

(1966) 04 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Execution Second Appeal No. 839 of 1965

Vasdev

APPELLANT

Vs

The Hoshiarpur Kishore Co-Operative Bank Ltd., Society

RESPONDENT

Date of Decision : 22-04-1966

Acts Referred:

Citation : (1966) 04 P&H CK 0041

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : H.L. Sarin, with Miss Asha Kohli, for the Appellant; Lal Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—The only contention in this appeal directed against the order rejecting the judgment-debtor's objections to the execution is that no execution could be taken by the liquidator under the Punjab Co-operative Societies Act, 1961, without the permission of the Registrar. At the time when the Society went into liquidation, it was the Punjab Co-operative Societies Act, 1955, Act XIV of 1955 which held the field but on the date the liquidator filed the execution application, the Co-operative Societies Act, 1931 held the field. The relevant section in the 1955 Act is 46 and in the 1931 Act is 59 For facility of reference both these provisions are quoted side by side:

S. 46 of 1955 Act S. 59 of 1961 Act.

(1) Notwithstanding anything contained in Section 44 relating to the date on which an order for winding up a co-operative society shall take effect, a liquidator appointed u/s 45 shall have power from the date of his appointment to take immediate possession of all assets properties, effects and actionable claims of the society or to which the society is entitled and of all books, records and other documents pertaining to the business of the society.(2) From the date on which the order directing the winding up of the society takes effect the liquidator

shall, subject to the rules and under the general direction and control of the Registrar, have power, so far as is necessary for the winding up of the society; on behalf of the society to carry on the business thereof and to do all acts and execute all documents necessary to such winding up, and in particular shall exercise such of the following powers as the Registrar may from time to time direct namely:(a) to institute and defend suits and other legal proceedings;(b) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration;(c) to determine the debts due to the society by a member past member or the state nominees, heirs or legal re (1) Subject to any rules made in this behalf, the whole of the assets of a co-operative society, in respect of which an order for winding up has been made, shall vest in the liquidator appointed u/s 58 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise. (2) Such liquidator shall also have power, subject to the control of the Registrar:(a) to institute and defend its and other legal proceedings on behalf of the co-operative society by the name of his office;(b) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society;(c) to investigate all claims against the co-operative society and subject to the provisions of this Act. to decide questions of priority arising between claimants";(d) to pay claims against the co operative society including interest up to the date of winding up according to their respective priorities if any, in full or ratably, as the assets of the society may permit; the surplus, if any remaining

representatives of a deceased member; (d) to calculate the costs of liquidation and to determine by what persons and in what proportions they are to be borne;(e) to determine from time to time the contributions, including the items mentioned in clauses (c) and (d), to be made to the assets of the society by the members, past members or estates, nominees, heirs and legal representatives of deceased members or by the past or present officers of the society;(f) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;(g) to pay claims against the society (including interest up to the date of the order for the winding up thereof) according to their priority, in full or rateably as the assets of the society permit; (h) to give such directions as appear to him to be necessary in regard to the realisation, collection and distribution of the assets of the society; and(i) after consulting the members of the society to dispose of the surplus, if any, remaining after paying the claims against the society, in such a manner as may be prescribed by the rules. after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;(e) to determine by what persons and in what proportions the costs of the liquidation are to be borne;(f) to determine

whether any person is a member, past member or nominee of deceased member; (g) 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; (h) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same; (i) to make any compromise or arrangement with creditors or person claiming to be creditors or having or alleging to have any claim, present or future, whereby the society may be rendered liable; (j) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration; (k) after consulting the members of the society, to dispose of the surplus, if any, remaining after paying the claims against the society, in such a manner as may be prescribed; and (l) to compromise all calls or liabilities to calls and debts and liabilities capable or resulting in debts and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the co-operative society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give a complete discharge in respect thereof. (3) When the affairs of a co-operative society have been wound up the liquidator shall make a report to the Registrar and deposit the records of the Society in such place as the Registrar may direct.

2. As I read these provisions, it appears to me that there is no bar to the liquidator taking out execution without sanction from the Registrar. All that these provisions provide is that the powers of the liquidator under the aforesaid provisions, are subject to "general direction and control" and "control" of the Registrar. Neither the general direction nor the control imply that the power of the liquidator is in any manner curtailed. All that it implies is that the Registrar can issue directions or ask the liquidator not to exercise any one of the powers conferred by the Statute in a given case but that does not mean, as is contended by the learned counsel for the appellant judgment-debtor that previous permission of the Registrar is required before the liquidator can exercise the power under this Act.

3. Moreover, the present objections are also barred by the rule of *res judicata*. In the previous execution application to which objections were raised by the judgment-debtor, this contention was not raised. Those objections were rejected. In a subsequent execution application by his successor, the objection that the liquidator had no power to initiate the earlier execution proceedings is not competent. That objection should have been raised at the time when the earlier execution application was filed. The rule is now well settled that constructive principles of *res judicata* apply to execution proceedings.

4. For the reasons recorded above, there is no force in the appeal. The same fails and is dismissed. There will, however, be no order as to costs.