

FULL BENCH (CIVIL).

Before Sir Ernest H. Goodman Roberts, Kl., Chief Justice, Mr. Justice Dunkley,
and Mr. Justice Braund.

1938

June 22.

H. C. DEY

v.

THE BENGAL YOUNG MEN'S CO-OPERATIVE
CREDIT SOCIETY.*

Co-operative society—Suit by society to recover loan from a member—Jurisdiction of civil Court barred—Burma Co-operative Societies Act, s. 50 (2) (i); Rule 15—Civil Procedure Code, s. 9.

By Rule 15 of the Burma Co-operative Societies Rules, 1931, framed by the Government of Burma under s. 50 (2) (i) of the Burma Co-operative Societies Act, every dispute touching the business of a co-operative society between a member and the committee of the society shall be referred to the Registrar.

Held, that a suit brought by a co-operative society against its member to recover a loan due by the member to the society was impliedly barred under s. 9 of the Civil Procedure Code.

Crisp v. Bunbury, 8 Bing. 394, followed.

Armitage v. Walker, 2 K. & J. 211; *Bhaishankar v. Municipal Corporation of Bombay*, I.L.R. 31 Bom. 604; *Dacca Co-operative Union, Ltd. v. Silpa Samities, Ltd.*, 42 C.W.N. 391; *Ganesh v. Secretary of State for India*, I.L.R. 43 Bom. 221; *Gopi Nalh v. Ram Nath*, I.L.R. 47 All. 374; *Hack v. London Provident Bldg. Society*, 23 Ch.D. 103; *Municipal Bldg. Society v. Kent*, 9 App. Cas. 260; *Ex parte Payne*, 79 R.R. 892; *Ramuchandra v. Secretary of State for India*, I.L.R. 12 Mad. 105, referred to.

Maung Kyaw Tha v. Co-operative Town Bank, [1937] Ran. 399, considered.

Rauf for the petitioner. A suit by a co-operative credit society against a member for the recovery of a loan is barred. The petitioner who is a member of the respondent society is disputing his liability as a surety in respect of a loan made by the society to another member. Under Rule 15 made by the Government under the provisions of s. 50 (2) (i) of the Burma Co-operative Societies Act it is a dispute touching the business of the society with a member and must be referred to the Registrar of the society. Where a statute sets up a special tribunal, the jurisdiction of the

* Civil Revision No. 117 of 1938 from the judgment of the Small Cause Court of Rangoon in Civil Regular Suit No. 9336 of 1936.

Courts is ordinarily barred. The object of the statute is to provide an inexpensive remedy so as to avoid heavy court fees and lawyer's fees. "A provision that if any dispute arises between a society and any of its members it shall be lawful to refer it to arbitration ousts the jurisdiction of the Courts over such disputes. It is obvious that the provision, from its nature, would be superfluous and useless if it did not receive a construction which made it compulsory and not optional to proceed to arbitration." See Maxwell, *Interpretation of Statutes* (7th Ed.) p. 114; *Crisp v. Bunbury* v. (1); *Armitage v. Walker* (2); *Municipal Permanent Investment Society v. Kent* (3); *Ex parte Payne* (4); *Hack v. London Provident Bldg. Society* (5); *Dacca Co-operative Industrial Union, Ltd. v. Silpa Samities, Ltd.* (6); *Sen Gupta v. Haripur Co-operative Bank* (7); *Gopi Nath v. Ram Nath* (8); *Bhaishankar v. Municipal Corporation of Bombay* (9); *Ganesh v. Secretary of State for India* (10).

[BRAUND, J. The jurisdiction of a civil Court may by necessary implication be barred under s. 9 of the Civil Procedure Code.]

That is so. The dictum of Mosely J. in *Maung Kyaw Tha v. Co-operative Town Bank* (11) has no bearing on this case.

Dangali for the society. There is a difference between the wording of the statutes and rules in England and our Act and rules. Rule 15 does not take away the jurisdiction of the civil Courts.

(1) 8 Bing. 394, 397.

(2) 2 K. & J. 211.

(3) 9 App. Cas. 260.

(4) 79 R.R. 892.

(5) 23 Ch.D. 103.

(6) 42 C.W.N. 391, 398.

(7) 39 C.W.N. 1301.

(8) I.L.R. 47 All. 374.

(9) I.L.R. 31 Bom. 604, 609.

(10) I.L.R. 43 Bom. 221.

