

review by a respondent where he is asking for review of the judgment only so far as it affects the question of the costs awarded against him.

I therefore hold that the application for review must be stamped *ad valorem* on the amount or sum awarded as costs against the applicant in the appellate Court.

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In re A.A.R.
CHETTYAR
FIRM
v.
DAW HTOO.
SEN, J.

CIVIL REVISION.

Before Mr. Justice Bagaley.

MAUNG BA LAT

v.

LIQUIDATOR, KEMMENDINE THATHANAHITA
CO-OPERATIVE SOCIETY.*

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Jan. 10.

Co-operative Societies—Liquidator's demand against member for "costs of liquidation"—Application to Civil Court for execution—Court's power to examine order—Court's refusal of aid—Burma Co-operative Societies Act (Burma Act VI of 1927), s. 47 (2).

Though a Civil Court has no power of interference with a liquidator's orders as such passed by him under the provisions of the Burma Co-operative Societies Act, nevertheless when the liquidator comes to the Civil Court for its assistance to enforce his order, then, before giving its assistance, the Civil Court is bound to see that the order is one that can reasonably be brought within the ambit of s. 47 (2) of the Act. The Court can refuse its aid in execution if the order is one that cannot be legally passed under that section.

The liquidator claimed from the applicant a sum of money as "costs of liquidation" which he had paid his advocates in a suit filed by the applicant against the liquidator. The costs awarded by the Court to the liquidator were much less. The liquidator maintained that he had to engage expensive advocates to contest the case as a test case for the purpose of strengthening the position and powers of all liquidators of co-operative societies.

Held that the expenditure was not for the purpose of winding up the particular society but was incurred to establish a point of law for the benefit of the whole co-operative movement and the Civil Court was entitled to refuse its aid in execution of the order.

Ganpat Ramdas v. Krishnadas, I.L.R. 44 Bom. 582; *Liquidator, Central Co-operative Stores v. Roy*, 37 C.W.N. 177; *Mathura Prasad v. Sheobi Ram*, I.L.R. 40 All. 89; *Maung Aung Nyein v. Maung Gale*, I.L.R. 7 Ran. 533;

* Civil Revision No. 213 of 1932 from the order of the Small Cause Court of Rangoon in Civil Execution No. 2423 of 1931

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 I.L.R. 8 Ran. 581 ; I.L.R. 9 Ran. 207 ; *Mohant Krishnan v. Ali Khan*, 22 C.L.J.
 525 ; *Nathan v. Samson*, I.L.R. 9 Ran. 480—*referred to*.

Robertson for the applicant.

Maung Kyaw for the respondent.

BAGULEY, J.—This is an application for revision of an order passed by the officiating Chief Judge of the Court of Small Causes, Rangoon, in an execution matter. There have been previous cases between the parties, but the one with which we are now concerned is Civil Execution No. 2423 of 1931.

The respondent is the liquidator of a co-operative society. On March 17th, 1931, he filed an application for execution of a decree for Rs. 591 plus costs passed by him against the applicant. The application was made under s. 47 (5) of the Burma Co-operative Societies Act, 1927. The applicant filed a written objection, but the learned Judge held that he was precluded from making any enquiry into the merits or demerits of the order of the liquidator and had no option but to enforce it. He appeared to regard himself as bound by the wording of s. 47 (2) which states that the liquidator has power, among other things, to determine by what person and in what proportions the costs of the liquidator are to be borne, and by s. 47 (5) which states that orders made under this section shall be endorsed when application is made by the liquidator to any Civil Court having local jurisdiction in the same manner as a decree of such Court. Reference might perhaps also be made to s. 49 which states that save as 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 the Act.

The parties have been litigating in the Civil Courts for a long time. The applicant was a member of a society of which the respondent is the liquidator. The respondent made an order against the applicant for a certain sum of money as being due on a promissory note signed by himself and some others, and applied for execution of his order to the Rangoon Small Cause Court. Thereupon the applicant filed a suit on the Original Side of the High Court asking for a declaration under s. 42, Specific Relief Act, that the proceedings of the liquidator in case No. 173 of 1928 were null and void. The case is Civil Regular No. 540 of 1929 of this Court, and Chari J., before whom the matter came for disposal, dismissed the suit with costs, advocate's fee four gold mohurs. The total costs awarded were Rs. 70 and this sum has been paid.

