

## APPELLATE CIVIL.

*Before Mr. Justice Mosely.*

## MAUNG KYAW THA

v.

## THE CO-OPERATIVE TOWN BANK, HENZADA.\*

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Apl. 5.

*Co-operative Society—Claim against ex-member for malfeasance and non-feasance—Limitation Act, art. 36—Claim referred to arbitrator by Registrar—Award enforceable as a decree of civil Court—Arbitrator's error as to law of limitation—Executing Court's power to question legality—Co-operative Societies Act, ss. 47, 49, 50 (2) (1)—Burma Co-operative Societies Rules, 1931, r. 15.*

There is no provision in Rule 15 of the Burma Co-operative Societies Rules, 1931, framed under s. 50 (2) (1) of the Co-operative Societies Act, expressly barring the jurisdiction of civil Courts in relation to proceedings of the Registrar or arbitrators in the same way as the jurisdiction of civil Courts is barred with respect to matters connected with the liquidation of a society.

A co-operative society's claim for compensation against its ex-member and manager for selling a house for a sum much less than its value, and for not crediting the amount to the society is a claim for malfeasance and non-feasance, and the period for filing a suit for compensation is two years from the date of the wrongful act.

But if under Rule 15 an award is made in respect of the claim by an arbitrator appointed by the Registrar the award is on application to the civil Court enforceable as a decree of such Court, notwithstanding the fact that at the date of the appointment of the arbitrator a suit in respect of the claim was time-barred. Although the arbitrator errs as to the law of limitation, the Court has no power to do anything except to execute the award, and cannot question the legality of the award in proceedings for execution of it.

*Ahmad Yar v. Co-operative Credit Society*, A.I.R. (1926) Lah. 547; *Dhanpal v. Anjuman*, A.I.R. (1935) Lah. 947; *Maung Aung Nyein v. Maung Gale*, I.L.R. 7 Ran. 533; *S. A. Nathan v. S. R. Samson*, I.L.R. 9 Ran. 480, referred to.

*E Maung* for the appellant.

*Tin Aung* for the respondent.

MOSELY, J.—This second appeal is against an order of enforcement of an award, under Rule 15 Sub-section (4) of the Burma Co-operative Societies Rules, 1931,

\* Civil Second Appeal No. 278 of 1936 from the judgment of the District Court of Henzada in Civil Misc. Appeal No. 35 of 1936.

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framed under section 50, sub-section (2) (1) of the Co-operative Societies Act, (Burma Act VI of 1927). The award was made by an arbitrator appointed by the Registrar in a dispute between the appellant, Maung Kyaw Tha, ex-member and manager of the Co-operative Town Bank, Henzada, and that banking society. The Bank's claim related to a loss of Rs. 1,050, which they said they had suffered by the default of their manager in selling a house worth that sum for Rs. 400,—which Rs. 400 was not credited to the society. The date of the loss must have been the date of the sale of the house, which was effected on the 31st March, 1932. Maung Kyaw Tha was dismissed in August 1932. This loss was brought to notice by a surety in July 1934. Inquiry was started in October, 1934. Application for appointment of an arbitrator was made in May, 1935, he was appointed in July, 1935, and he gave his award in January, 1936.

It would appear that the bank's claim was one for compensation for malfeasance and non-feasance, under Article 36 of the Limitation Act,—limitation of a suit for which is two years from the date of the malfeasance or non-feasance. It would seem that the claim was time-barred at the time of the appointment of the arbitrator.

Reliance for the appellant is also placed on section 26 (2) of the Co-operative Societies Act of 1927. That section, however, clearly relates only to liability of past members for contribution to the debts of the society, and not to debts by members to the society. Such questions of liability, under section 26, usually come before the Court in proceedings in liquidation on orders made by the liquidator under section 47 of the Act. That section, it is to be noted, (sub-section 5), allows the liquidator's orders to be enforced by a civil Court in the same manner as a decree of such Court, in exactly the same way as an award of an arbitrator

under Rule 15, sub-section (4). But it is to be noted that section 49, which provides that "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", is not reproduced under Rule 15. There is no provision in Rule 15 expressly barring the jurisdiction of civil Courts in relation to proceedings of the Registrar or of arbitrators in the same way as the jurisdiction of civil Courts is barred with respect to matters connected with the liquidation of a society.