(11) [1937] Ran. 399.

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ROBERTS, C.J.—This case has come before the High Court in revision from a judgment of the Third Judge of the Small Cause Court, Rangoon, and has been referred to a Full Bench for determination of the point of law involved. The defendant in the suit was one of two guarantors on a bond and was sued as such by the respondent Society, it having been the practice to entertain suits of this character by a Co-operative Society against one of its members in the law Courts in Burma.

By the Burma Co-operative Societies Act (VI of 1927) section 50 (2) (1) the Governor may, for the whole or any part of Burma and for any co-operative society or class of co-operative societies, make rules to carry out the purposes of this Act, and in particular and without prejudice to the generality of this power may provide that any dispute touching the business of a co-operative society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and shall prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed etc. By rule 15 (1) (b) of the Burma Co-operative Societies Rules, 1931, every dispute touching the business of a co-operative society, between a member or past member or persons so claiming and the committee or any officer of the society, shall be referred to the Registrar.

Section 9 of the Civil Procedure Code says :

“ The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

In my opinion the point raised is amply covered by authority. But before passing to consider it I desire to observe that it appears to me that the rule would be unnecessary altogether if by its application the jurisdiction of the Courts was not taken away : parties to a dispute could always agree to refer it to the Registrar and in these circumstances the rule would be unnecessary ; whereas if the rule is not to take away the jurisdiction of the Courts when the parties in dispute have not agreed to submit the matter to the Registrar, it would become a dead letter.

The leading authority on this point appears to be the case of *Crisp v. Bunbury* (1), an authority which has remained unquestioned for over a hundred years. The action was brought against the defendants for money had and received by them to the use of the plaintiff. The defendants were trustees of the Mildenhall Bank, which was a savings bank to which the provisions of 9 Geo. IV, Chapter 92 applied. By section 45 of that Statute it was provided :

“ That in case any dispute shall arise between any such institution or any person or persons acting under them, or any individual depositor therein, the matter so in dispute shall be referred to the arbitration of two indifferent persons to be chosen and appointed in the manner therein pointed out ; etc.”

Tindal C.J. said :

“ It is undoubtedly true, that the jurisdiction of the superior courts of Westminster is not to be ousted, except by express words, or by necessary implication : * * yet, where the object and intent of the Statute manifestly requires it, words that appear to be permissive only shall be construed as obligatory, and shall have the effect of ousting the courts of their jurisdiction, * * * . Now, in this case the legislature has enacted that disputes of the description of the present ‘ shall be referred ’,—

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words which, in their natural force, denote an obligation, not a permission only ; and unless these words are construed to be compulsory on the plaintiff, they mean nothing. If they are not compulsory on the plaintiff, neither can they be so, upon any principle of fair construction, upon the defendant. And if recourse to arbitration is not intended except both parties choose to adopt it, then indeed the Act is made a dead letter ; for it would be competent for both parties to refer the dispute to arbitration, if they both agreed upon it, without the intervention of the statute."

Adopting the phraseology which the learned Chief Justice later employed, it is clear that in the present case the remedy by action is taken away and that of a reference to the Registrar is substituted in its place.

The case which I have cited is followed in principle by the cases of *Armitage v. Walker* (1), *Ex parte Payne* (2) and *Hack v. London Provident Building Society* (3).

In *The Municipal Permanent Investment Building Society v. Kent* (4) it was held that when the rules of a benefit building society established by Statute provided for the settlement by arbitration of disputes between the society and any of its members, the High Court could not entertain an action by the society against a member for moneys due to it under covenants in mortgage deeds executed by the member, as such, to the society. The point upon which Lord Selborne delivered a dissenting judgment was that the disputes which had arisen were not in so many words defined as matters in dispute between the society or any person acting under them, and any individual member thereof, or person claiming on account of any member. In his judgment Lord Blackburn expressly referred to the

(1) 2 K. & J. 211.

(2) 5 Dow. & L. 679-79 R.R. 892.

(3) 23 Ch.D. 103.

(4) (1884) 9 App. Cas. 260.

decision in *Crisp v. Bunbury* (1) to which I have referred. I entertain no doubt that the rules made under the Burma Co-operative Societies Act take away the jurisdiction of the Courts in respect of disputes contemplated under rule 15.

