

vest in him any property. It gave him, no doubt, the right to execute the attached decree, and had it not been for the insolvency he would still have that right. The insolvency, however, vested all the property of the insolvent in the official assignee and in effect cancelled the attachment obtained by Dambar Singh. Once Sri Kishan was declared an insolvent, the official assignee was the only person who could execute the decree which Sri Kishan had obtained, unless the official assignee had, in realizing the estate, sold the decree to some third party. See the decision of their Lordships of the Privy Council in *Raghunath Das v. Sundar Das Khetri* (1).

In the third ground in the memorandum of appeal the appellant contends that the court below has also dismissed his application to recover certain costs which were no part of the decree belonging to Sri Kishan, but which were in fact awarded to him as costs of previous execution proceedings. We think that this objection may have force. If any costs were awarded to Dambar Singh personally against the judgement-debtors, those costs form no portion of the assets of Sri Kishan and accordingly never vested in the official assignee. Save as just mentioned we dismiss the appeal, but in doing so expressly state that the dismissal of the appeal is not to prejudice the right of the appellant (if he has any) to recover costs which were personally awarded to him. We make no order as to costs of the appeal. The order of the court below as to costs in that court will stand.

Decree varied.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

MATHURA PRASAD AND ANOTHER (JUDGEMENT-DEBTORS) v.
SHEOBALAK RAM (DECREE-HOLDER).*

Act No. II of 1912 (Co-operative Societies Act), sections 42 (5) and (6)—Order of liquidator declaring each member to be jointly and severally liable—Application for enforcement of order by Civil Court—Appeal—Jurisdiction.

A society formed under the Co-operative Societies Act, 1912, went into liquidation. The liquidator, having taken mortgages from the various persons

* Second Appeal No. 1086 of 1916, from a decree of E. M. Nanavutty, District Judge of Benares, dated the 12th of January, 1916, modifying a decree of Udit Narain Sinha, Subordinate Judge of Benares, dated the 9th of October, 1915.

(1) (1914) I. L. R., 42 Cal., 72.

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who were members of the society and had received advances, proceeded to make an order, purporting to be passed under section 42 (b) of the Act determining that each of the debtors should be jointly and severally liable for the full amount of the several debts. This order was then taken to the Civil Court having local jurisdiction to be enforced under section 42 (5) (a).

Held that the liquidator was probably wrong in passing the order which he did, but that, the order being one within section 42 of the Act, the Civil Court had no option but to enforce it and that no appeal lay to the District Judge nor a second appeal to the High Court.

THIS was an appeal arising out of an application to enforce an order under section 42 of the Co-operative Societies Act, II of 1912. The appellants were members of a society registered under the Co-operative Societies Act. The Registrar cancelled the registration of the society and appointed the respondent liquidator. The liquidator ascertained the amount of indebtedness of each member to the society and accepted a mortgage from each member to cover the amount of the latter's individual indebtedness. He then purported under section 42 (b) of the Act to pass an order declaring each member jointly and severally liable for the total indebtedness of all the members and applied under section 42 (5) to the Subordinate Judge to enforce the order by attachment and sale of the property of the members hypothecated and also other property. The appellants objected that the liquidator could not impose a joint liability on them for the debts of other members. The Subordinate Judge held that even if the liquidator had passed a wrong order he was bound to enforce it and disallowed the objections. On appeal the District Judge agreed with the Subordinate Judge, but held that the liquidator could not proceed against the mortgaged property, but could only proceed against the other property of the members. The objectors preferred a second appeal.

Babu *Piari Lal Banerji*, for the appellants :—

The Civil Court when invoked by the liquidator to enforce his order was not bound to enforce it without considering whether the order was one which the liquidator could pass. Section 42 (5) only allowed an *order passed under the section* to be enforced. It was therefore open to the Civil Court to inquire whether the order imposing a joint liability on the appellants for the debts of other members was an order which it was competent to the liquidator to pass. Under section 42 (2) (b), the liquidator was

empowered to determine the contribution to be made by each member. This was done by the liquidator before he accepted the mortgages. Under clause (c) he was empowered to give such directions regarding the collection of the debts as appeared to him necessary. This he did by accepting mortgages from the several members. It was not open to him after that to ignore the mortgages and impose a fresh and additional liability not warranted by law. The members were only liable to the society to the extent of their individual debts. It was only with respect to the debts of the society *qua* a third party, for example a Central or a District Bank, that the members would be jointly and severally liable. The portion of the order now sought to be enforced was therefore beyond the powers of the liquidator and consequently not one under the section and the Civil Court should not have refused its aid.

