

therefore, of opinion that the order of the Appellate Court must be set aside, and we accordingly set it aside and direct that the appeal be re-heard. At the re-hearing of the appeal, it will be for the consideration of the Sessions Judge whether the cumulative sentences in the case of Harmuz Ali ought or ought not to be affirmed. In these terms we make the Rule absolute.

E. H. M.

Rule absolute.

1914
KANCHAN
MALLIK
E.
EMPEROR

CIVIL RULE.

Before Holmwood and Chapman JJ.

ABDUL QUADIR

v.

SHAHBAZPUR CO-OPERATIVE BANK.*

1914
June 19.

Co-operative Society—Charge—Priority—Co-operative Societies Act (II of 1912) ss. 19, 20—Attachment—Civil Procedure Code (Act V of 1908) s. 73.

Under s. 73 of the Code of Civil Procedure the claim of a co-operative society cannot be enforced unless they have a decree or charge under s. 20 of the Co-operative Societies Act (II of 1912), though under s. 19 of that Act the society might have raised an objection to the attachment by reason of other sections of the Code of Civil Procedure.

RULE obtained by Abdul Quadir, the decree-holder, objector, against the Co-operative Bank of Shahbazpur and others, applicants under s. 19 of Act II of 1908 read with s. 73 of Act V of 1908.

The facts are briefly as follows. Abdul Quadir, the decree-holder, had attached certain property of his judgment-debtor one Samiruddin against whom he had obtained a decree for money, in the Court of the

* Civil Rule No. 587 of 1914 made against the order of K. B. Sen, Munsif of Nabinagar, dated Feb. 26, 1914.

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Munsif of Nabinagar. Thereupon the applicants, who appeared for the Co-operative Bank of Shahbazpur, filed an application under s. 73 and Order XXI, rule 66 of the Code of Civil Procedure for enforcing a charge under s. 19 of the Co-operative Societies Act (II of 1912). The applicants alleged that the judgment-debtor had borrowed money from the Bank in question for the purchase of cattle and seed grains. The books of the Bank showed that the judgment-debtor was a member and he had borrowed money for his agricultural purposes. On the other hand, the decree-holder alleged that the judgment-debtor had the cattle in his possession for a very long time. No evidence was produced to show that the alleged Co-operative Bank had been registered under the provisions of Act II of 1912 and there was, further, no evidence that the said Bank had any decree against the judgment-debtor.

In spite of the absence of such evidence and without any findings to that effect, the learned Munsif of Nabinagar passed an order on the 26th February directing that the money fetched by the sale of certain specified lots of the attached properties should go first to liquidate the debts due to the said Bank and that the decree-holder should get only the surplus.

The decree-holder thereupon moved the High Court against that order and obtained this Rule.

Moulvi A. K. Fazlul Haq, for the petitioner. I submit that the order of the learned Munsif under s. 73 of the Civil Procedure Code is without any jurisdiction and further illegal. As this Bank was not registered and had no decree against the judgment-debtor, it could not claim rateable distribution. This application could not lie as the section referred only to decree-holders. Further, this Bank had no charge

over the property as the charge contemplated by s. 20 of Act II of 1912 is a charge only upon the share or dividend of a member of the Co-operative Society. Nor does s. 19 of that Act create any charge. Hence I submit that the order of the learned Munsif must be set aside.

Mr. Rasul (with him *Babu Upendra Kumar Roy*), for the opposite party, showed cause. I submit that though the learned Munsif states that this is an application under s. 73 of the Code of Civil Procedure he does not really treat it as such, but as an application under Act II of 1912. Under s. 19 of this Act the society is entitled to realise its outstandings and claims as this section creates an equitable charge on the two classes of property specified in clauses (a) and (b) thereof, the special privilege conferred thereby not affecting any other properties of the judgment-debtor. So to enforce its prior claim the Bank need not obtain a decree as delay would defeat the very object of the Co-operative Societies Act, viz., the speedy realization of money advanced to promote thrift and self-help among agriculturists.

HOLMWOOD AND CHAPMAN JJ. This is a Rule which was obtained by the decree-holder in an application under Section 73 of the Code of Civil Procedure made by a Co-operative Society for enforcing a charge under section 19 of Act II of 1912. The application was undoubtedly made under section 73, and under that section we are of opinion that the Co-operative Society could have no priority to other creditors, unless there are one or more persons than one who have made applications to the Court for the execution of decrees for payment of money passed against the same judgment-debtors. To hold otherwise would be to give these Co-operative Societies a

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power which even Government in its much discussed certificate procedure does not claim. They would claim in other words to recover money without either decree or certificate or any legal title to enforce their debt. Admittedly, there is no charge in this case within the meaning of section 20 of the Co-operative Societies Act, so that the proviso to section 73 does not come in. It is possible that under section 19, the Society might have raised an objection to the attachment by reason of other sections of the Code of Civil Procedure; but with that we are not concerned. It appears to us perfectly clear that under section 73 the claim of a Co-operative Society cannot be enforced unless they have a decree or a charge under section 20.

The Rule, therefore, must be made absolute and the order of the lower Court set aside without prejudice to any action which the Society may seem fit to take, if so advised.

The petitioner is entitled to his costs in this Rule.

G. S.

Rule absolute.