Whether the award of the arbitrator could be attacked by suit is not a matter before me now. I need only mention in this connection that the case cited in the trial Court, *Dhanpat v. Anjuman Dahi Alo Mahar* (1), was one from Lahore, and under the Punjab Co-operative Societies Act, [section 18, clause (j)], "an arbitrator's award", (like an order in liquidation), "is not, as between the parties to the dispute, liable to be called in question in any civil Court, and is final and conclusive, except on proof of corruption." It was remarked in that case, I note, that the intention of the Legislature appeared to be that a past member should be liable for debts due to the society with such restrictions as might be applicable under the law of limitation.

It is clearly not the intention of the Legislature that the arbitrator should arbitrarily arrogate to himself the right to ignore the law of limitation.

I do not see, however, how this award, which is to be executed as a decree, can be attacked in execution proceedings merely on the ground that it has ignored the law of limitation and is, to that extent, clearly

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illegal. The same considerations here come into play as in *Maung Aung Nyein v. Maung Gale* (1), though what was in question there was an illegal order of a liquidator. Here, even if the executing Court could go behind the decree to the reasons for the judgment, the judgment was the award of the arbitrator, and the arbitrator had jurisdiction to commit errors of law. I do not see, however, that the executing Court can go behind the decree in executing this award, which is to be executed as a decree of the Court, and the principles laid down in *S. A. Nathan v. S. R. Samson* (2) must apply.

It is suggested that the principle applied in *Maung Ba Lat v. Liquidator, Kemmendine Thathanahita Co-operative Society* (3) could be applied here. But that was a special case where the Court found itself able to interfere with an obviously inequitable order of the liquidator, passed under section 47 (2), as to the costs of the liquidation, on the ground that on the face of it the order was one to recover costs which were not incurred for the purpose of winding up the society that the liquidator was liquidating, but for a different purpose, that of establishing a point of law for the benefit of the whole co-operative movement by a decision of a test case. It was possible to hold there that the liquidator had no jurisdiction under section 47 (2) to pass the orders which he did.

In the present case, however, I am unable to hold that the arbitrator had no jurisdiction to pass the order in question merely because it was not an order in accordance with the law of limitation; and though, as I have said, there is no express provision in the Act or Rules barring the jurisdiction of the civil Court in such

(1) (1929) I.L.R. 7 Ran. 533.

(2) (1931) I.L.R. 9 Ran. 480.

(3) (1933) I.L.R. 11 Ran. 125.

cases, yet I do not see that the Court has power to question the legality of the award in these proceedings for execution of it. I agree with what was said in *Ahmad Yar v. Co-operative Credit Society* (1), that the Court has no power to do anything except to execute the award.

This appeal will, therefore, be dismissed with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Mosely.*

DAW OHN BWINT AND OTHERS

v.

DAW SAW MAY AND ANOTHER.\*

*Succession certificate—Joint certificate to several persons—Rival claimants—Succession Act, s. 373.*

There is nothing illegal in issuing a joint succession certificate to more persons than one. There may be inconvenience and impropriety in issuing it to rival claimants, but s. 373 (4) of the Succession Act does not debar the issue of joint certificates.

*Lonachand v. Uttamchand*, I.L.R. 15 Bom. 684; *Madan Mohan v. Ramdixl* I.L.R. 5 All. 195; *Ram Raj v. Brij Nath*, I.L.R. 35 All. 470, referred to.

*Dangali* for the appellants.

*Eumoose* for the respondents.

MOSELY, J.—The ground of limitation has been abandoned, and the only remaining question to be decided is whether a joint succession certificate to several claimants could have been given, as was done in this case, to the decree-holder respondents.

Section 373, sub-section (4) of the Succession Act says :

“When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants

(1) A.I.R. (1926) Lah. 547.

\* Civil Second Appeal No. 314 of 1936 from the judgment of the District Court of Pyawôn in Civil Misc. Appeal No. 22 of 1936.

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