The Hon'ble Dr. Tej Bahadur Sapru, for the liquidator, respondent :—

The order of a liquidator under the Act is final. It is not open to appeal and the appellant in the guise of an objection to the enforcement of the order is really seeking to appeal against the order. The functions of a court under section 42 (5) are really those of an executing court, and as such it could go behind the decree which in this case is the order of the liquidator. The liquidator has in effect determined the liability of the members, and even if he has wrongly imposed a greater liability than the Act allows, that would not make his order without jurisdiction so as to enable the Civil Court to ignore it. The wide scheme of the Act showed that the courts should have no power to question the acts of the liquidator. Moreover, the Act only provided that the court should enforce the order of the liquidator in the same manner as if it were a decree. It did not make the order of the court appealable, and consequently no appeal lay to the District Judge and no second appeal to the High Court.

Babu Piari Lal Banerji, in reply :—

An order of the court when passed would be subject to appeal in the same way as order passed by a court executing a decree. The Registrar is not given any powers by way of appeal or revision. He could only express his opinion. As this Act was

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clear one, this Court should express its opinion for the guidance of the liquidator.

RICHARDS, C. J., and BANERJI, J.:—This appeal arises under the following circumstances. There was a society registered under the Co-operative Societies Act, II of 1912. The society got into debt. Its registration was cancelled and a liquidator appointed. There were a number of persons who were members of the society and had received advances. The liquidator took mortgages from each of the debtors for the amount of their liability. He then proceeded to make an order which purported to be under section 42 (b), determining that each of the debtors should be jointly and severally liable for the full amount of the several debts. This order was sought to be enforced in the Civil Court having local jurisdiction under the provisions of section 42 (5) (a). The court ordered execution. On appeal to the District Judge the appeal was dismissed. A second appeal has now been preferred to this Court. It is strongly contended on behalf of the appellants that the order of the liquidator was bad. It is said that, while the liquidator had a perfect right to determine the "contributions" to be made by the members of the society, he could not make them jointly and severally liable for each other's debts, more particularly where, as in the present case, he had taken a mortgage from each of the debtors for the amount of his debt. On the other side, it is objected that the Subordinate Judge was bound to execute the order of the liquidator and that he could not consider whether that order was right or wrong, that no appeal lay to the District Judge and that no second appeal lies to this Court. We think all these objections have force. If the order of the liquidator can possibly be said to be an order under section 42, then the Subordinate Judge being the Civil Court mentioned in sub-section (5), clause (a), had no option but to enforce the order. It seems to us clear that no appeal lies save appeals expressly given by the Act and that no second appeal lies to this Court. It is quite clear that the policy of the Act was that matters arising under the Act should be settled without litigation in the courts. If litigation were permitted, the whole object of the Co-operative Societies Act would be defeated. We think that in the present case we

may depart from our usual practice of not saying anything which is not absolutely necessary for the decision of the case because we are all interested in the good working of the Co-operative Societies Act. It seems to us that probably the liquidator was wrong in passing an order that each of these debtors should be jointly and severally liable for the amount of each other's mortgages. If he required money for the purposes of liquidation and for the discharge of the debts of the society, he had clear power to determine the contributions to be made, and we think that it would have been more correct had he made his order in this form and then proceeded to take steps to recover from each mortgagor the amount of his mortgage. We dismiss the appeal. The liquidator will get his costs in this appeal as part of his costs in the liquidation. The appellants will pay their own costs.

Appeal dismissed.

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MISCELLANEOUS CIVIL.

Before Mr. Justice Tudball.

LAKHAN SINGH (PLAINTIFF) v. RAM KISHAN DAS (DEFENDANT).*

Act No. VII of 1870, (Court Fees Act) Schedule I, Article 1—Court fee—

Cross-objection filed in an appeal.

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Under article 1 of schedule I to the Court Fees Act, 1870, a party filing cross-objections must pay an *ad valorem* fee according to the value or amount of the subject matter in dispute.

Office Report.

STAMP insufficient by Rs. 20-12-0, i.e., Rs. 8 in respect of the relief decreed against the defendant respondent and Rs. 12-12-0 in respect of the plea as to costs amounting to Rs. 166-8-0.

Objection from Babu *Priya Nath Banerji*:—I object to this report. On the first point, the suit was instituted by the plaintiff on a ten rupee stamp. The plaintiff has appealed on a ten rupee stamp, i.e., he has paid the full stamp duty. Therefore I am not bound to pay another stamp duty.

On the second point I do not ask any particular amount on account of costs. My objection is that the order about costs is a wrong order. I am therefore not liable to pay stamp duty.

* Stamp Reference in First Appeal No. 186 of 1917.