

APPELLATE CIVIL.

Before Mr. Justice Chari.

MAUNG AUNG NYEIN AND ANOTHER

v.

MAUNG GALE AND ANOTHER.*

1929

May 7.

Co-operative Societies Act (II of 1912), s. 42—Liquidator's powers—Power to summon witnesses and compel production of documents—Liquidator's order final—Court's duty to issue execution—No power vested in Court to control liquidator's orders.

An order of the liquidator under s. 42 of the Co-operative Societies Act is final. A Court whose aid is sought for the execution of that order cannot go behind it and investigate its legality. The actual rules framed under the Act do not provide for an appeal and there is no check imposed either by way of appeal or revision against any orders passed by the liquidator.

Mathura Pasad v. Shebolak, 40 All. 89—referred to.

Hla Tun Pru for the applicants.

Maung Kyaw for the respondents.

CHARI, J.—This is a second appeal against an order of the District Judge of Prome passed in appeal in a matter which came up from the Township Court of Thegon in the following circumstances.

The Padigun Urban Co-operative Credit Society, Limited, is under liquidation and Maung Gale and Maung Kyan were appointed liquidators. As such they summoned the appellants in this appeal to produce certain documents, which are set out in the copy of the order sent by them to the Township Court. That order shows that two persons Maung Myo and Maung Aung Nyein, the Chairman of the society in liquidation and the Manager of the same society, were summoned to appear and deliver to the liquidators the books apparently of the society itself

* Civil Revision No. 145 of 1929 from the order of the District Court of Prome in Civil Appeal No. 120P. of 1928.

1929
 MAUNG
 AUNG NYEIN
 v.
 MAUNG GALE.
 CHARI, J.

of certain years and one promissory note executed by U Myo for a loan which he took. These persons refused to obey the summons and thereupon the liquidators under section 42 (3) of the Co-operative Societies Act read with section 32 of the Civil Procedure Code directed the two persons Maung Myo and Maung Aung Nyein to suffer simple imprisonment for a term of one month.

It will be noticed that the persons against whom action was taken were the Chairman and Manager of the society under liquidation, whose duty it was to help the liquidators instead of obstructing them.

The Township Court of Thegon was then moved to execute this order and, in Civil Execution No. 236 of 1928, after issue of a notice to Maung Myo and Maung Aung Nyein, it directed their arrest and imprisonment for one month in the civil jail.

The matter was taken in appeal to the District Court of Prome and it dismissed the appeal.

Maung Myo and Maung Aung Nyein now file this second appeal. The learned advocate for the appellants admits that no second appeal lies. As not being a matter in execution of a decree, section 47 of the Civil Procedure Code is inapplicable, he wants me to treat the case as one in revision against the orders of the Township Court and the District Court.

It has been held in more than one case, by my brother Ormiston in Civil Revision No. 199 of 1928, by myself in a case decided last week or the week before and by the Allahabad High Court in the case of *Mathura Prasad and another v. Sheobalak Ram* (1), that an order of the liquidator under section 42 of the Co-operative Societies Act is final and that a

Court whose aid is sought for the execution of that order cannot go behind it and investigate its legality; and under section 42 (4) such orders are open to appeal to the Court of the District Judge provided an appeal is given by the rules framed under the Act. The rules framed under the Act do not provide for any such appeal with the result that an order by a liquidator is absolutely final and there is no check imposed either by way of appeal or revision against any orders passed by the liquidators.

The anomalous state of the law was noticed by Mr. Justice Ormiston and attention was drawn to it by him in his judgment. It is unnecessary for me to add anything to what he has already said on the point. The law being what it is and the Civil Court being precluded from questioning the order of the liquidator, in the case then before him Mr. Justice Ormiston held that as the Civil Court was bound to execute the order and had no option to do otherwise, it could not be said that there was any error in the exercise of jurisdiction which would entitle the party aggrieved to come up in revision to this Court. That reasoning would be applicable to the case now before me. But the learned advocate for the appellant seeks to draw a distinction on the ground that the order now before me is an order directing the imprisonment of the appellants under section 42 (3) whereas the orders sought to be executed in the other cases were orders passed under sub-section 2 to determine those persons liability as regards contribution. This point by itself does not distinguish the present case from the previous one. But another argument is adduced that the order passed by the liquidators was passed without jurisdiction; and that the Township Court of Thegon should have refused to execute that order

1929

MAUNG
AUNG NYEIN
2.
MAUNG GALE

CHARI, J.

1929
 MAUNG
 AUNG NYEIN
 v
 MAUNG GALE,
 CHARI. J.

on that ground and that in not refusing to do so it has failed to exercise the jurisdiction vested in it. This necessitates a consideration of the wording of sub-section 3 of section 42 of the Act. The liquidators appointed under section 42 are given powers necessary for carrying out the purposes of that section—to summon and enforce the attendance of witnesses and compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

It was first alleged that no summons was issued and that section 32 became applicable only when a summons had been issued and there had been disobedience of the summons. But the copy of the order sent to the Township Court of Thegon shows that a summons must have been issued. At all events there is nothing to the contrary on the record. The principal point urged on the part of the appellants is that under section 32 of the Civil Procedure Code under which the liquidators purported to act, the liquidators should have ordered the appellants to furnish security for their appearance and in default committed them to civil prison.

The complaint of the liquidators in the case is not that the appellants refused to appear before them but that they refused to produce the documents and account books in their possession which they were bound to produce.

Order XVI, rule 10 and the following rules also provide a procedure where the witnesses fail to appear or produce documents when they are summoned to do so and where the property of the witnesses could be attached for the purpose of making them obey the orders of the Court. There is nothing on the records before me to show that

the appellants were not ordered to give security before they were directed to be imprisoned. But assuming that this is the case there is no want of jurisdiction in the liquidators in the sense that the order passed was entirely without jurisdiction which could be ignored by any Court of law whose duty it is to enforce that order. It is merely an irregularity or at most an illegality, since the liquidators had power to use the means given to them by the Code for the purpose of enforcing the production so the documents. It cannot possibly be said that such an order, simply because it does not follow strictly the provisions prescribed by the Civil Procedure Code, is not an order under section 42 (3). The argument to that effect urged on me by the learned advocate for the appellants is fallacious. The order necessarily is an order under that section. Though it may be an irregular order, it cannot possibly be said that it is an order passed without jurisdiction.

As I have already pointed out, the Township Court has no option but to enforce the order and there is therefore no error of jurisdiction on the part of the Township Court or on the part of the District Court of Prome. The anomalous state of the law and the hardship to which one may find oneself put, are worthy of consideration by the Legislature or the Local Government. A Court of law cannot take these matters into consideration and must administer the law as it finds it.

The application is therefore dismissed with costs—two gold mohurs. The order suspending imprisonment is cancelled.

1929

MAUNG
AUNG NYEINv.
MAUNG
GALE.

CHARI, J.