It is clear that in India the same principle has been accepted and where there has been a special tribunal set up the jurisdiction of the civil Courts has often been held to be barred—see *Dacca Co-operative Industrial Union, Ltd. v. Dacca Co-operative Sankha Silpa Samities, Ltd.* (2), *Ramachandra v. The Secretary of State for India in Council* (3) (a case under the Madras Forest Act) and *Ganesh Mahadev Jamsandekar v. The Secretary of State for India in Council* (4). In this latter case it was held that the decision of a Collector of Customs under section 182 of the Sea Customs Act, 1878, was final, and that the Courts would not intervene when certain silver imported into British India without payment of duty was confiscated by him. In *Gopi Nath v. Ram Nath* (5) the election of directors of a co-operative society being part of the business thereof the Court held that the intention of the Co-operative Societies Act, 1912, in India, was that this and any dispute of a similar character should be referred for the decision of the Registrar or the arbitrators appointed by him in accordance with the rules made under section 43, and not to the civil Court. They accordingly held that a suit brought by two preference share-holders in the Muttra District Co-operative Bank for a declaration that the four defendants had not been legally elected directors of the Bank and for an injunction to restrain them from acting as such was not maintainable

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(1) 8 Bing 394.

(2) 42 C.W.N. 391.

(3) (1888) I.L.R. 12 Mad. 105.

(4) (1918) I.L.R. 43 Bom. 221.

(5) (1924) I.L.R. 47 AH. 374.

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In *Bhaishankar Nanabhai v. The Municipal Corporation of Bombay* (1) Jenkins C.J. said at page 609 :

“ But where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts, for they never had any ; there is no change of the old order of things ; a new order is brought into being.”

Our attention has been called to a dictum of Mosely J. in *Maung Kyaw Tha v. The Co-operative Town Bank, Henzada* (2) in which he says that there is nothing in rule 15 expressly barring the jurisdiction of the Courts. This dictum in its terms does not deal with cases of implication, and we are satisfied that the learned Judge was merely emphasizing the fact that in the particular case he was governed by express words.

The argument for the respondents, if carried to its logical conclusion, would lead to an express disregard of the terms of section 9 of the Civil Procedure Code which clearly contemplates that the jurisdiction of the Courts may by necessary implication be avoided.

In my opinion, therefore, this application in revision must be allowed, and the decree passed by the Third Judge of the Rangoon Small Cause Court must be set aside and the suit of the plaintiff-respondent Society dismissed with costs in both Courts, advocate's fee in this Court five gold mohurs.

DUNKLEY, J.—I am of the same opinion. The applicant was sued as guarantor on a bond for the repayment of money borrowed from the respondent

(1) (1907) I.L.R. 31 Bom. 604.

(2) [1937] Ran. 399.

Co-operative Credit Society by one of its members. The applicant is also a member of the Society. By rule 15 of the Burma Co-operative Societies Rules, 1931, framed by the Government of Burma under section 50 (2) of the Burma Co-operative Societies Act, 1927, every dispute touching the business of a co-operative society between a member and the committee of the society shall be referred to the Registrar. It is conceded on behalf of the respondent Society that the recovery of this loan is a "dispute touching the business of a co-operative society", but it is urged that rule 15, so far as it purports to restrict the jurisdiction of the civil Courts, must be construed strictly, and that in strictness the dispute is between the applicant and the society, and therefore does not fall within the scope of rule 15. This is an ingenious attempt to draw a distinction for this particular purpose between the society and the committee of the society. Now, under section 31 of the Act the society is a body corporate, and under section 2 (b) the committee "means the governing body to whom the direction of the affairs of the society is entrusted." The suit for the recovery of the loan must, under section 31, be brought in the name of the society, but there can be no dispute with the society as such. The suit was brought by resolution or order of the committee as the governing body of the society, and therefore the dispute was in the strictest sense between the applicant and the committee.

Section 9 of the Code of Civil Procedure enacts that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In *Mauing Kyaw Tha v. The Co-operative Town Bank, Henzada* (1) my brother Mosely pointed out that the jurisdiction of

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the civil Courts is not expressly barred by rule 15 of the Burma Co-operative Societies Rules, 1931, but he did not go on to consider whether the jurisdiction of the Courts is barred by implication. That it is so barred is plain from the simple fact that, as stated by my Lord the Chief Justice, if a dispute of the nature contemplated by the rule could be brought by either party before the Courts for decision, the rule would be of no force or effect.

BRAUND, J.—I agree and have nothing to add.