

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Das.

1933

June 13.

U SEIN BWIN AND ANOTHER^o

v.

U MAUNG GALE.*

Co-operative society in liquidation—Claim by depositor—Claimant not a member—Jurisdiction of civil Court—Burma Co-operative Societies Act (Burma Act VI of 1927), ss. 47 (2) (a), 49.

A suit to recover a sum of money by a depositor from a co-operative bank in liquidation is barred by s. 49 of the Burma Co-operative Societies Act. Whether the claim is by a stranger or by a member of the society the claim must be presented to the liquidator, and not to the civil Court.

U Kyan v. S.V.K.V. Firm, I.L.R. 8 Ran. 585—followed.

Robertson for the appellants. A suit by a non-member for a debt due to him from a co-operative society in liquidation against the liquidator is not barred by reason of s. 49 of the Burma Co-operative Societies Act, 1927. Clauses (a) and (b) of sub-section 2 of s. 47 make it clear that the jurisdiction of the civil courts is excluded only in respect of suits by members against the liquidator. Clause (a) of that sub-section, by empowering the liquidator to defend suits and other legal proceedings, contemplates suits being filed against him by non-members. Moreover, the effect of the bar in s. 49 being to make the liquidator a judge in his own case should not be extended in its operation.

See *Maung Ba Lat v. The Liquidator, Kemmendine Thathanahita Co-operative Society* (1).

A. Eggar (with him *Maung Kyaw*) for the respondent. The object of the bar in s. 49 is to give a

* Civil First Appeal No. 173 of 1932 from the judgment of this Court in Civil Regular No. 243 of 1932.

(1) I.L.R. 8 Ran. 581.

special protection to co-operative societies which are now in the stage of infancy, by removing from the cognizance of the ordinary civil courts claims in respect of matters connected with the liquidation of a society. The present suit is for a declaration that the plaintiff is entitled to a certain sum standing in the books of account of the society. Once a sum of money is paid into a bank by a customer it ceases to be the property of the customer; the customer becomes a creditor of the bank for that amount. The appellants in this case have been admitted as the creditors of the society, and will be entitled to any dividend that may be declared by the liquidator. This is obviously a matter connected with the liquidation of a society, and s. 49 bars any suit in relation thereto.

1933

U SEIN BWIN
v.
U MAUNG
GALE.

S. 49 may operate so as to cause hardship, but the language is clear. *Ganpat Ramrao v. Krishnadas* (1); *Mathura Prasad v. Sheobalak Ram* (2); *Maung Po Maung v. Maung Aung Paw* (3); *Maung Aung Nyein v. Maung Gale* (4); *Maung Ba Lat v. The Liquidator, Thathanahita Co-operative Society* (5).

PAGE, C.J.—In this suit the plaintiffs, as trustees of the “Myaung War Loan Fund”, seek a declaration that they are entitled to recover a sum of Rs. 45,582-9-10 which they allege was deposited by them in current account with the Burma Urban Co-operative Bank, Limited.

The Bank is in liquidation, and the liquidator of the Bank is impleaded as defendant in the suit.

The defendant pleaded *inter alia* that the suit was barred by s. 49 of the Burma Co-operative Societies Act, 1927 (VI of 1927).

(1) I.L.R. 44 Bom. 582, 585.

(3) I.L.R. 2 Ran. 325.

(2) I.L.R. 40 All. 89.

(4) I.L.R. 7 Ran. 533.

(5) I.L.R. 9 Ran. 207.

1933

U SEIN BWIN

U MAUNG
GALE.

PAGE, C.J.

The learned trial Judge, Shaw J., held the plea good, and dismissed the suit with costs.

The question that falls for determination is whether the Court had jurisdiction to entertain the suit.

S. 49 of the Act runs as follows :

"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 or winding up of a co-operative society under this Act."

It is common ground that in the preceding sections of the Act there is no express provision authorizing the Court to entertain or determine a suit of this nature against a co-operative society in liquidation.

It is contended, however, that although s. 49 of the Act abrogates the jurisdiction which otherwise the Court would possess to entertain claims against a co-operative society in liquidation by members or past members of the society or their legal representatives, claims against the society preferred by strangers are not within the ambit of s. 49. It is urged that inasmuch as the liquidator is authorized "to institute and defend suits and other legal proceedings on behalf of the society" [s. 47 (2) (a)], and to "institute or defend such suits in the civil Court having local jurisdiction and such other legal proceedings against persons other than members, past members or nominees, heirs and legal representatives of deceased members as may be necessary for the purpose of recovering debts and of recovering or retaining possession of other properties to which the society is entitled" (Rule 22), these provisions connote that persons other than members or past members are entitled to prosecute claims against a co-operative society in liquidation in the civil courts. In my opinion this contention cannot be sustained.

Because the liquidator is authorized to defend suits or other proceedings brought against the co-operative society it does not follow that such suits are maintainable, or that the Court has jurisdiction to hear or determine them. Even where a suit does not lie the defendant must be at liberty to defend the suit, although it may be that his only defence is a plea to the jurisdiction. I am unable to discover any legal ground upon which it could be held that the present suit does not fall within the ambit of s. 49. In *U Kyau v. S.V.K.V. Chettyar Firm* (1), Heald J. held :

“ S. 47 (2) gives the liquidator power to investigate all claims against a society which is in liquidation, and s. 49 says that no civil Court shall have any jurisdiction in respect of any matter connected with the dissolution or winding up of a co-operative society. It appears, therefore, that in respect of claims against a society which is in liquidation the jurisdiction of the civil courts is barred, and the matter is left to the decision of the liquidator, so that persons desiring to enforce claims against the society must apply to the liquidator and not to the civil Court.”

It follows that the claims of strangers and members against a co-operative society in liquidation, as Ormiston J. observed (Civil Revision 199 of 1928), are alike subject to “the uncovenanted mercies” of the liquidator. Non-members who have deposited money with a co-operative society which goes into liquidation may perhaps lament the predicament in which they find themselves, but those who lend money to persons or institutions under disability have only themselves to blame if they did not discover the risk that they were incurring before they lent their money.

For these reasons the appeal fails, and is dismissed with costs.

DAS, J.—I agree.