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The next step was the serving of a demand order by the respondents on the applicant for the sum of Rs. 591 "costs of liquidation." The applicant, through his advocate, wrote a letter asking for particulars of the claim and received an answer to the effect that it represented the actual expenses incurred in the execution case against the applicant. It was definitely admitted before me that this reply is entirely at variance with the facts, and it would seem that we have here a terrible example of what may occur under s. 47 of the Act; absolutely irresponsible powers, uncontrolled by any appeal to any authority and removed from the supervision of the Civil Courts, entrusted to a man who is either unable to understand a direct and simple question, or disinclined to check the correctness of a reply put up to him for signature by his office.

Be that as it may, it is now admitted that what the respondent did was to engage a leading firm of

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advocates to defend the declaratory suit brought against him and the sum of Rs. 591 is the amount by which their bill exceeded the sum of Rs. 70, the costs awarded by the Court and actually paid by the applicant.

An application was then filed in Civil Regular No. 540 of 1929, the original declaratory suit, drawing attention to what had happened, urging that the respondent was varying the order of this Court by enhancing the amount of costs awarded to him, and asking that the Court would take such action as it thought just and proper. Das J., before whom the matter came, held that he had no jurisdiction to deal with the matter in an application filed in the original suit, and dismissed the application. Against his order dismissing the application the applicant filed an appeal, and the matter came before a Bench in Civil Miscellaneous Appeal No. 110 of 1930, and once more the applicant lost, as it was pointed out that the application was an irregular one. It was in consequence of this that when the respondent applied for execution of his order for Rs. 591 to the Court of Small Causes an application was made to the Court by the applicant that the application for execution should be dismissed, but the Court considered that it was bound to proceed with the execution. Hence the present application for revision now before me.

The last appeal referred to is reported as *Maung Ba Lat v. Liquidator, Kemmendine Thathanahita Co-operative Society* (1) and the present case is before me in consequence of a passage in the judgment to be found on page 214:

“ . . . this Court could, if at all, only act on a separate proceeding if or when the liquidator applied again to the Court

of Small Causes for execution of the second order of contribution."

It seems clear that the argument before me took a different course to that which it took before the Bench. It was contended that the sum of Rs. 501 was not costs of the liquidation at all, but costs in the suit, and the significant admission was made before me by respondent's advocate which I took down. "This was a test case because an attack was made on the very basis of the co-operative liquidator's position in general and therefore expensive counsel had to be engaged." In other words these costs were incurred, not solely as expenses of the liquidation of this particular society, but for determining a question which affected the whole of the co-operative movement. No doubt the Rs. 70 paid by the applicant could fairly be regarded as the proportion allottable to the liquidation of the society involved, the remainder I hold definitely not to be expenses of the liquidation of the society in question, but to be expenses incurred for the presumed benefit of the whole co-operative movement, or at all events to strengthen the position and powers of all liquidators of co-operative societies.

The question, therefore, now resolves itself into this. Does s. 49 of the Act, by itself, or in conjunction with s. 47, prevent the Civil Courts from ever looking into, as opposed to merely looking at, an order purporting to have been passed by a liquidator under s. 47?

The position now is that the liquidator has applied to the Civil Court to execute his order by execution proceedings; and when a liquidator applies to a Civil Court for enforcement of his order the proceedings must from that point onwards be regarded as the proceedings of the Civil Court.

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Under s. 47 (5) (c) the order of a liquidator is, on his application, to be executed by the Civil Court as a decree of its own. It is worthy of note that the section does not say that the Civil Court is to execute it as though it were a decree of a Court of equal jurisdiction. Had that form of words been used, the Court to which application was made would have its hands tied and could not look into the order at all, *vide Nathan v. Samson* (1). Worded as the section is, however, it seems to me that the Court to which application is made by the liquidator is entitled to look into the order to the extent of ascertaining whether the order is one that has been passed under s. 47 (2), and, further, that it is one that could be passed legally under that section as opposed to one that has in fact been rightly passed. To enquire into the latter question would clearly be interfering with the liquidator's powers and discretion that would be contrary to s. 49 of the Act, but I am satisfied that the Civil Court, before it acts to enforce an order of a liquidator is entitled, nay, is bound, to inquire into the question as to whether the order can be brought within the four corners of s. 47 (2). Authority can be found for this. In *Mathura Prasad v. Sheobi Ram* (2) at p. 92 we find this passage :

“ If the order of the liquidator can possibly be said to be an order under s. 42, then the Subordinate Judge has no option but to enforce the order.”

