.

7. The appellants in these two appeals were admittedly once members of the Co-operative Rural Credit Society of Uppinangady. A liquidator was

appointed to administer the affairs of the society under Clause 2(b) of Section 42 of the Co-operative Societies" Act; it was his duty to determine

the contribution to be made by the members and past members of the society to its assets. The case of both the appellants was that five years

before the society was dissolved, they had ceased to be members. The liquidator heard this plea and held that they had not established it and

accordingly they as existing members were liable to contribute under this subsection. The contributions were then paid and separate suits filed by

the two appellants in the Court of the District Munsif of Puttur claiming refund of this money on the ground that they were not liable to contribute. It

was held both by the first Court and by the lower appellate Court, that, by virtue of Section 42(6) of the Act, no such suit could be maintained.

The question at issue in the two appeals is whether that decision is right or not Section 42(6) runs:

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.

8. We have been referred to two cases of the Lahore High Court in connection with the powers of the Civil Courts in this matter. In *Mukand Lal*

v. Liquidator, Malhotra Bank, Hafizabad (1933) ILR 14 Lah. 330 the person who was sought to be made liable to contribute maintained that he had never been a member of the society at all and it was held that Civil Courts had power to determine whether this fact was true or not, as an essential preliminary to the attachment of any liability in the liquidation. In Md. Barkat Ali v. Anjuman Qarza AIR 1935 Lah. 330 the case was of an Ex-member, like the present appellants. It was held that as he had admitted that he had once been a member of the society, he was a "past member" and therefore the liquidator had power to determine what contribution he was liable to pay. It is important however, to note the extent of the admission in Md. Barkat Ali v. Anjuman Qarza AIR 1935 Lah. 330. It was an admission that the party had ceased to be a member less than a year before the Society fell into liquidation. That party therefore could, on no reasonable interpretation of Section 23 of the Act, which lays it down that liability ceases two years after membership ceases, have disclaimed liability. In the present case, where the contention is that the appellants ceased to be members five years before the liquidation we are quite unable to hold that merely because they were once members they have no right on this contention to ask the Civil Courts to decide whether they are under any liability to contribute at all.

9. If we now leave the decisions and come to examine the words of Section 42(b) itself, we find no clear statement that the liquidator has power to determine who shall and who shall not be liable to contribute. It seems to us it would have been easy for the legislature to have made this clear by drafting the clause in some such form as this: "to determine which members and past members of the society shall contribute to the assets and how much they shall contribute". That is not the way the sub-section is worded. We think that in construing the powers of the liquidator, when these powers are to be free from all control by the Civil Courts, we must construe them as strictly as possible. 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. We are of opinion therefore that the decision of the lower Courts is wrong and we allow the appeals and remand the suits for decision on their merits. Costs to abide the event. The court fee on the

Memorandum of Appeal both here and in the lower appellate Court to be refunded if applied for.