This dictum I think can hardly be taken at its face value so far as the word “ possibly ” is concerned. I do not think it can have been meant to hold that the liquidator had only to say that the order was under the section, and that would debar the Court from looking below the surface of it. I read the word

(1) (1931) I.L.R. 9 Ran. 480.

(2) (1917) I.L.R. 40 All. 89.

"possibly" as meaning "in any reasonable way." This certainly implies that if the order can in no way be regarded as one under s. 42, the Judge would not have been bound to enforce it.

In *Ganpat Ramdas v. Krishnadas Padmanaba* (1) in the judgment of Macleod C.J. on p. 584 occurs the passage :

"Of course if the liquidator passes an order which does not come within s. 42, that is a different matter altogether."

The published rulings on this point of this High Court do not appear very clear. In *Maung Aung Nyein v. Maung Gale* (2) at p. 535 appears the sentence :

" . . . an order of 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."

Referring to the same ruling in *Maung Ba Lat v. Liquidator, Kenmendingine Thathanahita Co-operative Society* (3) the same Judge (Chari J.) says (at p. 582) :

"In *Maung Aung Nyein v. Maung Gale* I held that a Civil Court executing an order of a liquidator had no power to refuse execution on the ground that the liquidator had no jurisdiction to pass an order and that therefore it is a nullity"

but nevertheless on p. 537 of the report of *Maung Aung Nyein v. Maung Gale* (2) I find the passage :

" . . . 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."

This passage to my mind would clearly support the proposition that if a liquidator's order were made without jurisdiction a Civil Court would be justified in refusing to enforce it. *Vide* also Maung Ba J.'s construction of s. 49 of the Act, reproduced on p. 583 of the same ruling.

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(2) (1929) I.L.R. 7 Ran. 533.-

(3) (1929) I.L.R. 8 Ran. 581.

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In a very recent case, *Liquidator, Central Co-operative Stores, Jalpaiguri, Limited v. Santinidhan Roy* (1) a bench of the Calcutta High Court held that the Civil Court was entitled to look into the question of whether a liquidator had complied with his own rules before passing an order which he asked the Civil Court to execute, and, on finding that he had not done so, should refuse to execute his order.

I am of opinion that even if the ordinary Civil Courts have no power of appeal or of revision in connection with the orders of a liquidator and even if they have no power of interference with the liquidator's orders as such, nevertheless, when the liquidator comes to the Civil Court for its assistance to enforce his order, then, before giving its assistance, the Civil Court is bound to see that the order is one that can reasonably be brought within the ambit of s. 47 (2).

It seems clear to me that the authority which has to determine whether the order does or does not come within the section is, not the liquidator, but the Civil Court, as it is the latter which is being moved to execute the order concerned. Before the Civil Court takes action to enforce the order of a liquidator it has got to be satisfied that the order is passed by a duly authorized liquidator of a society governed by the Act, and that it is an order which has been passed under s. 47 (2) and that it could be passed *under that section*.

If this condition is not satisfied as a condition precedent, s. 49 of the Act would debar it as a Civil Court from exercising any jurisdiction by interfering in respect of a matter concerned with the winding up of a society, *vide Mohant Krishnan*

Doyat Gir v. Pershad Ali Khan (1) quoted by Cunniffe J. in *Rangoon Development Trust v. Behara* (2).

In the present case the advocate for the respondent made the definite admission that I have recorded earlier in this judgment, namely, that the expenditure, recovery of which was sought, was entailed, not for the purpose of winding up the society that he was liquidating but for the purpose of establishing a point of law for the benefit of the whole co-operative movement by the decision of a test case. I consider that the liquidator is not entitled to recover as expenses of liquidation expenses that on the face of them are not concerned with this particular liquidation at all.

The Civil Courts are *primâ facie* entitled to determine all Civil matters; legislation that ousts their jurisdiction must be very carefully examined, and unless the Courts are satisfied that the conditions upon which they are ousted are fulfilled, and fulfilled to their own satisfaction, they will not hold that they are debarred from inquiring into any matter before them. They will not take the mere *ipse dixit* of the authority which ousts them, unless the law definitely states that they are bound to do so.

For these reasons I consider that the appeal should be allowed. I set aside the order of the lower Court dismissing the application of the applicant and direct it to take no further steps in the matter of this execution for this sum of Rs. 591. Respondent must bear the costs of the applicant, advocate's fees 5 gold mohurs.

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(2) (1932) I.L.R. 10 Ran. 412 at p. 419.